



# National Irrigators' Council

Level 2, NFF House, 14-16 Brisbane Ave  
Barton ACT 2600

Ph: 02 6273 3637  
ABN: 92133308326

# ***Cultural Flows***

*Indigenous aspiration around water for economic purposes should be separated from the Basin Plan and considered as part of the wider issue of Indigenous economic growth*

## **Position Statement**

**March 2015**

*Statement ratified 31 March 2015*

# NIC Position Statement

## Cultural Flows

### Introduction

The issue of cultural flows is referred to in the Basin Plan at Schedule 30 under **Uses of Basin water resources** and notes that Indigenous use includes cultural, social, environmental, spiritual and economic purposes. Schedule 31 of the Basin Plan also refers to the concept of cultural flows and provides a definition (*see under Background in this paper*).

### NIC Principles Relevant to this Policy Paper

- A healthy environment is paramount
  - Sustainable communities and industries depend on it
- Water property rights must be protected or enhanced
- There must be no negative third party impacts on reliability or availability
  - Potential negative impacts must be compensated or mitigated through negotiation with affected parties
- Irrigators must be fully and effectively engaged in the development of relevant policy
- Irrigators expect an efficient, open, fair and transparent water market
- Irrigators require a consistent national approach to water management subject to relevant geographical and hydrological characteristics
- Irrigators expect Government policy to deliver triple bottom line outcomes

### Guiding Questions

1. What does the Murray Darling Basin Authority (MDBA) propose as part of a consultation process on the outcomes of the National Cultural Flows Research Project when it is completed in 2016?
2. How does the MDBA intend to keep irrigators informed at a local level of the outcomes of any cultural flow trials?

### Key Messages

The NIC provides the following key messages in relation to Cultural Flows:

- NIC seeks to be engaged on all aspects of the Cultural Flows debate including consultation by the MDBA at the earliest opportunity to discuss the outcomes of the National Cultural Flows Research Project when it is completed in 2016.
- Any Cultural Flow outcomes must not result in third party impacts on Current Water Entitlements or their reliability.
- Irrigators seek to be kept advised in relation to any analysis of impacts and outcomes of any cultural flow trials.
- NIC supports the use, access and management of both planned and held environmental water entitlements by Indigenous groups in a way that is consistent with and complementary to environmental needs.
- NIC does not support the creation of special purpose water entitlement for Indigenous groups as this violates the principle of no change in entitlement characteristics due to a transfer of ownership.
- NIC contends that Indigenous aspiration around water for economic purposes should be separated from the Basin Plan and considered as part of the wider issue of Indigenous economic growth.

## Background information

The NIC submits that if Indigenous groups were to present sound business cases built around the economic utilisation of water entitlement, those cases should be considered on their merit along with other proposals dealing with other forms of Indigenous business ventures. If proposals are sound, and as budgets permit, funding could be provided that will allow Indigenous proponents to enter the water market, acquire water entitlement and use that entitlement as they see fit - but under the normal constraints, conditions and characteristics that would usually apply to that class of entitlement.

The MDBA website describes cultural flows:

*Water entitlements that are legally and beneficially owned by the Indigenous Nations and are of sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social and economic conditions of those Indigenous Nations. This is our inherent right.*

This definition was endorsed by representatives from thirty-one Indigenous nations at a joint meeting of the Murray Lower Darling River Indigenous Nations (MLDRIN) and the Northern Basin Aboriginal Nations (NBAN) – The Echuca Declaration, September 2010. (*Attachment 1*)

Representatives of NBAN and MLDRIN were invited to attend and discuss with NIC members at the July 2014 the issue of cultural flows. NBAN representatives included Cheryl Buchanan and Russell Kelly. MLDRIN representatives were Darren Perry and Rene Woods. MDBA representatives also participated in the discussion. Following the meeting NIC members agreed that a high level position statement should be developed on Cultural Flows.

MDBA representatives noted at the July 2014 meeting that the Basin Plan referred to a commitment in a number of places and with a broader perspective captured in traditional owners' relationship with, and importance of, water. The MDBA also noted that the issue of cultural flows relates to the aspirations in managing Aboriginal water issues.

NBAN and MLDRIN representatives discussed the long term connection to and care for the river noting that a cultural economy for Indigenous people is often dependent upon the river. They highlighted that access to the river and water represented health and wellbeing for individuals and communities and was reflected in:

- knowledge and meaning of local sites along rivers
- connectivity through story lines
- an understanding of what occurs in one's own country and the impacts down river.

MLDRIN representative Rene Woods informed the meeting that he holds a cultural access licence on an Aboriginal managed property west of Hay, NSW, with 36 km of river frontage. The licence is not a cultural flow nor legally owned by the people in the Murrumbidgee valley and cannot have an economic gain. The licence cannot be sold for an economic purpose. Mr Woods noted that Aboriginal people seek within a cultural flow, a water entitlement and ability to use water in the same manner in which other Water Entitlement Holders can.

During the meeting a presentation was also provided to members on the National Cultural Flows Research Project which is focused on:

1. Literature review of Aboriginal values and uses of water
2. Develop methodologies and investigate case study sites
3. Modelling and on-ground trials to quantify flows
4. Analyse impacts and outcomes of cultural flow trials
5. Develop policy, legal and institutional reform options
6. Building and engaging the capacity of Aboriginal communities
7. Communication and advocacy
8. Project management: Case study sites: Gwydir wetlands; Narran Lakes; Toogimbie IPA wetland; Mulcra Island.

The [National Cultural Flows Research Project](#) website states that the project is aiming to secure a future where Indigenous water allocations are embedded within Australia's water planning and management regimes, delivering cultural, spiritual, social, environmental and economic benefit to communities in the Murray-Darling Basin and beyond. The project is described as the most comprehensive investigation into known Indigenous water values and uses ever undertaken, and will inform subsequent components of this research.

The project is described as a research program to provide rigorous and defensible knowledge on Indigenous water interests for the benefit of Indigenous people. The project will draw on a range of scientific research methodologies and generations of cultural knowledge to:

- Provide Australia with a greater understanding of Indigenous values relating to water and other natural resources
- Provide Aboriginal people with information to ensure that Aboriginal water requirements and preferences are reflected in water planning and management policy
- Inform the development of new governance approaches to water management that incorporate aspects of Aboriginal governance and capacity building.

While the focus of the National Cultural Flows Research Project is on the Murray Darling Basin, the project has been established for the benefit of all Aboriginal nations across Australia. The project will develop a framework, principles and solid evidence base that can be applied outside the Basin, to inform the recognition of Aboriginal water rights in different jurisdictions. It will do this through the use of a diverse suite of case study sites that consider cultural flows in different cultural, social, economic and ecological settings.

In December 2014 the Research Project website revealed that the MDBA had advised that funding to the National Cultural Flows Research Project had been suspended while a review of the project was undertaken. The website stated:

*We are disappointed to advise that all research activities, including the engagement with communities at each of the four case study sites, are on hold while the review is undertaken. This delay in conducting the research is likely to significantly impact on our ability to conduct flow trials during 2015. However, we hope to be working diligently again with the Aboriginal communities and contract research team to develop revised project delivery plans following the completion of the review – with the aim of still be able to deliver trial cultural flows at our case study sites during 2015.*

Advice from the MDBA is that the review of the Research Project is now completed (February 2015) with recommendations provided to the MDBA who will consider the next steps. The review was conducted by two independent reviewers.

The review of the Research Project was undertaken due to concerns that *'it had gone off track in terms of its scope and overall management of the Project including concerns around governance issues'*. The MDBA is keen to distil the recommendations and get the Project *'back on track'*. The Research Project is due to complete in 2016.

The MDBA has committed to keep the NIC informed of the responses to the review recommendations as well as maintain engagement with the NIC during progress of the Research Project at the time of its completion in 2016.

## Other contextual references

In January 2010 CSIRO was engaged by the MDBA to undertake a scoping study of the impacts of changes in water availability on Indigenous communities of the Murray Darling Basin. A CSIRO document titled *Summary of the scoping study: Effects of change in water availability on Indigenous people of the Murray-Darling Basin (2010)* describes the activities conducted as part of the study. As a preliminary study, this was to assist in scoping issues and to explore opportunities for addressing Indigenous interests in the Basin Plan through consultation with Indigenous groups, a literature review, and three case studies selected from across the MDB.

The document states:

*A number of commentators have observed that until recently Indigenous rights and interests in water management and reforms to water institutions were not addressed (Jackson and Altman 2009; Jackson, Tan and Altman 2009; Behrendt and Thompson 2004; MacFarlane 2004).*

*The National Water Initiative (NWI) of 2004 for the first time explicitly recognised Indigenous rights and interests in national water policy. The NWI acknowledges the special character of Indigenous interests in water. Parties to the NWI have agreed that water access entitlements and planning frameworks should recognise Indigenous needs 'in relation to access and management' (paragraph 25(ix)). Indigenous access is to be achieved through planning processes that:*

- *include Indigenous representation in water planning, wherever possible;*
- *incorporate Indigenous social, spiritual and customary objectives and strategies for achieving these objectives, wherever they can be developed;*
- *take account of the possible existence of native title rights to water in the catchment or aquifer area;*
- *potentially allocate water to native title holders; and*
- *account for any water allocated to native title holders for 'traditional cultural purposes' (paragraphs 52–54).*

The three case studies provide examples of the water management issues and a description of water management entitlements and activities by Indigenous organisations under water planning. The Nari Nari (Hay) and Ngemba (Brewarrina) cases describe two Aboriginal groups' efforts to access water under New South Wales. The third case study with the Yorta Yorta in Barmah-Millewa Forest revealed the complexity of inter-related environmental planning frameworks and co-management agreements that affect the Yorta Yorta's engagement in water management in a cross-border Living Murray Icon Site.

Review of the Native Title Act 1993: A review of the Native Title Act 1993 is currently underway. The review is being conducted by the Australian Law Reform Commission (ALRC). Submissions to the review closed on 19 January 2015. The ALRC is to report in April 2015.

Most recently the ABC Country Hour reported on 20 February 2015 that Indigenous groups are seeking to meet with the new Murray-Darling Basin chair and Federal Government to bring about water justice for Aboriginal people. The First Nations alliance of 46 indigenous groups across the river system want to ensure key reforms on Aboriginal ownership and management of water entitlements are fulfilled. The alliance delivered a letter in Canberra to the Hon Bob Baldwin and Neil Andrew, MDBA chair requesting a meeting.

MLDRIN Chair Darren Perry said they wanted water justice for Indigenous people along the Murray-Darling Basin system and stated: 'We're asking to start the conversation again with the new regime in Mr Baldwin and Mr Andrew .....about how we're going to achieve the things that have been

promised to us within the Commonwealth Water Act review'.

The Recommendations to which Mr Perry refers are:

Recommendation 1: that refers to the development of water resource plans (in accordance with Basin Plan water resource plan requirements) relating to Indigenous values and uses with guidelines to draw on the Convention on Biological Diversity's Akwe: Kon Guidelines as appropriate. The Recommendation also notes that after 1 July 2019 when Basin States water resource plans have been accredited, the case to amend section 22(3) to include a new section that reflects existing Basin Plan water resource plan requirements dealing with Indigenous values and uses should be considered.

Recommendation 20: that:

- (a) Section 178(3) of the Act be amended to include expertise in Indigenous matters relevant to Basin water resources as a field relevant to the Authority's functions
- (b) Section 172(1) of the Act, 'Authority's functions' be amended to add 'engage the Indigenous community on the use and management of Basin water resources' as a distinct function of the Authority
- (c) Section 202(5) of the Act be amended to provide that the Basin Community Committee's membership must include at least two individuals with expertise in Indigenous matters relevant to Basin water resources.

Mr Perry said Aboriginal groups felt that they had been left out of talks while the voice of irrigators is strongly heard. He did not want it to be thought MLDRIN was in competition with irrigators or the environment but highlighted Indigenous people's connection with water. Mr Perry said that as sovereign first nations and Indigenous people, they had managed water resources within traditional country for many generations and sought to be partners in water management.