

# **Gwydir Valley Irrigators Association Inc.**

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458 Frome St, PO Box 1451, Moree NSW 2400

## Submission to the Australian Senate's Legal and Constitutional Affairs Committee into Provisions of the Water Act 2007

18 March 2011

## **Introduction**

The Gwydir Valley Irrigators Association (GVIA) represents in excess of 250 irrigators in the Gwydir Valley of NSW, centred on the town of Moree, NSW.

The organisation is voluntary, funded by a cents/megalitre levy on regulated unregulated and groundwater irrigation entitlement. In 2009/10 the levy was paid on in excess of 90% of the eligible entitlement (excludes entitlement held by the State and Federal Government).

The Association is managed by a committee of 11 irrigators and employs a full-time executive officer and a part-time administrative assistant, as well as hosting a Regional Landcare Co-ordinator. .

GVIA is a member of the National Irrigators Council and the NSW Irrigators Council, and as well as providing this submission, the Association endorses the submissions made by those two organisations.

GVIA welcomes the opportunity to make this submission to the Australian Senate's Legal and Constitutional Affairs Committee into Provisions of the Water Act 2007, and looks forward to providing the Inquiry with additional information, if requested.

GVIA does not profess to be a constitution law expert. However, our core business is directly affected by the implementation of the Water Act, and has intimate knowledge of how it is implemented within our region. Hence we have made general comments associated with the Terms of Reference of this committee with specific examples embedded within.

GVIA believes that it is absolutely critical that the Inquiry tours the Basin and takes evidence at a large number of communities and from a wide range of sources including multiple legal representatives, to ensure that a wide range on issues and interpretations are received.

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## **Terms of Reference of Inquiry**

1. The provisions of the Water Act 2007 (the Act), with particular reference to the direction it provides for the development of a Basin Plan, including:
  - a) any ambiguities or constraints in the Act which would prevent a Basin Plan from being developed on an equally weighted consideration economic, social and environmental factors;
  - b) the differences in legal interpretations of the Act;
  - c) the constitutional power of the Commonwealth to legislate in the area of water;
  - d) the role of relevant international agreements and the effect of those on the parts of the Act which direct the Basin Plan to give effect to those agreements and their effect on the Act more generally;
  - e) any amendments that would be required to ensure that economic, social and environmental factors are given equally weighted consideration in developing the Basin Plan; and
  - f) Any other related matter.
  
2. That in conducting its inquiry, the committee should consult those with particular legal expertise in the area of water.

## **Comments regarding the Terms of Reference**

GVIA as with NSW Irrigators Council strongly believes that the Water Act (2007) is flawed. We believe they Act does not provide the opportunity for the equal consideration of environmental, social and economic factors in planning the future management and use of water resources in the Murray Darling Basin.

GVIA believe that it is in the best interest of the nation and imperative that resource management planning must consider the triple bottom line, rather than, either consideration having more weight than the other. GVIA believes that the National Water Initiative set the foundation for this to occur and that the Act is now removed from the initial objective of this reform.

With the release of the “Guide to the Basin Plan” in October 2010, our concerns were realised. The information presented in the Guide and its presentation to the community, highlighted the blatant disregard for social and economic factors in the presentation of sustainable diversion limits and the underestimation of social and economic impacts on the Basin and our region.

GVIA acknowledges that there have been assurances from the Murray Darling Basin Authority (MDBA) Chair Craig Knowles and the Water Minister Tony Burke, that they believe there is scope and possibility within the Act for the proposed Basin Plan to equally consider all outcomes. That is that they believe there is wriggle room to have some consideration given to people and industries impacted by the proposed Plan.

GVIA welcomes this position by the MDBA and Government. However, GVIA has heard this rhetoric on a number of occasions and we are yet to have the opportunity to review the draft proposed Basin Plan to make the assessment for ourselves. As such, we are providing our commentary based on past experiences with the Guide.

In specific reference to the Act, GVIA refers to Section 3 which details the objects of the Act and although it does refer to the consideration of social and economic factors in a number of sub-sections and even refers to the possibility of maximising net economic returns to Australia, each subclause is referent to International Agreements and threats to Basin water resources. Therefore, it is easily interpreted that each sub-section statement is qualified by environmental concerns as represented by Internal Agreements, as the more important facet of consideration i.e. the core object of the Act.

With the referral to International Agreements, GVIA's concern is that the Act is not clear in its definition of considerations and those others (as others have), may interpret the Act differently. Difference in interpretation may result in a swing away from the interpretation of the MDBA; in a direction that ensures that one of the other outcomes have greater importance over the others.

For example, GVIA believes that the Basin Plan maybe negotiated and proposed to Government based on equal considerations of economic, social and environmental factors as suggested by Craig Knowles and Minister Burke. However, there is considerable risk that this negotiated Plan, will not be supported and therefore, not implemented but rather is challenged legally, where others may interpret the key clauses as not requiring equal considerations.

GVIA does not want to work of the MDBA and others in preparing the draft Plan, who has provided information, human and financial resources and advice to be worthless with the negotiated document being challenged at a later date. Nor does GVIA want to continue this process of negotiation and continued uncertainty about water resources, time and time again, as other interpretations arise in the future.

GVIA strongly hope that Minister Burke and Craig Knowles can deliver on their assurances, as we believe the delivery of a balanced basin plan is what Australia wants and needs.

In addition, Section 22 details the requirements of the contents of the Basin Plan, which does not refer social or economic considerations at all. If we are truly to have a balanced plan, should those considerations be important in the contents of the Basin Plan.

As a result, GVIA believes that the Water Act should be amended to clearly define that water resource planning within the Basin equally considers environmental, social and economic factors and that holistic management of our basin will provide great resource condition and reliability for all. Through amending the Act as suggested there are greater opportunities to explore alternative options for managing and

operating rivers within the Basin, which would have greater triple bottom line outcomes rather than the current approach presented in the Guide.

A benefit of expanding the scope of the Act to include alternatives other than hydrological solutions would allow for the integration of regional and state resource management plans, which would ultimately seek to achieve holistic management. The alignment of these plans and their integrated implementation is critical to improving the condition of the Basin and is not considered as a solution or management option as part of the current Act.

## **Conclusion**

GVIA welcomes the opportunity to submit to this Inquiry and provide input into the review of the Water Act (2007).

GVIA in this submission endorses the information and statements presented in the submission by the National Irrigators Council and the New South Wales Irrigators Council.

GVIA strongly believes that the Water Act (2007) is flawed and that the Act does not provide the opportunity for the equal consideration of environmental, social and economic factors in planning the future management and use of water resources in the Murray Darling Basin.

GVIA supports the amendment of the Act to be clearer in its definition that the Basin Plan can have equal consideration of environmental, social and economic factors to allow for a truly holistic Basin Plan.