



# **National Farmers' Federation**

## **Public Submission to the Senate Inquiry into the Coorong and Lower Lakes: Part 2 Implications for Long-Term Sustainable Management of the Murray-Darling Basin**

19 November 2008



**Member Organisations**



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# National Farmers' Federation

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The National Farmers' Federation (NFF) was established in 1979 and is the peak national body representing farmers and more broadly agriculture across Australia.

The NFF's membership comprises of all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations collectively form the NFF.

Each of these state farm organisations and commodity council's deal with state-based 'grass roots' issues or commodity specific issues, respectively, while the NFF represents the agreed imperatives of all at the national and international level.

## Introduction

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The NFF welcomes the opportunity to provide a submission to the Senate Standing Committee on Rural & Regional Affairs & Transport Inquiry into longer-term sustainable management of the Murray-Darling Basin system (the "Inquiry"). This Inquiry is the second part of the inquiry into the Coorong and Lower Lakes. NFF has previously made a submission in September to the first part of the Inquiry.

In January 2007, the previous Coalition Government commenced negotiations for the longer-term management of the Basin, culminating in the passing of the Water Act 2007 (C'1th). This Act relied on the Commonwealth's own constitutional and international convention powers having failed to gain a referral of powers from the relevant state and territory Governments. The current ALP Federal has succeeded in having the Intergovernmental Agreement for reform of the Murray-Darling Basin (IGA) signed by the Council of Australian Governments (COAG) in July 2008. At the time of writing, the State Governments are in the process of passing the relevant legislation to refer certain powers to the Federal Government over water management.

The Federal Government has introduced the Water Amendment Bill 2008 (the Bill) into Federal Parliament to amend the Water Act consistent with the IGA. This bill also introduces significant changes to the Murray-Darling Basin Agreement (the Agreement) on the interstate sharing of water. It is proposed that the Agreement is appended to the Water Act 2007 as a new Schedule 1. The Bill also flags a comprehensive review of the schedules of the Agreement in the short term.

All these changes may have significant impacts on water sharing between the States and most importantly, attenuate the water entitlements held by some farmers, Government and others. As a result, the NFF is concerned that there is insufficient protection for entitlement holders.

NFF submits that the longer-term arrangement for management of the Basin's water resources has been implemented. However, implementation will take several years - but

this time is needed to construct a well-balanced Basin Plan that delivers a sustainable Basin in terms of its economic, social and ecological assets.

## Water Reform

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The management of the Basin has been evolving since first governance was implemented early last century. More recently, the wider COAG water reform program was commenced in the mid 1990s and remains ongoing, resulting in uncertainty in the irrigation sector, reform fatigue and consequently reduced incentives to invest.

The latest reforms are intended to provide national oversight of the management of the Basin. The Water Act 2007 was passed last year, relying on Commonwealth powers, to develop a Basin Plan and implement water charge and market rules. More recently, COAG signed the Murray-Darling Basin Water Reform Intergovernmental Agreement (IGA) with the related legislative amendments currently before Parliament. A separate Senate Inquiry will look at the Water Amendment Bill 2008 an NFF will provide a submission to that inquiry.

The Commonwealth have backed the Federal legislation with a \$12.9 billion funding program – Water for the Future. This program has several components. For this inquiry, the most important elements are a \$3.1 billion acquisition program and a \$5.8 billion rural water infrastructure program.

The funding program takes over from the previous Coalition Government's National Plan for Water Security, nevertheless with different focus. The main difference, from an irrigation perspective is the setting aside of a \$1.5 billion structural adjustment program, and a reduced rate of investment under the \$5.8 billion infrastructure program.

For the latter, the emphasis is on state priority projects agreed under the IGA. Of major concern to NFF is the apparent referral of on farm projects from the Commonwealth to the States under these priority projects. Moreover, all Governments have a reluctance to fund on farm infrastructure projects. While there are a number of drivers for this, the main reason is reluctance to investment in what will be seen to be private irrigation infrastructure (albeit in return for water entitlements) and that the cost of implementing these projects is higher than the cost to purchase water. The latter is a particularly vexed issue.

Given that the above legislation and funding programs are relatively new, and the legislation is still being implemented, NFF believes that any further changes are premature. The legislation is about long term management of the Basin and its resources, and concerns about short-term water scarcity should not be used as an excuse to undermine the current process. The legislation does contain review mechanisms and this should be the method used to assess the management regime in the Basin.

## State Management of Water

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Management of water is extremely complex, e.g. in NSW alone, there are over two hundred pieces of legislation regarding the management of water. As a result, few people in the Basin understand water management on a regional basis, let alone state and the Basin.

This has certainly lead to many people claiming to be experts in this field, and many commentators claim to know what is needed to “fix” the perceived problems of the Basin, even if many of these problems are short term water scarcity and unrelated to the integrity or otherwise of the water management of the Basin. NFF does not claim that the current water management in the Basin is perfect but the changes being implemented at the Federal level are the next iteration in the evolution of the management of the Basin. In many cases, Australia is considered by the rest of the world to be leading the way in water management, but nationally is seen to be poor managers.

Despite Federal oversight of the Basin, the State Governments will remain integrally involved in water management. Water entitlements are and will continue to be issued under State legislation, which inherently means that water trading is also managed at the State level. Water allocations to water entitlements will continue to be determined by the States. Water sharing plans for each water sources will continue to be development and implemented under State legislation. Land use will continue to remain under state jurisdiction. Water pricing will remain under State control, unless the State refers this power to the ACCC. Implementation of regional based investment in NRM (via Catchment Management Plans), including water, will remain the domain of the States.

The Federal Government legislation includes provisions for the Basin Plan (including setting sustainable diversion limits), establishing the new Murray-Darling Basin Authority (which picks up the former Murray-Darling Basin Commission responsibilities) and setting the rules that will determine water market and water charge rules. As part of these responsibilities, the Federal Government, through the Authority, will be responsible for determining the water available in the Murray Valley only at a state bulk water share level.

From the above, it can be ascertained the there will be certain responsibilities that are the domain of State Governments, while the Federal Government has defined responsibilities for Basin water management. Those whose expectations went as far as to expect one water product across the Basin, one water allocation regime and total Federal responsibility will be disappointed and need to come to terms with the realities of the Federal and State governance of water.

## Specific Terms of Reference

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The remainder of the NFF submission deals with the specific terms of reference.

- a) *The adequacy of current whole-of-Basin governance arrangements under the Intergovernmental Agreement;*

The management of the Basin and its governance arrangements have been evolving since early last century. The last iteration of the agreement is dated in 1992, however,

amendments via schedules to the Agreement has occurred since then, most notably those schedules dealing with the Cap on Diversions and trade.

There have been criticisms of the governance arrangements, with many commentators describing these arrangements as management by the “lowest common denominator” because of the veto power of individual Ministers in the Ministerial Council. However, a more positive view of these arrangements are that where governments are required to provide financial support for decisions, and where all can agree, then the decisions are robust and enduring.

The IGA seeks to implement new governance arrangements for the Basin. The Bill seeks to enact these arrangements at a Federal level. However, NFF notes that these arrangements reflect the status quo. There remains a Ministerial Council with new terms of reference and a Basin’s official committee (i.e. to replace the Murray-Darling Basin Commission) with new terms of reference.

There is a new Authority and a new Chief Executive Officer. The Authority’s autonomy is constrained by the retention of the States management control via the Ministerial Council and Basin Officials Committee. One could say that there will still be a robust decision process; however, the expectations of some individuals and organisations of an autonomous Authority are gone. The redeeming feature is that the Authority will be skills based (rather than state officials), and because the States will continue to fund the Authority, albeit with different contributions their historic contributions, there will be significant buy in and ownership of decisions by the States.

The major difference is that the Basin Plan is a decision solely of the Federal Minister for Water, developed by the Authority and with advice of the Ministerial Council.

The Water Act provides for a review of the Federal arrangements in 2014. It seems that this would be appropriate time to review these water reforms rather than as proposed by this inquiry before these reforms have commenced.

b) *The adequacy of current arrangements in relation to the implementation of the Basin Plan and water sharing arrangements;*

The Basin Plan is to be developed by 2011. This provides a period of no more than three years. In many cases, it has taken up to five years to develop individual water sharing plans for water sources. This is because of the need to develop a shared understanding of the complex water management and environmental issues, and develop and agree to the tradeoffs required. Therefore, the time to develop the Basin Plan will be needed to undertake this significant task across the entire Basin.

Many have commented that the Basin Plan will not really take effect until the transitional water sharing plans have ceased (many are due in 2014). However, the Water Act 2007 states that water sharing plans, many of which are due to be reviewed in 2009, are required to **not** be less consistent than the Basin Plan. The reality is that these reviews in 2009 will most likely pre-date the Basin Plan, leaving a window of less than three years before most water sharing plans will be adjusted to take into account the Basin Plan.

NFF notes that the above does not apply to Victoria due to its water sharing plans having different review and completion dates.

Hastening the development of a Basin Plan will affect transitional water sharing plans, which underpin property rights, leading to period of uncertainty that is not conducive to investment by irrigators.

c) Long term prospects for the management of Ramsar wetlands including the supply of adequate environmental flows;

Ramsar wetlands are not the only environmental assets across the Basin. The Basin Plan is required to include implementation of international agreements, specifically Ramsar wetlands (Cl. 21(3)) and to embed an environmental watering plan. NFF expects that the latter will require identification of the environmental assets and their associated biodiversity values across the Basin that management (noting that management is more than just water), the volume required (including where this volume can be attenuated by engineering solutions) and the watering regimes. Water recovered under the Water for the Future program should be tagged to address these icons.

In doing the above, it may not be possible to save every environmental asset, and NFF expects that tradeoffs may need to occur against the social and economic values of regional communities.

d) The risks to the Basin posed by unregulated water interception activities and water theft;

NFF does not condone the theft of water under any circumstances and supports an appropriate compliance regime. This may include both monetary and water penalties. The issue in many cases is the detection of the action, and the proof of theft. If necessary, the appropriate legislative changes must be enacted to ensure these risks are negated.

Additionally, there should be significant investment in metering – which is required to be able to manage the resources as well as to determine the basis for water pricing (with the exception of basic landholder rights). However, in reality a cost to benefit analysis should accompany the decision to install new meters to ensure that small volumes of diversions are not accompanied by a very expensive meter. In the latter case, it may be appropriate to deem the volume of water taken and use other methods to ensure compliance (e.g. satellite imagery or helicopter/plane assessment at peak irrigation times).

The States need to ensure that sufficient resources are applied to compliance.

Regarding unregulated water interception activities, NFF has ascertained from the Inquiry Secretariat, that the Committee is seeking comment on floodplain harvesting undertaken, largely in the Northern Basin.

NFF would contend, that with the implementation of NSW legislation regarding floodplain harvesting, that there is no “unregulated” water interception activities in this state. Landholders (i.e. including dryland farmers) are allowed to harvest 10% of run off

for stock and domestic uses. This water cannot be used for commercial irrigation activities or where the commodity produced may be bartered.

In Queensland, all floodplain harvesting is regulated or authorised. In the lower Balonne, it is licensed and all storages certified. The rest of the Basin in Queensland, overland flow is restricted to existing infrastructure (built before September 2001) which is then authorised when notified. No new overland flow storages have been built since this date. NFF understands that some storages have been built to accommodate sleeper licences and where there are unauthorised works built after 2001, these will be prosecuted and the infrastructure decommissioned.

Unregulated water interception activities could also refer to stock and domestic water rights or basic landholder rights as these are now more widely known. Such licences could fall into the category of unregulated; however, these rights are enshrined in state water legislation. In the majority of cases, these are unlicensed and unmetered due to the smaller individual volumes and the prohibitive cost of metering for small volumes. In some situations, like Victoria, such uses have been “deemed” to account for the use as part of the water source water-sharing plan.

NFF understands that stock & domestic (farm dams) have little impact on surface water in Queensland due to the low livestock carrying capacity per hectare of land. Queensland does require licensing of intensive livestock operations, however, these generally use water sourced from the Great Artesian Basin, which is undergoing a capping and piping program.

e) *The ability of the Commonwealth to bind state and territory governments to meet their obligations under the National Water Initiative;*

It has been the view of the irrigation sector that the Commonwealth has bought influence with the States over a number of policy reform areas, initially through the COAG tranche payments and more recently through the State Priority Projects agreed under the IGA.

The agricultural sector noted that the original water reforms were implemented according to what the State Governments saw as their achievements. These were not necessarily aligned with the expectations of entitlements holders.

More recently, NFF lobbied strongly that the implementation of the NWI was proceeding at a level that prioritised State Government objectives at the disadvantage of agriculture. Currently, implementation of the Water for the Future is seeing a high prioritisation of acquisition with infrastructure investment slowing and with many commentators urging the Federal Government to undertake the acquisition package before embarking on the infrastructure package.

Given the above, the NFF has some concerns that the current reforms will bind the State Governments to their NWI commitments, their IGA commitments, or the timelines agreed by Governments.

f) The adequacy of existing state and territory water and natural resource management legislation and enforcement arrangements; and

Most states and territories have robust legislative arrangements in place with continuing improvement by implementing the COAG reform agenda and the NWI. It is an evolving process, with some states more advanced than others are.

However, one area that the states do need to improve is compliance. Governments need to put in place robust tamper proof real time metering using the most current technology. In addition, use of widespread satellite imaging of irrigation areas, rivers and creeks would be helpful.

Governments should make the necessary legislative changes that will facilitate prosecution those who choose to steal water. As an example, in NSW State Water is required to convince the Department of Water and Energy of the need to prosecute and the collection of evidence is so onerous, it is similar to collecting evidence for murder.

g) The impacts of climate change on the likely future availability of water.

NFF does not purport to be an expert on climate change and therefore are not in a position to make comment on the future availability of water. However, water sharing plans have some capacity to deal with these issues.

Each water source has, or will have, a water-sharing plan that determines the sustainable diversion limits, and will deal with the appropriate tradeoffs at a regional level. These plans (with the exception of Victoria) are largely reviewed in year five and year ten. Any adjustments to the water sharing plans are appropriately effected at these decision points. This includes the need to account for adjustments due to climate change. In reality this is adaptive management, i.e. as the consumptive pool of water changes, the plans are likewise adjusted.

To do otherwise, is requiring today's irrigators to pay for adjustment for tomorrow's irrigators. Asking today's irrigators to pay for what may or may not occur (and remember in some areas, more water may be available) is untenable and most egregious.

## Conclusion

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The Government has put in placed arrangements for the longer-term management of the Basin. This commenced with the Water Act 2007, and will be strengthened if the Water Amendment Bill 2008 passes the Senate in due course. Arrangements under COAG for other water reforms commenced in the early 1990s, was revamped and strengthened under the NWI and is progressing under the current COAG water reform agenda.

It is unnecessary, particularly given the new arrangements for the longer-term management of the Basin has not yet commenced, for there to be a review of arrangements. The new arrangements provide for numerous reviews, including a:

- Review of the Water Act in 2014 (Cl. 253);

- Review of the Basin Plan every 10 years (Cl. 19(5) and 50, Water Act 2007);
- Review of water sharing arrangements (Cl. 11, p. 140 Water Amendment Bill 2008);
- Review of Agreement within one year of the Basin Plan taking effect and at any other time (Cl. 142, p. 143 Water Amendment Bill 2008);
- Review of the resolutions, directions, procedures, measures and activities of the previous Ministerial Council (Cl. 151, p. 147 Water Amendment Bill 2008); and
- Review of Agreement Schedules (Cl. 152, p. 147 Water Amendment Bill 2008).

Many participants in the media (journalists and others making comments) simply do not understand the complexity of the water sharing arrangements of the Murray River. Consequently many are ill informed, make comments based on hearsay and consequently do much damage to rural communities, and the irrigation sector in the process, by pitting irrigator against irrigator and community against community. In some cases, the issues of Basin water management are used to further individual objectives.

It is time for the Basin community and Governments to take a step back and allow the process for the longer-term management of the Basin to be put in place, implementation to occur and the various reviews to assess the merit of the process and management arrangements to take place as scheduled.

## NFF Contact

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Deborah Kerr  
NRM Manager  
Ph: 02 6273 3855  
Fax: 02 6273 2331  
Email: [dkerr@nff.org.au](mailto:dkerr@nff.org.au)