



**National Farmers' Federation**

**Submission to the**

**Senate Inquiry into Water Licences and Rights**

**9 October 2009**



Member Organisations



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# 1. The 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.

## 2. Introduction

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The NFF welcomes the opportunity to make a submission to the Senate Standing Committee on Environment, Communications and the Arts Inquiry into Water Licences and Rights. NFF understands that the Inquiry will investigate the Commonwealth to sustainably manage water resources, across state boundaries, in the national interest. A particular focus for the Inquiry is:

- a. The issuing and sustainability of water licences under any government draft resource plans and water resource plans;
- b. The effect of relevant agreements and the Commonwealth environmental legislation on the issuing of water licences, trading rights or further extraction of water from river systems;
- c. The collection, collation and analysis and dissemination of information about Australia's water resources, and the use of such information in the granting of water rights;
- d. The issuing of water rights by the states in the light of Commonwealth purchases of water rights; and
- e. Any other related matters.

The terms of reference for this Inquiry highlight some lack of the understanding of Australia's water entitlements systems and the role of the Commonwealth in the management of the water resources of the Murray-Darling Basin. Although not specific in the terms of reference, this Inquiry can only relate to the Basin as the Commonwealth has no jurisdiction over any other water resources and nor has any State sought the Commonwealth to take over all responsibility of water in the Basin or outside the Basin. NFF are of the view that this is highly unlikely to occur.

Furthermore, the objects under Section 3 of the Federal Water Act 2007 states “(a) to enable the Commonwealth, ***in conjunction with the Basin States***, to manage the Basin water resources in the national interest” (emphasis added). If the Senate Committee has any misconceptions that the Commonwealth Government has sole responsibility for the management of the Basin's water resources, this should dispel these.

Moreover, the States, through the Murray-Darling Basin Intergovernmental Agreement referred only specific powers to the Commonwealth – not all their powers. In particular, the States retain

full responsibility for the legislation and management of water access entitlements. The Commonwealth has no referred power.

Again, the NFF reiterates that a water entitlement gives the owner the right to a share of the available consumptive pool each year. In this context, the repeated assertions of over allocation of water are technically incorrect.

### **3. The issuing and sustainability of water licences under any government draft resource plans and water resource plans**

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First and foremost, the only water licences remaining are those which have not yet been converted to entitlements (a gradual process) or which apply to non-water resource plan areas (such as unregulated systems). Water licences are generally time limited (e.g. supplementary licences in NSW are issued for the ten year water sharing plan, and not compensable. In some cases, licences are linked to flow events (extraction linked to the height of the river).

Water access entitlements are not granted under water resources plans. In most water plan areas, the granting of additional water entitlements is now embargoed. It is only low development catchments such as the Paroo that Governments have retained the right to issue new entitlements.

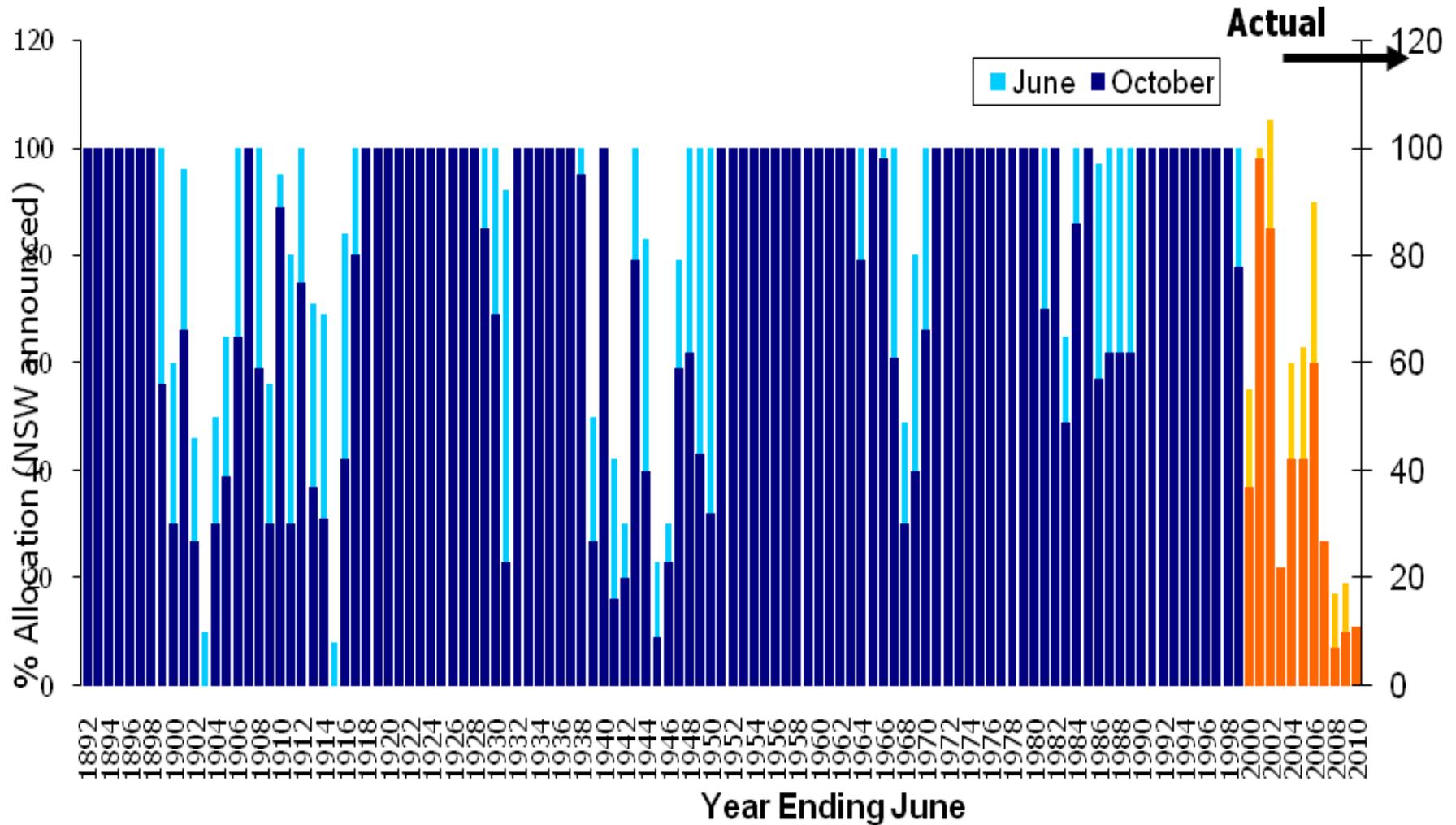
Moreover, water resource plans determine the consumptive pool of water that can be sustainably extracted from a particular water source. Water allocated annually to the consumptive pool is then shared according to a hierarchy of entitlements that generally provides for, in order:

1. Environment (e.g. planned environmental water)
2. Basic landholder rights
3. Urban, including industrial and recreation
4. High reliability entitlements
5. Low or general security entitlements
6. Supplementary licences.

Some in the community would argue that this has resulted in an unacceptable decline in riverine environments. With the above planning regime, water is and has been managed sustainably - in a hydraulic sense. Importantly, irrigators only get water when there is water available to be allocated. They do not receive 100% each and every year. Figure 1 on the following page demonstrates this for the NSW Murray River General Security Entitlements for 119 years (i.e. it includes 108 years of modelled and 11 years of actual allocations, including carry over).

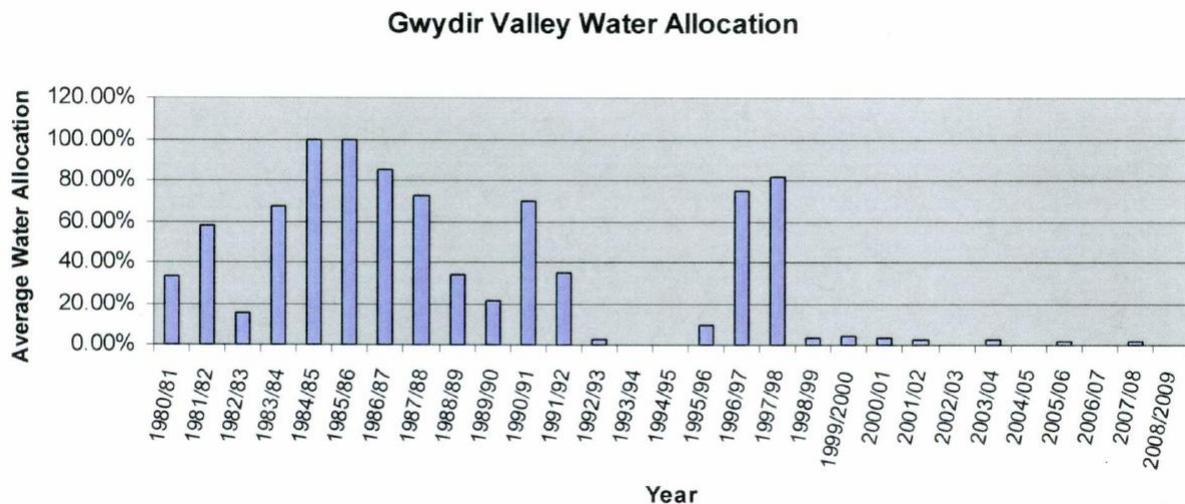
For the northern Basin, the water availability is similarly affected by climate to delivery allocations as portray for the Gwydir Valley in Figure 2. The allocations since 1992-93 have been profoundly impacted by both drought but also reflect the nature of the northern Basin climate, i.e. summer dominant rainfall. The importance of unregulated flow events cannot be underestimated for the Northern Basin, but also for the Southern Basin.

Figure 1 NSW Murray Allocation Announcements (end Oct - end June) Modelled 108 Years under Water Sharing Plans (+ 11 Years actual data)<sup>1</sup>



<sup>1</sup> Modelled data sourced NSW Office of Water; modelled Figures include average take-up of 10% carry-over per annum; actual figures include actual valley average carry over and actual allocations at the end of October and June

Figure 2 Gwydir Valley Water Allocations 1980-81 to 2008-09



The new Basin Plan will bring into effect a new planning regime. Water resource plans, as they expire and are replaced, will need to comply with the Basin Plan that was in effect two years prior. This means that while the Basin Plan is in development, water users have the security knowing the rules that will affect the allocation of water to their entitlements.

The reality is that water plans have been suspended over the last few years to ensure adequate provision of limited water to service the basic water needs of people reliant on the Basin’s water. This means that water for both the environment (i.e. planned water) and entitlements holders was suspended and pragmatically allocated on an equity basis. An alternative way of managing the limited resources is to allocate water to entitlements then allow the market to operate to the fullest extent. However, market failure has occurred as Governments seek to intervene to provide for the best interest in a limited supply of water.

NFF understands that there has been some angst over the expiry of the Victorian Plans in 2019 and note that this will be a problem in maintaining competitive neutrality between each State’s irrigators. However, it should be well understood that these plans cannot be less consistent with the Basin Plan and the majority of water will be covered by the Basin Plan from 2014.

More correctly, the Senate Committee is really seeking to understand whether the water sharing plans are sustainable. In many respects, the suspension of many water plans during the last few years may be seen as a failure of Governments to anticipate the severity of the drought. Are these sustainable in the longer term is a question that is perhaps better asked.

Many of the NSW Water Sharing Plans underwent a review in 2008. The extraction limits in the NSW water plans are managed by modelling to ensure that long term extraction limits are managed within sustainable limits<sup>2</sup>. Progress reports for Basin’s regulated rivers in NSW identify planned environmental water as varying between 56% (Murrumbidgee) to 73% (Namoi and Macquarie) to 75% (Lachlan). Reviews for the Gwydir and Murray are yet to be published and the Border Rivers plan only commenced in 2009 following lengthy negotiations with Queensland.

<sup>2</sup> For example, the Murrumbidgee Plan identifies 56% of water for the environment. See Water Sharing in the NSW Murrumbidgee Regulated River: Progress Report 2004-2008, p. 1. Available online: [http://www.dwe.nsw.gov.au/water/pdf/wsp\\_progressreport\\_murrumbidgee.pdf](http://www.dwe.nsw.gov.au/water/pdf/wsp_progressreport_murrumbidgee.pdf).

NFF understands that South Australia commenced a review of the River Murray Prescribed Watercourse Water Allocation Plan<sup>3</sup> in 2007. This review highlighted the need for a new plan identifying the following concerns:

- Administrative and technical issues, e.g. interaction between surface and groundwater;
- Ability to promote sustainable water use;
- Gaps in policies; and
- Integration and compliance with legislation (e.g. National Water Initiative and Schedule “E” of the MDB Agreement)<sup>4</sup>.

The new plan will not address the current drought situation and short term decisions on allocations. South Australia anticipates a new plan will be finalised in 2010.

While the Queensland Water Resource Plans were finalised in 2003, their associated Resource Operation Plans have been held up under legal appeal processes and hence has been unable to be finalised. One of the consequences is that full trade has been impeded until the property rights are fully defined and issued.

In summary, water entitlements are issued under State legislation and there are embargoes in place across most regulated catchments on the issue of further water entitlements meaning that new entrants must purchase entitlements off existing water entitlements owners to access the right to extract water when this is available and allocated to entitlements.

The existence of an entitlement does not guarantee water will be allocated at 100% for 100% of years. Water delivered as allocations to the consumptive pool is determined by water resource plans. Generally, lower reliability entitlements will receive less water over the longer term than higher reliability licences. Most state legislation prioritises the environment first, then urban and domestic use followed by irrigation entitlements.

The environment receives the majority of water in a water source. Generally, the following comprises of environmental water:

- Base river flows;
- Overbank flows;
- Unregulated flow events (i.e. unable to be stored in dams or weirs);
- Planned environmental water;
- Formal environmental entitlements; and
- Losses – both dam storage and river transmission losses.

Regular reviews of water resource plans ensure that these deliver against environmental objectives in the water plans that were agreed at the time.

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<sup>3</sup> The Plan was approved in 2002 with a five year review.

<sup>4</sup> 2007, SA Murray-Basin NRM Board, River Murray Water Allocation Plan Review, p.5

## 4. The effect of relevant agreements and the Commonwealth environmental legislation on the issuing of water licences, trading rights or further extraction of water from river systems

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### Entitlements

The issuing of water licences or entitlements, as stated previously, belongs with the States. There is no agreement that diminishes this right, including any agreement signed by the Commonwealth. Furthermore, the Commonwealth's environmental legislation, the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) mainly relates to Ramsar Wetlands, migratory birds and some threatened aquatic species.

The Interim Report of the Independent Review of the EPBC Act, Chapter 9 (p. 148-159) dealt with the issue of water. While some submissions sought better Commonwealth involvement in the issues around the management of water, no submission called for Commonwealth involvement with the issue of water entitlements/licences.

Moreover, the Independent Review noted that a coordinated approach to managing cross jurisdiction water resources is desirable (at Cl. 9.23). The Review noted that a suggested trigger of a water extraction as a matter of National Environmental Significance (NES) might include a number of actions – one of which include the issue of new water entitlements. However, there are embargoes already in place so this is really a suggestion that will not result in any action or outcome!

The Independent Review also agreed stating “*creating a trigger that relies on an action taking a specific amount of water from a water resource may not be the most effective way of determining the significance of the action [as t]here is a significant variation in the size of the water resource areas*”. In other words, a significant impact in one area will vary across water sources depending on particular circumstances. A one size hat does not fit all situations.

### Extraction

The right of entitlement holders to extract water is a legislated right under state legislation. The volume of water able to be extracted under the entitlement is determined by water resource plans, capped since 1994 by the MDB Cap on diversions (this has generally operated on an average valley basis meaning that individual entitlements can vary providing the average diversions for the valley remain within cap). Water resource plans have been consistent with the Cap. In NSW, these plans actually provide for long term diversions less than cap in practice.

One of the many misconceptions with Cap management in the past is that MDBC assessment of compliance is a snapshot in time on an annual basis. But the States manage extractions on a long term basis (i.e. over a ten year period) not annual.

Much of the public and political focus has been on the Murray River and the amount of water extracted by irrigators and or by upstream states (with all accusing each other of wrongs). A graph of actual flows across the South Australian border shows a slight improvement in the trend line over the period 20 August 2007 to 26 July 2009 (see Figure 3 below). This is in spite of the challenges to manage a very long river with limited flows during a very low resource period.

**Figure 3 Murray River Flows (ML/day) across the South Australian Border 20/8/07 to 26/7/09 (Source: MDBA)**

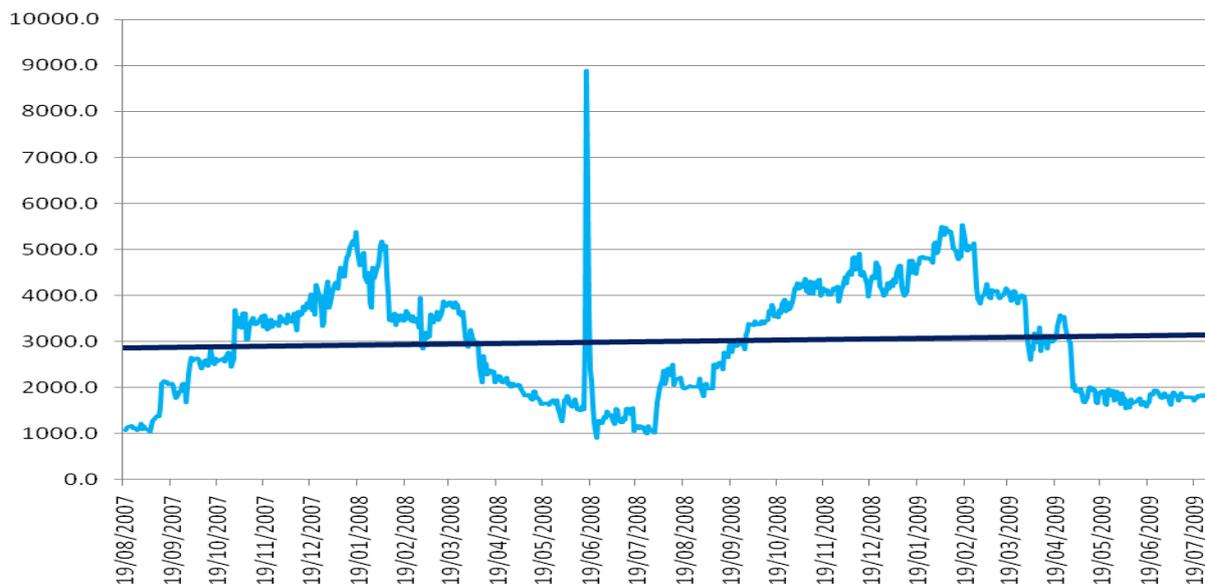
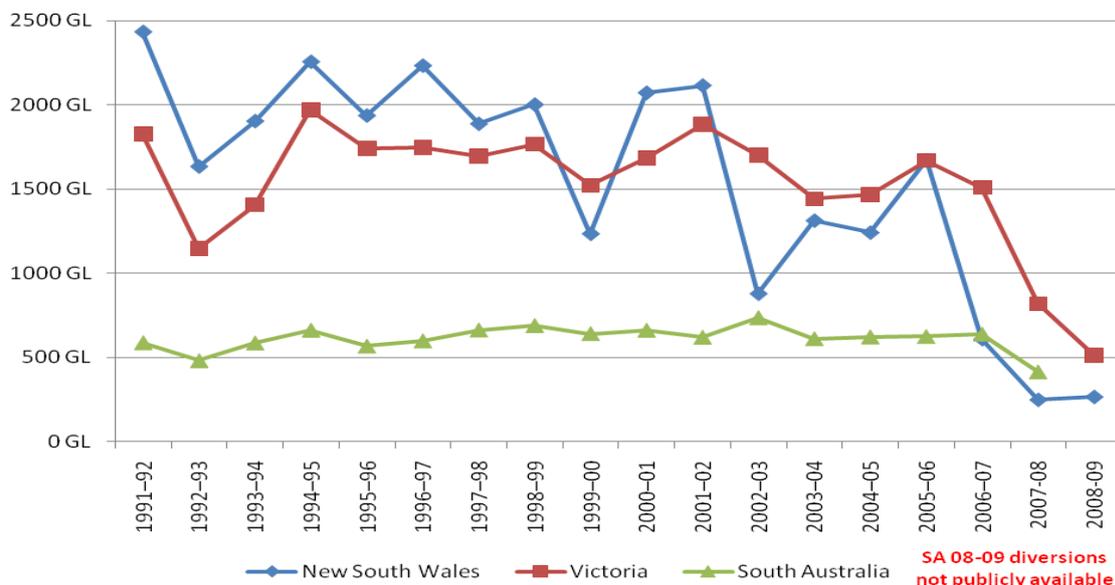


Figure 4 portrays all Murray River state (actual) diversions from 1991-92 to 2008-09<sup>5</sup>. This shows a dramatic reduction in extractions over the drought period – more starkly for NSW and Victoria, with South Australian impacts felt more recently (2007-08). It is interesting to note that diversions for NSW fell below those of South Australia – the latter included provisions for Adelaide’s water supply which exceeded the critical urban water needs from the Murray in the other States.

**Figure 4 Summary of all Murray System State Diversions 1991-92 to 2008-09 (Source: MDBC Annual Reports, Weekly Reports and other available data).**

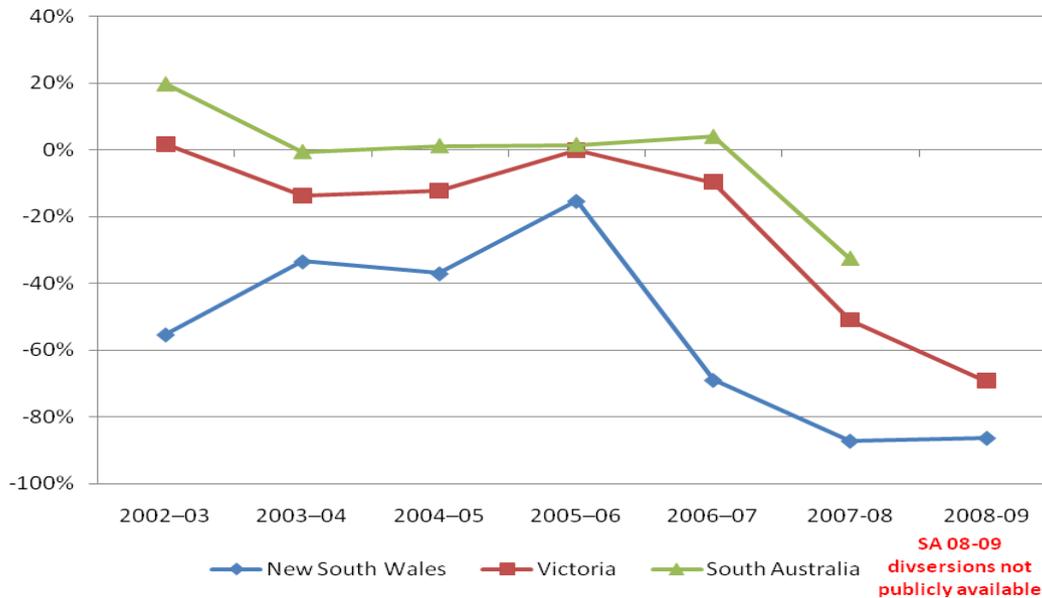


By contrast, Figure 5 portrays the percentage change in State Diversions since 2002-03 when compared to the average diversions from 1991-92 to 2001-02 (i.e. the preceding 10 years). It shows significant reductions for all states, but the effect for NSW in particular earlier and more

<sup>5</sup> Except South Australia, whose diversions are not public knowledge at the time of compilation.

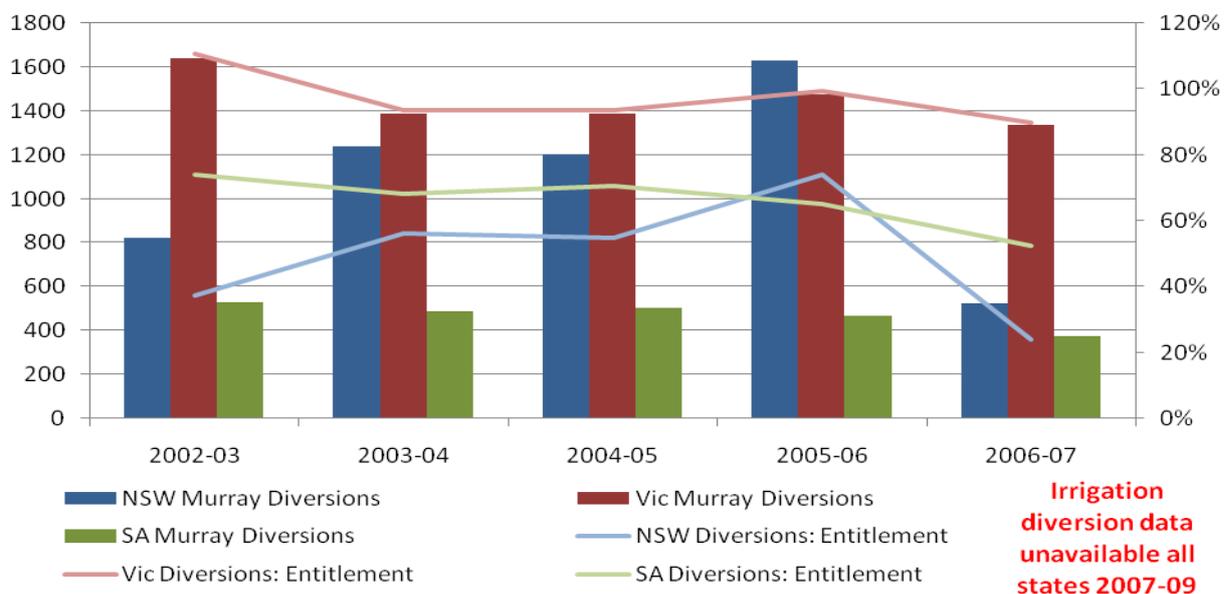
dramatically than for SA and Victoria. This fundamentally reflects the nature of the entitlements in NSW compared to Victoria and South Australia, i.e. few high reliability entitlements and the majority low reliability entitlements. Low reliability entitlements are the last to have allocations distributed. Another description is that low reliability entitlements are the entitlements of “last resort”.

**Figure 5 Percentage change in State Diversions since 2002-03 compared to average diversions 1991-92 to 2001-02**



The above figures reflect at all diversions or extractions. The target of much consternation has been irrigation extractions. Figure 6 below isolates all irrigation extractions and as a percentage of all entitlements. It is unfortunate that irrigation diversion data for all states was not readily accessible for 2007-08 and 2008-09 to enable a full assessment of the impact of that last two years of drought.

**Figure 6 Murray System Irrigation Diversions and Irrigation Diversions as Percentage of all Entitlements 2002-03 to 2006-07**



In summary, climatic conditions govern the volume of water allocated to the consumptive pool and the water resource plans determine how that water is shared between the relevant users (including the environment). Water will continue to be extracted in accordance with existing water resource plans, and the development of the new Basin Plan will implement a new Sustainable Diversion Limit (Basin and each water source) that will replace the existing Cap.

NFF does not support further interventions in water planning management beyond what has been agreed between the Commonwealth and the States. Furthermore, community, media and political expectations on what has and is agreed to in terms of water reform needs to be better understood and expectation managed to avoid disappointment!

### **Trade**

The Federal Water Act provides for the development of water market and trade rules by the ACCC. The market rules are finalised and development of the trade rules that will become part of the Basin Plan is underway.

The National Water Initiative also includes provision of trade reform and NFF look forward to the release of the 2009 Biennial Review shortly to see the progress by all jurisdictions on trade reform. It should be noted that the much maligned 4% trade limit is part of the NWI agreed by all jurisdictions in Australia.

The Commonwealth acquisition of water entitlements under the \$3.1 billion Restoring the Balance is accelerating and from NFF's calculations, exceeding even the accelerated package agreed under the deal between Senator Xenophon and the Commonwealth. It is likely that over 80% of the package will be spent in a five year time frame (2008-09 to June 2013).

NFF's concern in this regard is a balancing of this package with the \$5.8 billion Rural Water Infrastructure Package, with much of the latter held up in negotiations with the States and development of project plans. NFF supports an acceleration of the infrastructure package as this delivers more widespread and improved social, economic and environmental outcomes throughout the Basin.

Moreover, trade in allocations is the active market area, with trade in entitlements (apart from the Commonwealth's acquisitions) historically and now very thin. Development of appropriate systems that facilitate electronic and shorter trade timeframes is supported. NFF supports the COAG agreed maximum timeframes for temporary trade but encourages jurisdictions to facilitate similar maximum timeframes for entitlement trade.

## **5. The collection, collation and analysis and dissemination of information about Australia's water resources, and the use of such information in the granting of water rights**

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The role of the collection, collation, analysis and dissemination of information about water resources is not intended to be used for the granting of water entitlements. As stated previously, water entitlements are in existence and embargoes are widely in place on the issue of further entitlements in the Basin.

The role of information is to assist in the management of the water resources.

## **6. The issuing of water rights by the states in the light of Commonwealth purchases of water rights**

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As stated previously, the issue of water rights has been largely embargoed. The implementation of the 1994 COAG Water Reforms and the 2004 National Water Initiative is to provide for compensable property rights for water entitlements. Governments have agreed to water trade and markets. In fact, Governments have insisted that new entrants seek to purchase water from existing entitlement holders, and that trade is encouraged to ensure that those who value the water most are prepared to pay for the right to extract water when this is available and allocated to entitlements.

To this end, it is imperative that any adjustments between irrigation and environmental pools of water are implemented by Governments acquiring water from willing sellers in the market. To do otherwise, undermines the property rights and water market so advocated by all Governments. Manipulation of government policy to deliver improved environmental outcomes at the cost of the irrigation sector, irrigation production and rural communities will not be supported if left uncompensated as per the NWI risk assignment framework.

In Queensland, the NFF understands that water resource plans have been completed and their associated water operations plans (ROP) are in draft form. This will formalise the issue of Queensland based water access entitlements resulting from the separation of land and water. Until such time as the current litigation over the Condamine Balonne ROP has been completed, this process remains incomplete. It would be extremely inequitable and unfair to prevent irrigators in that state from being issued NWI compliant entitlements when other irrigators throughout the Basin have been afforded that opportunity.

## **7. Over Allocation**

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The NFF notes with concern a number of interpretations of over allocation. The National Water Initiative states that over allocation is to be resolved prior to the commencement of risk assignment provisions. Yet an NFF analysis of the jurisdictions NWI implementation plans shows that all the Basin States have largely complied with their NWI requirements dealt with this issue, through the 2004 water plans. Hence the States claim that over allocation has been resolved. Moreover, Victoria's implementation plan states that any future adjustment is to be resolved through the investment in water efficiency projects or by entering the market to acquire water.

Yet from public discourse, there are many cries to resolve over allocation and much of the Commonwealth's water reform process is based on this premise (e.g. Basin Plan, Water for the Future program etc) and supported by the CSIRO's sustainable yields assessment of the Basin's resources (historically, now and future). But exactly what is over allocation.

Entitlements provide owners the right to a share of the resource called the consumptive pool. The latter is determined by reference to inflows, water in storage, system losses, and the provision of planned environmental water. Water is then allocated according the hierarchy outlined in legislation – usually environment, human uses (basic landholder rights, urban, industrial and recreation uses), then high reliability irrigation entitlements (e.g. Victoria water rights, SA entitlements, NSW high security entitlements). Finally, any remaining water is shared between the low reliability irrigation entitlements.

Usually if there is over allocation/overuse of entitlements, this will change the reliability attached to those entitlements – more simply put, how many years over the long term (i.e. over 100 years) could irrigators expect to receive an allocation of water against their entitlement. The regulatory environment around water planning and rules determines the available water to be shared.

A bigger issue than over allocation is when there is over use. This is when a Government chooses to allocate more water to the consumptive pool resulting in more water **actually being extracted** from a water source than is environmentally sustainable. Such actions would not be tolerated by the irrigation sector and many water users including the environment. This is because it puts at risk the environment, water for human consumption and the livelihoods in Australia's premier food bowl.

More validly, there are community concerns about the balance between environment and other water users. The Commonwealth's Water for the Future investment in acquisition and infrastructure is seeking to restore the balance and to underpin defined entitlements to the environment. The latter was a fundamental component of the 1994 COAG water reforms and is reflected in the NWI. Moreover, the next round of water plans will better reflect current community attitudes.

NFF advocates the development of an agreed understanding of over allocation and an agreed pathway forward. This is a critical step to enabling the risk assignment provisions in the NWI. If jurisdictions cannot agree on this important issue, entitlement holders will be caught in an untenable situation. NFF encourages further discussion.

## 8. Conclusion

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This Inquiry by the Senate follows other water related Inquiries. Yet there appears to be a degree of frustration largely borne from incomplete knowledge of water management and planning at both a state level and a Commonwealth level.

Importantly, the States have retained control over a number of aspects of water management, including the issue and management of water entitlements. Commonwealth agreements and legislation have not attenuated this right of the states. Moreover, many entitlements are now embargoed, i.e. no further entitlements can be issued. This literally means that any new entrants must acquire an entitlement from existing entitlement holders.

Much of the current frustration arises from an incomplete knowledge of water planning or are attempting to circumvent the development of the new Basin Plan including the Sustainable Diversion Limit.

Expectations, however, on the role of the Commonwealth are clearly incorrect and as stated in the Water Act 2007, the Commonwealth in conjunction with the States will manage the water resources of the Basin.

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