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SUBMISSION
Water Trading and Water Ownership in NSW

The Inland Rivers Network (“IRN”) is a coalition of environment groups and individuals that has been advocating for healthy rivers, wetlands and groundwater in the Murray-Darling Basin since 1991. IRN acknowledges the Traditional Owners of the lands and waters where we live and work, and pays our respects to Elders past, present and future.

“Transparency is not only a natural antidote to corruption, but also to perceptions thereof.”¹

IRN believes that the NSW Government has failed to improve transparency around water ownership and water trading, as expected through the Water Reform Action Plan.

IRN has been following the implementation of the recommendations from the Matthews independent investigation into NSW water management and compliance (Matthews report) closely. As a member group of the Lifeblood Alliance we contributed to a joint submission to the ACCC investigation into the Murray-Darling Basin water markets inquiry interim report. We welcome the opportunity to comment on the transparency of water trading and water ownership information in NSW.

IRN considers that the NSW Government are in effect ignoring the recommendations of the Matthews Report in relation to transparency in water regulation. Changes to WaterNSW and DPIE Water web sites are re organising and re-presenting information at a high level that was previously available. The historic opportunity to transform the culture of water regulation in NSW offered by the Matthews report by revolutionising transparency is unfortunately being missed.

¹ ICAC investigation into complaints of corruption in the management of water in NSW and systemic non-compliance with the Water Management Act 2000, Nov 2020.

Background

In July 2017 the ABC Four Corners program “Pumped” aired. What the program revealed was that a complete overhaul of water management in NSW was required – and the then NSW Water Minister Niall Blair agreed, commissioning the Matthews report.

Released in September 2017, increased transparency in NSW water regulation was a pillar of the Interim Matthews report:

“There is little transparency to members of the public of water regulation arrangements in NSW, including the compliance and enforcement arrangements which should underpin public confidence.”

The interim Matthews report concludes that water is generally considered a community-owned resource, and that members of the public have a right to satisfy themselves that it is being used in compliance with the law. The value of improved transparency was to enable public scrutiny of water management.

The options proposed to develop a more transparent future system include:

- a) Enable the public to readily access from a single source, all details of entitlements, including: name of holder; licence number; licence conditions; water entitlement; water allocations; meter readings; real time water account balance; and all trading activities.
- b) Enable the public to readily identify any specific pump, off-take, or works. This could be achieved by requiring an identifying number to be posted on, for example, all river pumps, and making the mapping of pump locations more readily available.

Of the reform ideas proposed in the interim Matthews report, and listed above, the report warns:

“Some of these ideas may not be welcomed by the current beneficiaries of an inadequate system. However to re-build effective compliance and public confidence will require more than incremental change. No change is not an option.”²

The final Matthews report released in November 2017 identifies a risk that certain important stakeholders expressed concern about water metering and transparency of information in submissions made to the interim report. While Matthews supports practical adjustments in the implementation of policy, he is concerned that:

“... if too many ‘adjustments’ accumulate, there is a risk of gradually losing the current unprecedented opportunity to achieve long-overdue remedies to NSW compliance problems.”³

A review commissioned by DPIE into the Matthews reports’ recommendation found that full transparency, as proposed by the Matthews Report would expose commercially sensitive information and be too expensive. The review found that only aggregated water account-holding information be made publically available.⁴

² Interim Matthews Report – Independent investigation into NSW water management and compliance. Sept 2017.

³ Final Matthews Report – Independent investigation into NSW water management and compliance. Nov 2017.

⁴ NSW ICAC report Investigation into complaints of corruption in the management of water in NSW and systematic non-compliance with the Water Management Act 2000.

Improving Transparency

1. Free access public Water Register

IRN considers holding a water access licence to be a privilege given that water is a critical public resource and the source of all life. We consider that a public Water Register including the names of licence holders should be a part of the social contract.

IRN strongly objects to the finding by DPIE that only aggregated water account holding information be made publically available.

IRN supports the implementation of the original recommendations from the Interim Matthews report.

We support a single source public, free Water Register that includes all details of entitlements: name of holder; licence number; licence conditions; water entitlement; water allocations; meter readings; real time water account balance and all trading activities. It is also important that any convictions from non-compliant water take is available as well. Such a public register is available in Western Australia.

The DPIE webinar dated 3rd December 2020 indicated that WaterNSW and DPIE will most likely not develop a single source of water licencing and trading information as recommended by the Matthews report, as it might be too complicated. “When you put a lot of things in one place it actually makes it harder to navigate.”⁵ IRN rejects this assertion. When well organised and designed, websites can hold very large amounts of information that can be accessed easily and logically.

Water trading information drawn from the same data source will be presented to the public on two systems – the WaterNSW Water Insights system (yet to be launched) and the DPIE Water Trading Dashboard. This is not a single source of data, as was recommended by the Matthews Report.

IRN objects that the NSW Government is ignoring a key element of the Matthews recommendation that water access licence information be available from a single source.

The development of the WaterNSW Water Insights and the DPIE water trading dashboard sites are providing better access to aggregated information at a water source and basin wide level that was previously available, although difficult to find. By limiting the development of these web tools to the presentation of information that was already in the public domain, the NSW Government is failing to address the recommendations about improved transparency made in the Matthews report in any significant way.

IRN strongly objects to only aggregated totals of water licence and extraction details at a water source level.

⁵ Mitchel Isaacs, Chief Knowledge Officer, DPIE. Webinar on water trading and ownership 3/12/2020.

The interim Matthews report emphasised that the need for improved transparency was to enable public scrutiny of water management. ABC's Four Corners 'Pumped' programs exposed allegation of largescale water theft in the NSW Northern Murray-Darling Basin. The Matthews Reports and the ICAC report into water management and compliance both refer to a culture with the NSW Government that has not taken water theft seriously enough.

While the establishment of the Natural Resources Access Regulator (NRAR) has been a positive step, IRN believes the NSW Government would need to go further to regain public confidence.

IRN considers that an essential inclusion to the proposed Water Register is that any recorded convictions for water related offenses be linked to the licence holder.

There are no changes to the Water Access Licences System (WAL) Register proposed, which holds information not available on the NSW Water Register, specifically the name of the licence holders. Searching the WAL Register has a cost attached to it. The ABC reported in May 2020 that in order to conduct a search for the owners of water licences currently issued in NSW, it would cost approximately \$558,600 to search the entire register.⁶

IRN objects to costs being associated with the search for water access licence information. A public Water Register should provide free access.

2. National Water Trading Exchange

IRN supports the establishment of a National Water Trading Exchange.

WaterNSW Water Insights panel is still developing a portal for presenting information about water trading in NSW. The information that will be presented is aggregated at a water source level, and drawn from data that is currently available to the public, although difficult to access. The intended audience for this information will be WaterNSW customers.

DPIE Water have developed a Water Trade dashboard, which draws on the same data as the WaterNSW Water Insights panel will. It too will present high level aggregated trade prices and volumes at the water source and basin wide level. The intended audience for the information is the general public.

Water trade can lead to a concentration of extraction in areas which may already be feeling the impacts of over extraction. It is critical that the public have a clear picture of trading activities within catchments. Common environmental concerns associated with water trade include that it may result in:

- I. concentrating water extraction in areas suffering from high water tables (NWC 2012);
- II. increased salinity in areas that require minimum irrigation intensities and that have experience water entitlement loss (Khan et al. 2009);

⁶ <https://www.abc.net.au/news/2020-05-06/chinese-state-owned-companies-buy-up-water-in-murray-darling/12215548>

- III. moving water into locations where its extraction might have a negative impact on river water quality (NWC 2012);
- IV. increases groundwater substitution (Wheeler and Cheesman 2013; Wheeler et al. 2020), and increased groundwater use can lead to increased salinity problems if saline groundwater flows into rivers due to discharge (Haensch et al. 2016);
- V. moving water extraction upstream, thereby resulting in reduced river flow from the new point of extraction to the old point of extraction (NWC 2012); or
- VI. activating previously unused water leaving less water in rivers to support ecosystems (NWC 2012; Loch et al. 2013); (plus of course reducing the amount of water in storages which leads to reduced water allocations in future seasons).⁷

IRN objects to water trading information only being publically available at a water source and basin wide level. Water trading information associated with each water licence holder should be publically and freely available via a Water Register tool.

Water access licences that are owned by speculators and non-landholding traders who produce no agricultural output should be clearly identifiable on a Water Register. Speculation of water drives the prices up, and is a clear threat to the environment and water security for First Nations groups, regional communities and small irrigators in the Murray-Darling Basin.

IRN supports the inclusion of zero value trades being included in the information held in a Water Register.

When water access licences are owned and traded by corporations, the Water Register entry should include ASX and ASIC listings, names of directors, water licence registration details including volumes and a link to the company website.

As a complete public register, IRN considers that a Water Register would carry all details about the water entitlements and trading activities of all Members of Parliament.

The ATO's foreign ownership register is voluntary, and not publically available. IRN supports the foreign ownership registry being made compulsory for listing the water holdings by overseas investors, and that when water access licences are owned and traded by overseas corporations and individuals, there should be a link to the ATO foreign ownership register relating to the water holding on a NSW public Water Register.

IRN understands water purchases by private foreign investors will generally not be scrutinised by the Foreign Investment Review Board (FIRB). *"The acquisition of water entitlements is treated as the acquisition of a business asset and doesn't fall within any of the categories that require compulsory FIRB approval FIRB approval may be required for the acquisition of water assets when it forms part of a broader business acquisition. But on their own, water entitlements do not require FIRB approval."* Duncan Bedford, a partner at law firm McCullough Robertson.⁸

IRN supports that all water entitlement acquisitions by overseas investors be approved by the FIRB, and that the link to the FIRB report be available on the Water Register.

⁷ Water market literature review and empirical analysis – The University of Adelaide May 2020

⁸ Ibid footnote 6.

Conclusion

IRN is concerned that the influence of irrigation stakeholders has diluted the intent of the recommendation of the Matthews report, which is an opportunity for historic changes in the culture of water management in the NSW Government.

“It has been put to this Review that currently there is less transparency in water holdings (a public resource) than in real estate (a private asset).”⁹

Without a free, user friendly and comprehensive public Water Register, there can be no confidence in water regulation and compliance in NSW.

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⁹ Interim Matthews Report – Independent investigation into NSW water management and compliance.