



Rachel Connell  
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Department of Industry – Lands and Water Division

Via electronic mail: [rachel.connell@industry.nsw.gov.au](mailto:rachel.connell@industry.nsw.gov.au)

**17 July 2018**

Dear Rachel,

**Re: NSW Irrigators' Council Submission to NSW Updated Factors for Water Recovery**

The NSW Irrigators' Council (NSWIC) welcomes the opportunity to provide comments to the Department of Industry's Consultation Paper and Technical Report on the NSW updated factors for water recovery.

NSWIC appreciates that the NSW Long-Term Division Limit Equivalence Factors (LTDLE Factors) which were released on 1 June 2018 are based on a consistent suite of peer-reviewed models, data and assumptions and will be used as an accounting tool to convert the Commonwealth Government's recovered water entitlements into a long-term diversion limit equivalent value for each of the various types of water entitlements and allocations system across the Murray-Darling Basin. The Council also understands that the LTDLE Factors are used to guide the Commonwealth's environmental water recovery under the Basin Plan with the aim of ensuring that all NSW valleys (and all Murray-Darling Basin valleys) are SDL compliant from 1st July 2019.

NSWIC reiterates that its long-held policy position<sup>1</sup> has been that a review of LTDLE (or Cap Factors) must be limited to the NSW Gwydir and Macquarie valleys where there are known anomalies with the previously determined long term diversion limit equivalence factor. A review of all LTDLE Factors – whilst agreed under the Murray-Darling Basin Plan 2012 Implementation Agreement (dated August 2013) – has not been supported by NSWIC on the grounds that it creates uncertainty around current and any future environmental water recovery amounts under the Basin Plan and the Sustainable Diversion Limit Adjustment Mechanism and could be seen as a perceived change to the value of entitlements due to the confusion between LTDLE Factors and allocation reliability.

Despite NSWIC's objection, the Council is of the view that the strongest argument for accepting a revision of the LTDLE Factors is that the outcome could lead to a more accurate reflection of the baseline diversion limit and hence reduce – but certainly not eliminate – the risk of future Sustainable Diversion Limit breaches.

While NSWIC acknowledges that it is difficult to determine accurate LTDLE Factors in the context of ever changing water use behaviour by different licence holders, different climate conditions, varying allocations announcements, different accounting and Water Sharing Plan rules, it is however critical that the determination of the LTDLE Factors is as realistic as possible, noting that:

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<sup>1</sup> Passed at the NSWIC General Meeting in July 2014

1. If the LTDLE Factors are set to minimise the Commonwealth Government's environmental water recovery, it could increase the probability that the SDL is breached. This in turn could have an impact on lower priority water licences (e.g. supplementary and General Security licences) who may have their allocations reduced to achieve SDL compliance.
2. If the LTDLE Factors are set to maximise the Commonwealth Government's environmental water recovery, it would minimise the risk of breaching the SDL but it would also (potentially) 'lock-up' more water within the Commonwealth Government's environmental water portfolio than potentially necessary. This in turn could have a social and economic impact.

While the trade-off between both scenarios is challenging, NSWIC also stresses that there are additional legal and administrative challenges involved in divesting from any over-recovery in environmental water<sup>2</sup> which will be discussed further in point 1 (below).

### [Specific Comments to the Consultation Paper and Technical Report](#)

#### **1. Environmental Water Recovery Volumes**

Table 1 in the Consultation Paper indicates that adopting the 2018 LTDLE Factors would result in the 2075 GL recovery target (Local Reduction + Shared Reduction amount for the Northern Basin and Southern Basin) being over-recovered in total.

- Northern NSW Basin: 33,267 ML/yr
- Southern NSW Basin: 33,609 ML/yr

**While this question is ultimately for the Commonwealth Government, NSWIC requests that the Department outlines its position on the matter of over-recovery.**

Further, despite this over-recovery, the Border Rivers, Namoi and Lachlan will still not have met their local recovery targets:

- Border Rivers: 2,753 ML/yr
- Namoi: 8,795 ML/yr
- Lachlan: 1,301 ML/yr

While NSWIC understands that the figures for the Lachlan are/have been amended (e.g. between the discussion paper and the ALL-SAP presentation on 5<sup>th</sup> June 2018), NSWIC requests that the Department provides further details on the BDL modelling in the Lachlan Valley<sup>3</sup>.

Further, NSWIC seeks clarification from the Department on the still to be recovered volumes in the three NSW valleys, particularly as the NSW Minister for Primary Industries, Regional Water Trade and Industry had previously stated that a review of LTDLE Factors should not disadvantage any NSW valley. Given the outcome of the 2018 review, NSWIC is of the view that this commitment has not been adhered to in the Namoi and NSW Border Rivers valleys.

Finally, NSWIC would like to register its discontent that the Department of Industry has used the updated local recovery volume for the Barwon-Darling pursuant to the previously disallowed Northern Basin amendments despite the fact the amendments had – at the time of the release of the Discussion Paper – not been re-introduced or passed by the Federal Parliament. Given that the Department has adjusted the figures for the Lachlan Valley (in the span of a few days between the release of the Consultation Paper and the ALL-

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<sup>2</sup> s.106 of the Water Act 2007 (Cth) and the CEWH investment framework (draft paper: <http://www.environment.gov.au/system/files/consultations/832e318a-dc82-453f-9900-5c11852c6bf5/files/investment-framework-discussion-paper.pdf>)

<sup>3</sup> In addition, NSWIC would like to seek clarification from the Department on the treatment of the Lake Brewster Adaptive Environmental Water Licence, noting that it should not be included as part of the BDL.

SAP meeting), NSWIC would like to put on record that this approach by the Department was inappropriate and simply represents poor practices.

## **2. Method to develop LTDLE Factors for General Security and Supplementary Water**

NSWIC understands that the updated LTDLE Factors for General Security access licences and other categories of licence (except supplementary water) were initially developed using reliability of allocation factors and utilisation factors based on data available between 2004 and 2017. These factors were applied to the respective licence entitlements to obtain a share of the average annual BDL extractions. However, reliability of allocation factors is not relevant to supplementary water because their annual allocations are not determined by water availability. Therefore, the supplementary water licence share of BDL extractions is determined by simply adopting long-term modelled average annual extractions under BDL conditions. This can then result in total shares of the BDL exceeding the BDL. As a result, the General Security licence share of the BDL is adjusted down. That is, the inability to apply a more refined approach to supplementary water licences impacts the General Security LTDLE Factors. Given the earlier point that the LTDLE will inform future environment water recovery, the methodologies used to determine both supplementary water and General Security LTDLE Factors will influence future water recovery decisions by the Commonwealth Government. For that reason, NSWIC seeks comments from the Department on whether the adopted approach could be a risk to irrigators. Further, NSWIC notes that despite the Department's intent to provide greater consistency in the development of the LTDLE Factors, the above issue shows that this has not necessarily been achieved.

Also, the different approaches used to determine shares of the BDL for General Security and supplementary water licences mean that a direct comparison of the 2018 factors between each of these categories of licences and between other categories is not appropriate. NSWIC considers this to be unfortunate – particularly since other methods to develop the LTDLE Factors are available which would allow for such comparison. As argued below, a simple comparison of average annual water extractions under current or BDL conditions against total entitlement for each category of licences could have been used to allow for a direct comparison between licence classes.

Finally, neither the Consultation Paper nor the Technical Report adequately discusses why this complicated approach was taken and why average annual modelled extractions for each category of access licence as a percentage of total entitlements for that licence category was not simply used.

## **3. The use of historical usage patterns in the development of the updated factors**

It is recognised in the Consultation Paper and Technical Report that the updated LTDLE Factors have attempted to consider the most recent water user behaviour, but in a limited way. For example, if the adopted methodology relies on establishing shares of the BDL then an up-to-date assessment of BDL should be used. However, it is not clear from the Consultation Paper whether revised BDLs are being used. Further, the use of 2016/17 data should be consistent for all valleys.

## **4. Growth in use risk**

The Department did not differentiate between 'extractive water users' and 'environmental water users' when developing the 2018 LTDLE Factors. Assuming similar water use behaviour for both types of WAL holders could be problematic (e.g. cause reliability impacts) if the actual water use of one type of licence holder in a valley grows beyond the LTDLE Factors.

With the transfer of water entitlements from irrigators to the Commonwealth Environmental Water Holder (CEWH), there is a potential for the 'environmental demands' and 'environmental extraction patterns' to be significantly different to what is currently being assumed by the NSW Government. For example, the CEWH could order water at different times, rates and quantities to irrigators, in order to mimic a natural watering

event. As such, the CEWH may be less or more conservative in their usage patterns than irrigators. If the CEWH is less conservative in the future, there is a risk to the reliability of lower priority licences (e.g. supplementary and General Security licences).

In broad, NSWIC remains concerned that the growth in use could be material in some valleys and hence have a distribution impact on lower priority licence holders in NSW<sup>4</sup>.

For that reason, NSWIC seeks assurance that the Department and the Murray-Darling Basin Authority will continuously monitor the water use behaviour of these two water users in order to ensure that the action of one does not impede on the reliability of the other. NSWIC and its members have questioned what policy protection will be put in place to ensure that the environmental water use is consistent with the assumed LTDLE Factors.

**As such, NSWIC recommends the NSW Government, in conjunction with the Murray-Darling Basin Authority, develop a mechanism to manage the risk of growth in use of the held environmental water holdings.**

## **5. Transparency and Trade**

Neither the consultation nor the technical papers provide sufficient detail to fully explain how different data (e.g. historical usage and modelled data) is used to determine either average annual account usage or Available Water Determination + net trade. Further, traded water is considered to be “used” by the entitlement against which it is purchased, not against which it is sold – further raising the questions how other jurisdiction will derive an appropriate methodology that will pick up the issue of net trade in their review of LTDLE in order to effectively establish true ‘use’ of traded volume.

In addition, the Consultation Paper has inadequately dealt with the “Pros” and “Cons” of the adopted methodology and also failed to consider any alternative options. For example, the Paper fails to explain why a more complex method than a simple comparison of average annual water extractions under current or BDL conditions against total entitlement for each category of licence (which would provide a common methodology against which all factors could be compared), has been used.

## **6. Interstate consistency**

NSWIC appreciates the consultation paper is a NSW document. However, the Council and its members are interested to understand the methodology applied by other states in their reviews of the LTDLE Factors (e.g. including whether there are also proposals to change their 2011 Factors). NSWIC has an expectation that each State’s policy is consistent with the underlying principles outlined on page 10 of the Consultation Paper.

## Conclusion

NSWIC appreciates the challenges to develop LTDLE Factors within a dynamic system that will change over time as irrigators and environmental water manager behaviour change in response to commercial/environmental opportunities, water allocations and the availability of carryover. As such, it is extremely challenging to derive a set of LTDLE Factors that are appropriate to determine whether SDL compliance will be achieved from 1 July 2019 and over the longer term. Despite this complexity, NSWIC urges the Department to provide clarity and further details on the methodology used to derive the 2018 LTDLE Factors and outline in more detail the possible implications for WAL holders more broadly.

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<sup>4</sup> Under the current NSW water sharing plans, if the long-term average annual extraction limit is breached then the first compliance action would (typically) be to reduce future water allocations for all supplementary water licence holders (including those held by the environment).

For further information, please contact: Stefanie Schulte, Policy Manager, NSW Irrigators' Council:  
stefanie@nswic.org.au or (02) 9264 3848

Sincerely,

A handwritten signature in cursive script, appearing to read 'Stefanie Schulte'.

Stefanie Schulte  
Policy Manager  
NSW Irrigators' Council