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Dear Committee,

RE: Submission to Select Committee on findings of the Murray-Darling Basin Royal Commission and Productivity Commission as they relate to the decisions of the South Australian Government.

The Conservation Council of South Australia (Conservation Council SA) welcomes the opportunity to make a submission to the Select Committee into matters relating to the implementation of the Murray-Darling Basin Plan and the effects on South Australian interests.

Conservation Council SA is an independent, non-profit and strictly non-party political peak organisation representing around 60 of South Australia's environment and conservation organisations. Conservation Council SA has been a strong advocate for the protection of native vegetation and biodiversity in South Australia since 1971.

We are greatly concerned that the current ongoing process of implementing the Basin Plan will not deliver the intended outcomes of sustainable management of water resources for Basin ecosystems or Basin Communities, unless the recommendations of the SA Royal Commission and the Productivity Commission are taken seriously. In particular, the delivery of the 450 GL/y is crucial to achieving the intended outcomes of the Basin Plan, for all Basin communities, not just South Australia.

Since the Plan was signed in 2012, Victoria and New South Wales have given priority to supply projects in order to claim as much as possible of their 650 GL/y concession but have been very slow to deliver any constraints projects or complementary measures, and have campaigned to remove efficiency measures (the 450 GL/y) all together.

In the course of the implementation process for the Basin Plan, adjustments to the water recovery target have been passed, reducing it from 390 GL/y by 70GL/y to 320 GL/y in the Northern Basin and from 2750 GL/y by 605 GL/y to 2145 GL/y in the Southern Basin.

The likely end result is that the upstream states will have been granted their concessions for signing the Basin Plan, but South Australia gets nothing of its 450 GL/y. The purpose of the 450 GL/y was to maintain flows for river health throughout the length of the river systems, to maintain connectivity with floodplain wetlands, to export salt from the whole Basin, to keep the Murray Mouth open 90% of the time and to support recovery of the internationally important Coorong ecosystem. This would benefit communities throughout the Basin, not just South Australia, because the end of the River is an indicator of the health of the whole system.

The Basin Plan is currently failing to meet its interim target of no further decline in key species and ecosystems. This has been the case from 22 November 2012 to 1 July 2019 and appears likely to fail the long term target of improvement after that date. Under current flows, water bird populations in the Basin are in serious decline¹. There is an urgent need to replace millions of mature trees killed in the Millennium Drought, and mature trees are starting to die off again throughout the Basin. The recent fish kills in the Lower Darling demonstrate the lack of provision for minimum flows during drought, and the absence of reserved water to flush any algal blooms. These minimum flows should be in place for all Basin rivers for future health.

It cannot be overstated how vulnerable the state the Murray Darling Basin is in. Ecosystem resilience is lower now than before the 'Millennium Drought', and there is reduced capacity to respond to immediate shocks, let alone ongoing drying as a result of climate change. The long term trend is poor, and any positive gains through the Plan are being overwhelmed by a drying climate, biodiversity loss and ongoing over-allocation of water away from River channel and wetlands.

As always, South Australia, as the state at the end of a long and complex River system has the most to lose.

It is essential all jurisdictions, including the South Australian Government, recognise the current path for the Murray Darling Basin Plan is not sustainable, and institute necessary changes as recommended by the Murray Darling Royal Commission and the Productivity Commission.

Below are Conservation Council SA's comments on the Terms of Reference for the Select Committee on Findings of the Murray-Darling Basin Royal Commission and Productivity Commission as they relate to the Decisions of the South Australian Government.

a) The advice considered by the South Australian Government in making the decision to endorse the equivalent of 3200GL of environmental benefits and whether it represented an Environmentally Sustainable Level of Take under the Water Act;

The MDB Guide stated that environmental water requirements for key environmental assets and key ecosystem functions might be achieved, but with a high level of uncertainty, with water recovery of 3,000 GL/y. MDBA modelling for the Basin Plan stated that 17 out of 18 targets could be delivered for four icon sites with high uncertainty at flows of 2800 GL with all constraints relaxed². Reports to the SA Government from the Goyder Institute during the implementation process since 2012 reinforced the message that even 3200 GL/y with all constraints removed would still not deliver Basin Plan targets, particularly not for the Chowilla icon site, the Murray Mouth or the Coorong.

In the summary guide to Basin Plan released in 2011

"Scenario 3 targets an additional 4,000 GL/y for the environment, which would result in a Basin-wide total of surface-water SDLs of 9,700 GL/y or a 29% reduction from current diversion limits.

¹ KINGSFORD, R. T., BINO, G. & PORTER, J. L. 2017. Continental impacts of water development on waterbirds, contrasting two Australian river basins: Global implications for sustainable water use. *Global Change Biology*, 23, 4958-4969.

² Gibbs, M.S., Higham, J.S., Bloss, C., Bald, M., Maxwell, S., Steggles, T., Montazeri, M., Quin, R., Souter, N.J., 2012b. Science review of MDBA modelling of relaxing constraints for Basin Plan scenarios, DEWNR Technical Note 2012/01, Department of Environment, Water and Natural Resources, Adelaide.

Modelling and other assessments indicate that scenario 3 is likely to achieve all environmental water requirement targets in all regions. In some regions it may be possible to achieve the environmental water requirements with greater reliability.

Very careful and effective environmental water planning would still be required to maximise the environmental outcomes and achieve the targets; however, scenario 3 will provide some flexibility and capacity to respond to future challenges such as climate change."

The important issue here is that the analysis of a 2750 GL/a option was not specifically considered. The conclusion must be that, at the very best, environmental targets can only be met with a high level of uncertainty after all of the following are instituted in full:

- the supply projects are all completed and shown to deliver 'equivalent environmental outcomes',
- all efficiency projects deliver the 450 GL/y, and;
- all constraints are relaxed.

b) The rationale for the South Australian Government supporting a package of measures at the Murray-Darling Basin Ministerial Council on 14 December 2018, including the socio-economic criteria;

Ensuring enough water to secure the long term ecological health of the River Murray is essential for our state. This includes the 450GL 'Upwater' negotiated by South Australia as part of the Murray Darling Basin Plan.

A number of prominent scientific and environmental experts, including the Wentworth Group of Concerned Scientists, members of the Lifeblood Alliance and former Commonwealth Environment Water Holder David Papps, have all strongly expressed the view that the socio-economic conditions for projects negotiated and accepted by MDBP jurisdictions, including South Australia, at the Murray-Darling Basin Ministers meeting held in Melbourne in December will ensure the water will never be delivered.

As a member of the Lifeblood Alliance, the Conservation Council of SA shares that concern, and is alarmed about the implications for the long term health of the River.

While we have no doubt the Minister was genuinely motivated by a desire to ensure upstream states commence work on fulfilling their quota of the 450 GL 'Upwater', we believe the deal struck, on balance, is likely to leave our state worse off, and should be revoked.

c) The current and potential options for the best available science to inform such decision-making;

There have been a number of reports over recent years that question the science undertaken to support the longer term decision making in relation to the Basin's water resources. Importantly, this includes the Goyder review of the Basin's science from a SA perspective.

The Conservation Council of SA supports robust science to provide solid evidence based decision making and believe environmental, agricultural, social and cultural research (multidisciplinary) must be taken into account.

Concern has been raised in the community about the potential for independent science based assessments to be modified or creatively interpreted to achieve political, rather than ecological outcomes. It is essential that robust, independent science be used to guide Basin decision making.

d) The consideration given by the South Australian Government to the recommendations from the independent report provided by Ernst and Young for the Basin Ministerial Council on delivering the 450GL of water for the environment;

The Basin Plan can only be delivered as intended if the total package of all elements of the Plan are implemented, including the supply projects, efficiency projects, constraints projects and complementary measures. The efficiency package was designed to meet South Australia's negotiated position in signing the Basin Plan.

The Ernst & Young report indicated that a clear and credible pathway for delivering the 450GL 'upwater' was present.

However, to date, upstream states have given most of their energy to the elements which reduce their obligation to return water to the rivers, and almost no energy to programs designed to increase water flow to secure future river health for all communities. Action to reverse this situation has been recommended by both the SA Royal Commission and the Productivity Commission. It will require renewed commitment from Basin governments, with full investment of required resources and agreed timelines and penalties to ensure timely and effective action. Otherwise, there are serious risks that outcomes required in the Basin Plan will not be delivered, resulting in long term damage both to river communities and to river ecosystems³, and long term economic and social costs for Basin communities.

e) Any recommendation, finding or observation in the report of the Murray-Darling Basin Royal Commission 2019, as deemed relevant by the Committee;

The Royal Commission provided some 44 recommendations. These are all supported, while recognising that some have less chance of achieving effective outcomes in the current political environment.

The Commission found that, given the Water Act 2007 requires the restoration and protection of key Basin assets and ecosystem functions, the water recovery target adopted in the implementation process did not represent an ecologically sustainable level target and was not based on the best available science. It was also found that there was evidence of funding invested in Plan projects not returning the intended or claimed environmental benefits and that elements of the Basin Plan were not being implemented as intended or returning the intended outcomes of the Plan.

More detailed recommendations included immediate review of the sustainable development levels adjustments (SDLs) for both the Northern and Southern Basins, using buybacks to obtain the 450 GL/y urgently, and factoring in climate change immediately. It was recommended that the recovery target should only be adjusted after the supply projects had demonstrated equivalent environmental outcomes.

The Royal Commission stated that the Basin environment must not be subject to an uncontrolled experiment in order for less water to be recovered for the environment in the short term, and that reconciliation cannot wait until 2024.

³ REID, J. R. W., COLLOFF, M. J., ARTHUR, A. D. & MCGINNESS, H. M. 2013. Influence of Catchment Condition and water resource development on waterbird assemblages in the Murray-Darling Basin, Australia. *Biological Conservation*, 165, 25-34.

Conservation Council SA does not currently endorse any changes to the Water Act 2007 or the Murray Darling Basin Plan Act 2012. It would be risky to open those Acts to further changes which could result in changes being introduced by other Governments that could weaken even further the current Plan.

From a Conservation Council SA perspective, the most important changes that are worth pursuing by the SA Government with a reasonable expectation of deliverable outcomes include:

- New determinations of the ESLTs, and SDLs for both surface water and groundwater that reflect those ESLTs, should be carried out promptly.
- The MDBA (or some other appropriately funded body) should be required to urgently conduct a review of climate change risks to the whole of the Basin.
- A full analysis of the effects of the Menindee Lakes Water Savings Project.
- Implementation of a properly funded, compulsory scheme for the removal or easing of constraints.
- Further research into return flow outlined in the Groundwater and Return Flow Impacts Report should be immediately undertaken.
- The Commonwealth Auditor-General should conduct a review of the Commonwealth's irrigation infrastructure upgrade schemes to date and include an audit of how much water has actually been recovered.
- The Northern Basin Review should be conducted again.
- Improved Commonwealth and State funding and support should be provided for the ongoing representative and consultative work of MLDRIN and NBAN, and consideration should be given to the establishment of a separate representative body for the central Western/Darling River region.
- Increased provision of technical and expert resourcing should be provided to representative bodies to undertake the work, including research, necessary to engage in water resource planning and management activities within the framework of the Water Act and Basin Plan.
- A meaningful consultation should now commence between the Basin States, the Commonwealth and the MDBA concerning cultural flow.
- The final submission of WRPs for accreditation must await the finalisation of the newly determined ESLTs. However, that does not mean all work should cease on them. They should continue to be completed as far as possible.
- A comprehensive Basin-wide environmental monitoring program should be established immediately. This monitoring program can be based on the Sustainable Rivers Audit, but likely needs to be more comprehensive.
- Independent, published assessment and monitoring of the MDBA's to increase public confidence.
- Further research must be undertaken to better understand and quantify the environmental requirements of water resource areas that incorporate floodplains, especially in the Northern Basin. The watering requirements for floodplains are necessary to establish the ESLT for those water resource areas.
- A licensing and metering regime for floodplain diversions is necessary.
- Greater investment in the scientific understanding of the Basin's groundwater resources.
- Basin States should give consideration to the possibility of greater uniformity between their offence and penalty provisions having regard to community expectations,

including consideration of enhancing penalty provisions to provide for the forfeiture of water rights, which accrue to statutory environmental water holders.

- The Basin Plan should be amended so that the 20% threshold against which SDL compliance is measured in the register of take be reduced to no more than 5%. Further, the Basin Plan should be amended so that SDL compliance for each water resource area is assessed independently.
- Resourcing must be made available to enable sufficient auditing of Basin State compliance with SDLs for each water resource area.
- The comprehensive suite of recommendations made by Mr. Ken Matthews AO regarding transparency, including real-time monitoring and publication of consumptive use, should be implemented immediately. There is no basis for these matters to be secret. The approach of Basin States in this regard should be consistent.
- An independent, scientifically astute and experienced body responsible for auditing the effectiveness of the implementation of the Basin Plan, akin to the NWC, should be established.
- All opinions and advice the MDBA or the Commonwealth have obtained on the construction of the Water Act, the determination of the ESLT, the setting of the Basin-wide SDL, and all aspects of the SDLAM should be released immediately.
- All modelling and other non-disclosed data used by the MDBA to determine the range of water recovery for the Guide and the ESLT Determination Report should be released immediately.
- The manner in which the recovery amount of 2750 GL was influenced or adjusted for social and economic outcomes should be fully disclosed.
- All modelling in relation to the NBR and the supply measure adjustment should be released immediately.
- The manner in which the 70 GL figure for the NBR was influenced or altered as a result of social and economic factors should be fully disclosed.

f) Any recommendation, finding or observation in the Productivity Commission's Murray Darling-Basin 5 Year Review, as deemed relevant by the Committee; and

The Productivity Commission's review includes recommendations to speed up delivery of the four key elements of the Basin Plan (supply projects, efficiency projects, relaxation of constraints and complementary measures). The review found that the Plan will not be delivered anywhere near 'on time' and absolutely not 'in full' by 2024 at current rates of action. Basin Governments need to renew their commitment and support strongly this comprehensive package of recommendations to get the Plan back on track to achieve its targets in full sooner rather than later.

Four key elements of the Plan are well behind schedule for completion by 2024. There is a high risk that the 37 supply projects will not be completed by 2024 to deliver their 'equivalent environmental outcomes'. The promise of completing these projects was used to justify reducing the Basin water recovery target by 605 GL.

Also behind schedule are the efficiency projects to find 450 GL additional water demanded by South Australia to maintain river flows, the Coorong and Lower Lakes, and keep the Murray Mouth open. In addition, the review found little progress had been made on critical projects to remove constraints to flows and promised toolkit measures to complement infrastructure projects.

The review found there is a serious risk that most of the 29 water resources plans due for completion and sign-off by 30 June 2019 will not meet that deadline. The recommendation to extend the deadline for completion of the Water Resource Plans is regrettable but necessary, and should also carry enforceable penalties for any further delays.

The recommendations to develop effective arrangements for evaluation and monitoring of Basin Plan progress are strongly endorsed, particularly with respect to management of environmental flows and meeting environmental targets.

The Productivity Commission has recommended that the implementation and compliance functions of the Murray-Darling Basin Authority be split into a corporation and a regulator, to avoid the Authority needing to regulate itself and to make it easier to control water theft and corruption.

g) Any other related matters

Concerns about 605 GL/y Rebate for Supply Projects

The sustainable adjustments mechanism allowed states to put forward projects which claim to deliver 'equivalent environmental outcomes' but these outcomes do not have to be delivered until 2024. The adjustment however, has already been passed by the Federal Parliament, reducing the recovery target for the Southern Basin by 605 GL/y. The upstream states have already got their concession on the basis of very sketchy project proposals and no proof of delivering projected environmental outcomes.

The SA Royal Commission found the process which reduced the recovery target before the supply projects had delivered their outcomes was contrary to the requirements of the Water Act. Major concerns have been raised by the Productivity Commission and others that these projects cannot deliver the promised benefits and that some key projects may instead deliver further harm, such as the Menindee Lakes proposal having negative effects on native fish populations and failing to deliver minimum flows to the Lower Darling.

Support for a First Flush Rule

We support the call from the community, including the River, Lakes and Coorong Action Group, for a "First Flush" rule. This measure temporarily suspends access to a pre-determined level of take, based on restoring ecological health, in a sequential manner to water flow as water moves downstream. This acts to protect the first flush/recommencement flow following an extended low flow or cease-to-flow period. In recent times, significant flows have come down the various tributaries from NSW, and more importantly from Queensland. These would likely have reached the lower sections of the Darling if a 'First Flush' rule was in place, giving lower sections of the River system a much needed drink after extended drying.

Using 'Wild Law' to restore the River's health

In the wake of poor progress in restoring the River system to health and some States looking to distance themselves from the current arrangements, we believe the time is right to consider alternative legal mechanisms. In New Zealand, the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 declared the Whanganui River – New Zealand's third longest river - to be a legal person with all the associated rights, powers, duties and liabilities; a similar legal capacity as a family trust, company or incorporated society. The Act also established a mechanism for two people – a Crown appointee and a Traditional Owner appointee – to act as the River's guardians and speak on its behalf. Such an approach would enable the River – through its guardians - to act by itself to protect its ongoing health.

Thank you for the opportunity to provide feedback.

I am happy to appear before the Committee if required.

Please do not hesitate to contact me on craig.wilkins@conservationsa.org.au or (08) 8223 5155 should you require any further information.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Craig', followed by a stylized flourish.

Craig Wilkins
Chief Executive