

14-4-2018

NSW Government Water Reform Action Plan Submission Better Management of Environmental Water

Dear Department of Industry Lands and Water,

Introduction

Cotton Australia is the key representative body for Australia's cotton growing industry. We welcome the opportunity to speak on behalf of NSW cotton growers in regards to the overall NSW Government Water Reform Package and in particular the Better Management of Environmental Water paper.

Cotton Australia is an active member of NSW Irrigators Council and endorses its submission. Further, in developing this response, Cotton Australia engaged extensively with irrigator representatives from across the Northern Inland Valleys of NSW and has drawn heavily on this collaborative work in preparing this submission.

While Cotton Australia believes there will be a high degree of consistency in the submissions prepared by these various groups, there will also be some valley specific differences and these need to be recognised.

General Comments

Cotton Australia recognises that our growers who hold water licences issued by the NSW Government and have a range of very important rights and responsibilities. As an industry, we are very supportive of the general thrust of the NSW Government's Water Reform Action Plan.

The Water Reform Action Plan (WRAP) is born out of issues highlighted in the Matthews Report and the Murray-Darling Basin Compliance Review. Specifically, this consultation paper attempts to provide possible solutions to the complexities of better managing environmental water focusing on the Northern Basin unregulated river system.

Cotton Australia is concerned that this process is being rushed for a "quick-fix" solution. For the best public policy outcome Cotton Australia agrees with the NSW Government that the plan implemented needs to be equitable and transparent. Equitable for the stakeholders that will be most affected such as Water Access Licence (WAL) holders and transparent for the greater public so as to build faith by both water users, government and the greater public.

Consultation Question: The measures in this paper are focused on the unregulated systems of the Northern Basin – do you agree that this should be the main focus for the interim solutions package?

The question is somewhat difficult to answer. Cotton Australia does not know what the proposed interim solutions are, so the response below is limited by the fact that we are only addressing the question in very general terms.

Although the WRAP and the interim solutions discussed around the issue of better managing environmental flows is born out of the airing of ABC programmes, which alleged water mismanagement and theft within the Northern Basin, the interim solutions should not be restricted to that area. The solutions should be malleable mechanisms which are adaptable to all other valleys and river systems within NSW.

Having said that, it is reasonable that initial development of solutions could be focused on the Barwon-Darling, and then tested and adapted for their suitability in other areas.

Consultation Question: Do you agree with the mix of environmental outcomes? Are there others we should be considering?

Cotton Australia is not in a position to either agree or disagree to the majority of the environmental outcomes listed in the paper and reproduced below:

What outcomes are we seeking?

Improving the management of flows and extraction (the taking of water) within and between river systems will help to protect and improve aquatic ecosystems, while enhancing equitable cultural, social and economic outcomes from water. The frequency, timing and duration of flows are ecologically important for different reasons, but each is critical to achieving the objectives from improved management of environmental water, including:

- **breaking extended cease-to-flow periods**—cease-to-flow durations of 50 days at Bourke and 100 days at Wilcannia have been identified as critical ecological thresholds.
- **whole-of-river flow connectivity**—low flow connectivity is important for fish and invertebrate populations, and maintaining water quality.
- **flushing flows**—flow pulses up to approximately 2,000 megalitres per day (ML/d) are important for the spawning and migration of fish, nutrient cycling following the inundation of in-channel benches and in the movement of salt out of the system.
- **protection of held environmental water**—ensuring held environmental water is recognised and managed effectively to achieve identified ecological outcomes between river systems and within unregulated rivers, such as the Barwon–Darling.

The first and third outcomes listed are very specific in nature, there is no supporting information, and to Cotton Australia's knowledge there has been no extensive consultation with stakeholders on them.

With regards to the second outcome listed, Cotton Australia is aware that different stakeholders and individuals will have very different definitions as to what constitutes whole-of-river-flow connectivity,

and therefore it is impossible for Cotton Australia to agree with this outcome in the absence of a significant detail.

Cotton Australia does acknowledge that it is a reasonable public expectation that held environmental water is protected.

However, there are already rules in place that protect environmental water, primarily using total extraction limits. These rules were in place when the Commonwealth purchased this water.

While Cotton Australia concedes that the Australian public expects a higher level of protection, the pathway to achieving that additional protection should start from a public and very respectful acknowledgement that access to water to date has been in accordance with licence conditions, and any changes to those conditions may have negative impacts on licences holders, and these impacts will be mitigated and/or compensated for.

Cotton Australia is aware that for at least the past two years irrigation entitlement holders have been willing to have discussions with both the Commonwealth Environmental Water Holder (CEWH) and the NSW Government to find a way environmental flows can have a higher degree of protection than currently provided. However, there appears to have been a lack of enthusiasm by jurisdictions to enthusiastically enter into these discussions.

Cotton Australia does endorse the Interagency Working Group's (IWG) principles as outlined below:

The IWG developed the following set of principles, which are being used to guide the assessment of the interim solutions package. :

- a) **Adverse impacts are mitigated**—impacts are identified and appropriate mitigation measures are put in place.
- b) **Unintended gains are avoided**—measures, where possible, should not contribute to an increase in water access reliability for downstream water users.
- c) **Evidence-based and outcomes focused**—measures that look to protect environmental water use best available information and deliver environmental outcomes with considerations of social and economic outcomes, where practical.
- d) **Feasible**—identify measures that are technically and operationally able to be implemented.
- e) **Value for money**—measures must present value for money and not be cost prohibitive.

Consultation Question: Do the measures in this paper adequately balance the needs of the environment with the needs of other water users?

Table 1. Snapshot of measures for improving environmental water management of unregulated rivers

	Possible measure	Description
1	Impose restrictions when held environmental water is released from an upstream storage	Restrictions would be imposed on downstream licences to recognise held environmental water when it enters the unregulated system from a regulated system. This is additional water that would otherwise not have been in the system. Restrictions on licensees' ability to access the held environmental water would help ensure this water can serve its intended environmental purpose.
2	Change access rules for flows through the Barwon–Darling	In unregulated rivers such as the Barwon–Darling, commence-to-pump thresholds are the key way in which water is shared between extractive users and the environment. Changes to access rules could be either temporary (as a trial or to protect a particular flow) or permanent through a revision of access rules in water sharing plan. Changes could include: <ul style="list-style-type: none"> • review of commence-to-pump thresholds for each flow class • seasonal commence-to-pump thresholds set for wet vs dry conditions • first flush flow rule that restricts access sequentially as flow moves downstream to reconnect the system.
3	Use Individual Daily Extraction Limits (IDELs) to better manage flow sharing	IDELs are a framework which limits the daily take by individual licences. They can be used to allow flows to be better shared between users or between users and the environment. IDELs can be used as a standalone mechanism or could deliver additional benefits if combined with other tools such as trading (proposed amendments included in the Exposure Bill will enable this type of dealing) or active sharing of flows on an event basis.
4	Active sharing of flows on an event basis	Active sharing of flows on an event basis outside of the IDEL framework. This could be implemented through voluntary arrangements or a 324 order, or through sharing rules set through the WSP.
5	Use of downstream environmental requirements as a trigger to manage upstream access	This framework is currently used in some water sharing plans and is based on the downstream flow requirements in the Interim Unregulated Flow Management Plan for the North–West. This option proposes actively implementing this framework in the northern regulated tributaries and in the Barwon Darling.

Cotton Australia is very concerned that on the whole these recommendations have been developed from a perspective of protecting environmental flows. With little or no consideration of protecting the rights of entitlement holders.

Cotton Australia strongly urges the NSW Government and the IWG to meet directly with irrigators, initially those along the Barwon-Darling, to jointly develop a proposal that meets everyone's needs.

Irrigators are not wanting a "free kick" from environmental flows, but nor can they accept a "penalty" being awarded against them.

Proposal 1 is far too broad to give a considered opinion on. There needs to be a lot more detailed discussion on what rules are being considered and how they would be implemented.

Cotton Australia believes that it would be relatively simple to develop rules to protect "held" environmental water when it is the only water making up a flow, but will become far more complex when there is a mix of water in the flow.

Proposal 2, would without doubt be a fundamental change in the Water Sharing Plan and have a definite impact on irrigator reliability. In addition, it would in-fact have a greater impact on planned environmental water, than held environmental water.

In Cotton Australia's view, Proposal 3 offers the greatest opportunity to meet the dual criteria of protecting held environmental water, while mitigating impacts on irrigators. It would require the active management of water, and that would have to be resourced. However, the management required would not be too much different from the management currently utilized for supplementary flows in the regulated systems.

Proposal 4 is worthy of further consideration, and could possibly be implemented in conjunction with Proposal 3. However, Cotton Australia's support for Proposal 4 is totally contingent on the process not being implemented through a Section 324 amendment. Section 324, has always been, and should remain a last resort option, used only in times of extreme drought and only when there is overwhelming evidence that the desired outcome will be achieved. The proposed amendments to Section 324 are totally opposed by Cotton Australia.

Cotton Australia urges the NSW Government to examine closely the voluntary flow sharing arrangements that irrigators on the Barwon-Darling have utilised in the past. It would also be worthwhile to take a look at the Gwydir Valley Small Flows rosters that assists in the management of small supplementary flows.

Consultation Question: What do you see as the likely barriers to better management of environmental water, and do the measures presented in this consultation paper help to address these?

The obvious but complex barrier to better management of environmental water is finding an equilibrium between water entitlement holders property rights and having consistent evaluation, monitoring and reporting of what are the required environmental outcomes. This needs to be achieved through transparent and trustworthy modeling, linked with strong communication between government and those relevant stakeholders.



Advancing Australian Cotton

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Consultation Question: Are there any other measures the Government should consider?

Cotton Australia believes the best and fairest solution will be the active management of flows, during periods of time when there is held environmental water in the system. This could involve a combination of rosters, and IDEL.

It will require high quality metering and river gauging, as well as skilled river operators. Although this would require a higher degree of resourcing than what is currently allocated to unregulated rivers. It must also be noted that the number of events needed to be managed is limited. Currently, WaterNSW manage multiple rivers with a team of operators rather than operators being specifically assigned to individual rivers.

Consultation Question: If the measure(s) presented in this paper are implemented, what would be the likely social and economic impacts?

The nature of the measures proposed, will have profound negative impacts on the property rights of water entitlement holders. The social and economic impacts that stem from them have the potential to ripple through not only those water entitlement holders but stretch into the local communities, resulting in reduction of businesses and jobs.

It cannot be emphasised enough that we are very much dealing with a property right. A property right that has been monetarized and any change will have a financial impact and cannot be ignored by the regulators.

Cotton Australia is confident that entitlement holders are willing to enter genuine discussions around providing additional protection to held environmental water. This willingness needs to be harnessed in good faith by government and not exploited at their cost.

Consultation Question: Are there any practical or other issues with implementing any of the proposed measures which have not been captured in this paper?

Cotton Australia believes that the government can improve the management of environmental water in the Northern Basins and throughout the state. However, it requires improved modeling capability and transparency around the information about what levels are required and what targets the environmental water is trying to achieve.

Success will also require the goodwill and co-operation of the irrigation entitlement holders. Since the Four Corners program “Pumped”, irrigators have been demonised as water thieves with no regards to the environment, when nothing could be further from the truth.

It was disappointing, that while irrigators recently voluntarily approached the CEWH to guarantee the protection of a proposed release of held environmental water into the Barwon-Darling system, the NSW Government decided to act by implying a Section 324 restriction. An opportunity was lost to demonstrate that there could be effective water management with goodwill from all sides.

Consultation Question: Do you agree that trialing measures in these priority areas is a useful approach?

The trialing of measures that find the balance of water entitlement holders and the environment are key. Growers have expressed their willingness to volunteer and assist government to roll out solutions. However, there needs to be a collaborative approach with a larger focus on our grower's water rights. Trialing possible measures and achieving enduring solutions requires give and take from all stakeholders.

Concerns with the Draft Exposure Bill

There are specific concerns Cotton Australia has with the delivery of a Draft Exposure Bill in conjunction with the consultation papers. It possibly suggests that the amendments within the Draft Exposure Bill provide more than a strong indication of the way the NSW Government will legislate regardless of the feedback received. Cotton Australia hopes this is not the case and that all feedback received will be processed and considered. It is also anticipated that more consultation will be needed and requested regarding the final Draft Exposure Bill.

Amendment [12]

The proposed inserting of Part 5 Conditions imposed by regulations, is opposed and should be removed. Allowing the Minister powers which can drastically alter the conditions on licences and approvals around prohibiting and limiting water go far beyond what is need for the environmental purposes. If the proposed measures strike the correct balance between water entitlement holders rights and the environment, social, economic and environmental outcomes can all be achieved without perverse impacts on licence holders.

Amendments [14]

This proposed amendment is opposed for the same reason given in Amendment [12]. Additionally, allowing the Minister to have unrestricted powers on top of the powers already conferred in him in Section 324, erodes the core of property rights in Australia. The current construction of this section is sufficient without the addition of (1A) to provide environmental aide to the river system.

Additionally, given that the consultation paper is directed at the Northern Valleys and the Act, extends to the state of NSW. The Minister has the power to implement the proposed amendments outside the unregulated river systems.

Conclusion

Cotton Australia's key concern with this paper is there is not enough consideration of the water entitlements holder's property rights. There appears to be to much focus on the environmental outcomes without acknowledgment of the social and economic impact these proposed solutions will have on our growers and the communities they are in.



Advancing Australian Cotton

Cotton Australia is willing to work with the NSW Government to ensure that we quickly progress to a world where there is better transparency and water management throughout NSW.

For further information on the submission, or the Cotton Australia's view on water reform in general, please contact Cotton Australia General Manager Michael Murray – 0427 707868 or michaelm@cotton.org.au.

Yours sincerely,

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Cotton Australia