

SUBMISSION

TO: MURRAY–DARLING BASIN AUTHORITY
FROM: NGARRINDJERI REGIONAL AUTHORITY INC
RE: SUBMISSION BY NGARRINDJERI REGIONAL AUTHORITY INC FOR AND ON BEHALF
OF THE NGARRINDJERI PEOPLE IN RELATION TO THE PROPOSED BASIN PLAN
DATE: 16 APRIL 2012

Introduction

The Ngarrindjeri People are the traditional owners of the lands and waters of the lower Murray River, Lowers Lakes and Coorong. In this submission Ngarrindjeri say that the proposed Basin Plan fails to consider to the extent required Indigenous cultural interests in water. For these reasons, the proposed Basin Plan fails and is not able to be characterized as a relevant document for the purpose of the Water Act 2007 ('the Act').

The reasons that the Authority has failed in the proposed Basin Plan are not directly relevant to the validity of the instrument however Ngarrindjeri wish to make the following general observations about the process of engagement for the proposed Basin Plan:

1. the MDBA has not engaged with Ngarrindjeri respectfully;
2. it has focused upon the recording of oral histories of individuals living on the River rather than engagement of Ngarrindjeri as a community;
3. it has engaged researchers to compile such oral histories who are unfamiliar to Ngarrindjeri, notwithstanding that the MDBA have been advised that this process is wrong;
4. it has failed to devise methodologies for engagement with Ngarrindjeri which would result in an understanding of cultural interests associated with water.

Ngarrindjeri while making these observations reiterate that it was a matter for the Authority to determine a relevant engagement strategy. Respectful and meaningful dialogue with Ngarrindjeri should have been at the core of that strategy. While these approaches are fundamental they are only the building blocks for creating a context where the hard thinking, negotiation and decision-making can take place. The main issue is not the engagement strategy itself but the outcomes that can be achieved by undertaking such processes. The Authority has failed to understand the substance of Ngarrindjeri cultural interests in water. To start to understand those interests the Authority would need to understand the cultural principles that connect Ngarrindjeri to their country.

Ngarrindjeri articulate in this submission a central and important cultural principle in relation to water. It is not a principle based upon water as a commodity to be bought, sold or traded but as a cultural principle based upon water as life, giving life and living. It is connected to, and integrated with, the land and the people of the land. There is a fundamental difference of perspective between the Authority and Ngarrindjeri. The Authority's preoccupation with the use and allocation of water, and the collecting of oral histories from individual indigenous people, has been a barrier to meaningful discussion. The focus of the Authority should have been upon understanding cultural principles associated with water, considering those cultural principles prior to and apart from the 'use' of water, and by listening and working with Indigenous People to translate (or negotiate) the differences.

This has not occurred and Ngarrindjeri are confronted with a proposed Basin Plan which is irretrievably flawed. The proposed Basin Plan does not comply with the Act. The Authority has failed to consider cultural interests because it has not done the work to understand what they mean and it has given them the wrong priority in the proposed Basin Plan. The Authority proposes to deal with these failings by shifting the responsibility onto the Basin States. The handballing of the issue of cultural interests to the Basin States will create problems of inequality of treatment of those interests across the whole basin. It will also create problems at the Basin State level because the Authority incorrectly characterizes cultural interests to be incorporated into the environment which is contrary to the requirements of the Act.

Ngarrindjeri People

- A. The Ngarrindjeri People as descendents of the original indigenous inhabitants of the lands and waters of the lower Murray River, Lower Lakes and Coorong and adjacent areas assert control over these lands and waters by the continuation of their culture upon their traditional lands to pursue their economic, social and cultural development of the land and waters located within the boundary of Claim SC 98/4 being the Ngarrindjeri Native Title Claim as described therein ('the Native Title Claim').
- B. The Ngarrindjeri People are the traditional owners (as that term is defined in the Aboriginal Heritage Act, 1988 (SA)) within the area of the Native Title Claim. The Ngarrindjeri People act through their representative bodies being Ngarrindjeri Tendi Incorporated, Ngarrindjeri Heritage Committee Incorporated and Ngarrindjeri Native Title Management Committee. These bodies, with other representative bodies within the Ngarrindjeri community have formed a peak body called the Ngarrindjeri Regional Authority Inc for the purpose of coordinating activities and resources of the Ngarrindjeri community and high level interactions with Governments.

Cultural Principles

- C. Ngarrindjeri state:

'The Meeting of the Waters is a fundamental aspect of the Ngarrindjeri world where all things are connected, whether they are living, from the past and/or for future generations. The Meeting of the Waters makes manifest core concepts of Ngarrindjeri culture that bind land, body, spirit, and story in an integrated, interfunctional world. The principles that flow from this cultural system are based upon respect for story, country, the old people, elders and family. The pursuit of these principles is contingent upon maintaining a relationship with country. The violation of these respect principles is manifest through the destruction of Ngarrindjeri yarluwar ruwe (a concept that embodies the connectedness and interfunctionality of their culture) and their effect upon the behaviours and survival of ngatji (the animals, birds and fish). According to these principles and contingent beliefs the "environment" cannot be compartmentalised: the land is Ngarrindjeri and Ngarrindjeri are the land. All things are connected and interconnected. Ngarrindjeri philosophy is based on maintaining the integrity of the relationship between place and person. It is the responsibility of the living to maintain this continuity. The past is not and cannot be separated from the here and now or the future. To break connections between person and place is to violate Ngarrindjeri culture. The objective in undertaking activities upon Ngarrindjeri country should be to not cause violence to Ngarrindjeri culture.'

- D. Ngarrindjeri consider that all things are connected, including the land, water and sky. It is Ngarrindjeri cultural principle that nothing can separate or should separate these things from

each other. These are the laws of that creation ancestor Ngurunderi used to create order and unity for the Ngarrindjeri People. This includes the creation of the flow of water from up river and into Ngarrindjeri country.

- E. Ngarrindjeri are part of the water. It is life, gives life and is living. The cultural and spiritual relevance for Ngarrindjeri of water as a source of life and as part of the living body is that it flows, within, around and through Ngarrindjeri country. The exercise of Ngarrindjeri culture rights and the fulfillment of Ngarrindjeri responsibilities include being interconnected with and being part of the living water. The flow of water forms part of the interconnectedness of Ngarrindjeri to their country and the failure of water to flow into their country impacts upon their exercise of rights and their fulfillment of responsibilities as custodians of the land, water and sky.

Flowing Water – Prior Right

- F. Ngarrindjeri consider they have the first right, a right attached to the exercise of their cultural rights, interests and responsibilities, that precedes all other rights including but not limited to the legislative function of the MDBA to allocate water for particular uses. The rights and interests of the Ngarrindjeri require that water flows into, through, and from, their country from up river. This is a right *a priori* to all others and the MDBA should commence their consideration of allocations without interference or diminishment of these rights.

Water Act

- G. Section 21 (4) (v) of the Act says that the Authority and the Minister must have regard to Indigenous issues. Section 22 (1) of the Act says that the mandatory content of the Basin Plan includes the use to which the Basin water resources are put (including Indigenous People).

Aboriginal Site – Meeting of the Waters

- H. Section 22 (3) (g) of the Act says the requirements must include circumstances relating to tradable water rights. Schedule 4 Clause 4 (4) (e) states that restrictions on extractions, diversions and use of water resulting from trade can only be used to manage: features of major indigenous, cultural heritage or spiritual significance.
- I. Ngarrindjeri are the traditional owners of Registered Site No. 6626-4727 'Meeting of the Waters'. This Aboriginal Site is registered under the Aboriginal Heritage Act 1988 (SA). It includes the Goolwa Channel, the Murray Mouth and parts of the Currency Creek and Finniss River. The natural state of this area requires adequate fresh water flows from up river to flush out the Murray Mouth and ensure that the Ngarrindjeri are able to continue to exercise their cultural rights in this area.
- J. The State of South Australia in its capacity as a Basin State should ensure that the registered Aboriginal Site, other Recorded Aboriginal Sites and other Aboriginal Sites (under the Aboriginal Heritage Act 1988 (SA)) being features of major indigenous, cultural heritage or spiritual significance apply as a restriction on extraction under the watering trading rules. In

effect this means that end of system flows should occur to the Murray mouth to protect the Meeting of the Waters' Aboriginal Site.

Proposed Basin Plan

- K. The proposed Basin Plan does not comply with the mandatory requirement in Section 22 (1) of the Act which says that the mandatory content of the Basin Plan includes the use to which the Basin water resources are put (including Indigenous People). The use of water is not adequately referred to in Part 14 of the Basin Plan. It defers the issue to further consultation and consideration under a water resource plan.
- L. It does not comply with the mandatory requirement to have regard to Indigenous issues as required by section 21 (4) (v) of the Act.
- M. It does not:
- a. have regard to the prior right of Indigenous People as referred to in the opening part of this submission;
 - b. it refers only to 'use' of water by Indigenous People but only 'where these align with or enhance environmental outcomes.'
- N. The management of water by the MDBA within the scope of their legislative power may include specific use which results in allocation to places such as wetlands where birds, fish plants and animals live.

Possible Inconsistency with Racial Discrimination Act, 1975

- O. A risk is identified in the proposed Basin Plan that there may not be sufficient water for Indigenous People to maintain their culture. While recognizing the risk the Authority does not respond to it. The Authority should not propose a Basin Plan which could be inconsistent with the Racial Discrimination Act 1975. Arguably, if this Basin Plan were accepted by the relevant Minister it will be open to the claim that it is in its impact or operation inconsistent with the requirements of the Racial Discrimination Act 1975.

Role of MLDRIN

- P. MLDRIN comprises representatives of Indigenous Nations in the Basin. MLDRIN has taken care to ensure that the Authority is clear it does not make representations for Indigenous Nations. For example, it does not make representations for Ngarrindjeri. It is made up of important representatives from each Indigenous Nation and may be an important mechanism to assist the Authority to hear the concerns of Indigenous People.

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