THE WILDERNESS SOCIETY

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The Research Director
Agriculture, Resources and Environment Committee
Parliament House
BRISBANE QLD 4000

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Dear Chair

Submission to the Agriculture, Resources and Environment Committee in relation to the Water Reform and Other Legislation Amendment Bill 2014

Please accept the following submission from The Wilderness Society on the above Bill.

The Wilderness Society is one of Australia's leading community-based conservation and environmental advocacy organisations with a long history of engagement, campaigning and focus on river protection. In Queensland, the organisation has been a longstanding and consistent advocate for the protection of the state's wild rivers, native bushland, remnant forests, world heritage-standard landscapes of Cape York, and the landscapes and waterways of the gulf country, channel country, and other wild and ecologically-special places in Queensland.

The Wilderness Society has a number of concerns with the proposed legislation, as outlined in this submission. We note as a matter of context, the limited time available to review the Bill, and the Government's failure to release the proposed Water Regulation.

In a water constrained continent like Australia, water is our most valuable – but undervalued - natural resource. The social and economic costs of its over-exploitation, not to mention the biodiversity costs, need to be appropriately factored into the "development at all costs" paradigm that this Bill facilitates. In that context, the key question for the Committee to consider is whether Queensland can afford another Murray-Darling Basin, which is the likely consequence of implementing this Bill in its current form.

If the Bill is implemented in its current form it will be a significant backward step for Queensland's water resource regime, that will result in the over-allocation of water and the dismantling of what has been, up until now, a well-respected and comparatively rigorous water planning framework.

The inequity inherent in the proposed amendments – in terms of favouring large proponents over smaller users – lacks any rationale and will likely result in significant economic harm to downstream water users and flow-dependent industries (such as the fishing industry), as well as the environment (and associated tourism sectors).

We also have significant concerns with the further centralisation of power in the Coordinator-General's Office, which combined with the proposed one-stop shop arrangements for environmental approvals, effectively removes all checks and balances and external oversight of Queensland's water allocation processes.

The further diminution of public consultation rights and the removal of appeal and objection rights is an alarming trend in Bills coming before this Parliament and one that the Committee needs to urgently consider.

The following three amendments to the current water planning framework are of most concern:

1. Facilitating large scale water related development, in particular the ability for the Government to grant a "**water development option**" and allowing environmental impact assessments to inform the grant of water entitlements and the amendment of water plans;
2. **Deregulation of watercourses**; and
3. **Fast tracked conversions of water licences to tradeable water allocations** in the absence of detailed hydrological modelling that will allow Government and other users to understand the potential impacts of that water being traded.

We urge the Committee to consider the implications of supporting these provisions in their current form, both in terms of their impacts on freshwater ecosystems, rivers and hydro-ecology, but also in relation to their potential economic impacts on other (smaller) water users, Traditional Owners and existing industries, such as tourism and fishing.

Additional amendments of concern are outlined at the end of this submission.

1. Water Development Options

The proposal to introduce an up-front water development option (WDO) for major water infrastructure projects is highly problematic for the following reasons:

a. The decision to grant a water development option (WDO) is at the absolute discretion of the chief executive with no objectively assessable criteria in the Bill for the proponent to demonstrate either environmental sustainability or economic viability, other than a general requirement for the proponent to provide a pre-feasibility assessment (section 83) and for the chief executive to have the view that "significant impacts" can be "adequately mitigated" (section 85).

b. There is no public consultation requirement in relation to the chief executive's decision to grant a WDO, meaning other water users in the catchment will be excluded from a discretionary and subjective process that prioritises the water aspirations of external developers over the aspirations of regional communities, Traditional Owners and existing industries. Public interest rights in relation to the environmental consequences of the grant are also excluded.

c. Granting of water entitlements under any WDO is subject only to approval of the proponent's environmental impact assessment (EIA) by the Coordinator-General. Given the lack of public objection and appeal rights in relation to Coordinator-General decisions, the potential lack of Federal oversight given proposed one-stop shop arrangements, and the inherently biased nature of a proponent's EIA with no guarantee in the Bill of independent scientific scrutiny of the EIA, this aspect of the process is a breach of natural justice for which no compelling rationale has been provided in the Explanatory Notes. At a more practical level, it fundamentally undermines the principles of holistic catchment-based water planning at the expense of other water users, existing industries and the environment.

d. If the granting of water entitlements under the WDO requires amendment of the relevant water plan (i.e. because there is insufficient unallocated water in the plan to implement the WDO), those amendments are – again – not subject to any public consultation requirements.

e. There also seems to be nothing in the amendments requiring that the water authorisations, post approval, be used for the project for which they were originally intended (e.g. a use it or lose it provision). As such, there appears to be nothing in the Bill preventing proponents from simply selling off their water allocations to the highest bidder once their EIA is approved by the Coordinator General, and the chief executive then grants the relevant water allocations.

Recommendations

1. This proposal should be removed from the Bill given the Government's failure to provide rationale for prioritising the water aspirations of a few, over the water needs and aspirations of existing water users, including the environment.

2. The case for providing up-front water commitments as a means of incentivising greenfields agricultural investment has not been made and the Government should be required to explore alternative options given the significant risks associated with this proposal.

3. At a minimum, the provisions allowing a WDO to be granted without application should be removed. There is absolutely no legitimate basis for the Government to enter into an agreement with a proponent to grant a WDO outside the application framework provided for by the Bill.

4. If the WDO proposal is retained, objective provisions governing the exercise of the chief executive's discretion need to be included in the Bill to prevent proponents rorting the system to secure tradeable water allocations. These include requirements that the pre-feasibility assessment include:
    - Detailed hydrological modelling to demonstrate the availability of water in the system and the sustainability of proposed extraction rates;
    - A fully costed business case including capital and operational components, as well as assumptions concerning gross and operating margins for crops and the overall enterprise.

5. To minimise the inequity of the WDO provisions, WDOs should only apply to unallocated water that has been identified under a catchment water plan. The chief executive must reject applications for a WDO outside of established regional water balances and in areas of the State where there is no water plan.

6. A requirement be included in the Bill that the proponent undertakes an Environmental Impact Statement (EIS) as opposed to some lesser form of EIA (which attract no public notification or consultation requirements).

7. An explicit requirement must be included in the Bill that the chief executive undertakes a full and open public consultation and submission process before any decision is taken to grant a WDO. This should include release of information provided by the proponent as part of the application process.

8. If proponents are going to be given priority access to water, then an explicit requirement must be included in the Bill to ensure that water entitlements granted as a result of a WDO are actually used for the project for which they were granted (a use it or lose it provision). This will help ensure some rigour and *bona fides* in proponents' applications.

9. Similarly, to avoid WDOs themselves being used as tradeable "assets", the provision allowing WDOs to be transferred should be removed in its entirety.

2. De-regulation of watercourses

The proposal to reduce the number of watercourses regulated by the Water Act is likely to have major environmental and economic implications for downstream water users, flow-dependent industries and receiving environments.

As a first order issue, the criteria by which the Chief Executive will assess and determine watercourses to be "de-regulated" are not included in the Bill or the Explanatory Notes. This lack of transparency makes it virtually impossible for stakeholders to meaningfully assess and comment on the potential impacts of proposed changes. At a minimum, we urge the Committee to secure this information from the Minister as part of this current Inquiry.

There are also significant issues with the proposal to effect "de-regulation" simply by publishing watercourse identification maps (developed through some, as yet, unspecified process) on the department's website. For a Government that espouses a commitment to transparency and certainty for end-users, this proposal will generate a more uncertain regulatory environment – i.e. what's regulated is simply what appears on the department's website on any particular day.

At a practical level, The Wilderness Society is aware of issues already emerging in Lakeland Downs on Cape York Peninsula for downstream pastoralists as a result of previously regulated watercourses becoming unregulated and upstream users no longer being subject to licencing requirements. As a concrete example of how unregulated water harvesting is working in practice, the Committee should make its own inquiries into what is occurring at Lakeland Downs and consider the implications of that situation being replicated across the State if this proposal is implemented.

We also note that by deregulating watercourses, protections afforded by the *Vegetation Management Act 1999* (VMA) for riparian regrowth vegetation will be removed. There is a significant risk that currently protected riparian vegetation in the Burdekin, Wet Tropics and Mackay Whitsunday catchments will be cleared if watercourses in these catchments are deregulated. Clearing riparian regrowth vegetation in these and other Great Barrier Reef catchments is likely to cause significant land degradation, which will substantially increase the amount of sediment transported to the Great Barrier Reef, accelerating its decline.

Recommendations

10. The criteria by which the Chief Executive will assess and determine which watercourses will be "de-regulated" need to be made available, and stakeholders given the opportunity to comment, before this proposal proceeds.

11. The process by which "de-regulation" comes into effect and/or maps are amended needs to be a transparent public process, with sufficient opportunity for stakeholder input. The current proposal to simply publish maps on the department's website as a means of implementing "de-regulation" is neither equitable nor certain.

12. The Committee should conduct its own investigation into the practical implications of this proposal for downstream users and receiving environments using Lakeland Downs as a case study, and any other areas where the department has already started to "de-regulate" previously regulated water harvesting activities.

13. The Committee needs to further consider the implications for riparian zones if this proposal proceeds. This should include consideration of Queensland's obligations and commitments to

protect the Great Barrier Reef from further degrading land uses including unregulated clearing of riparian zones.

3. Conversion of water licences to tradeable water allocations

There are significant risks associated with this proposal. Given the lack of robust hydrological models and long-term water resource data for many parts of the State – including areas like Queensland's Gulf Country that have already been identified as targets for greenfield agricultural development - claims in the Explanatory Notes that converting water licences to tradable water allocations will not compromise water entitlement holders' existing security or cause environmental impacts cannot be verified or substantiated.

In addition, the Bill fails to contain any provisions to ensure that appropriate monitoring, reporting, compliance or management measures will be introduced to ensure that any issues or impacts arising from converting water licences to tradeable water allocations will be properly managed.

We also have significant concerns with the proposed mechanism to convert licences to tradeable allocations, namely Water Entitlement Notices (WEN), which include:

a. The absence of review or appeal rights for affected parties in relation to WENs;

b. An extremely restricted definition of who is regarded as an "affected person" under the Bill, which would essentially exclude from any input into the process the majority of other water entitlement holders in the catchment, as well as industries, such as the fishing industry, who are likely to be impacted by ad hoc water trading;

c. The risks of environmental and economic impacts occurring if trading occurs in catchments where there is little baseline data (for example, Queensland's Gulf Country) and no requirement to undertake detailed hydrological modelling before converting licences to tradeable allocations; and

d. The fact that water allocation dealing rules will be prescribed by regulation or set by a water management protocol. In that context, we note that the regulations have still to be made publically available – again limiting stakeholders' ability to properly scrutinise and comment on the proposed changes. In relation to rules set by a water management protocol, we note that the Bill only requires "adequate consultation" on those rules with "persons affected" by the protocol. The extent of this consultation provision requires clarification. Our view is that it should be made as broad as possible to include potentially affected industries (who may or may not have a water entitlement) as well as public interest groups and traditional owners.

Recommendations

14. No water licences should be converted to tradeable water allocations without sufficient baseline data and hydrological modelling to provide community certainty that water entitlements and natural values will not be compromised.

15. To ensure informed and transparent input into the conversion process, baseline data and the results of hydrological modelling should be made available to affected persons as part of a public consultation process before any decision is made to convert licences to allocations.

16. The definition of affected persons needs to be expanded to ensure broad public consultation occurs with all relevant stakeholders including potentially affected industries (who may or may not have a water entitlement) as well as public interest groups and traditional owners.

17. The Bill needs to clearly outline the monitoring, reporting and compliance frameworks that will be put in place to ensure early warning and proper management of issues and impacts arising from trading.

4. Additional issues and recommendations

18. Removal of all statutory rights to take water for the resources sector

We reiterate and bring to the Committee's attention two key recommendations from our submission of 29 July 2014 to the Strategic Water Act Review Team on the Consultation Regulatory Impact Statement for the reforms:

- The granting of a "statutory right to take water" to the mineral resources sector be rejected, and the existing provision of a "statutory right to take water" afforded to the petroleum and gas (P&G) sector be removed.
- Rather, <u>all</u> resources sector projects should be required to secure a water entitlement for the take of "associated" and "non-associated" water prior to the grant of a mining lease or a P&G tenement to ensure all sectors across Queensland are subject to the same consistent framework in relation to access to water.

19. Need to enshrine the precautionary principle in any amendments

The Bill proposes removing Ecological Sustainable Development (ESD) principles from the purpose of the Act. This contravenes the Queensland Government's commitments under the National Strategy for Ecologically Sustainable Development 1992, which requires national, state and local governments to apply ESD principles in all planning, development and natural resource management decision making processes.

Of more immediate relevance, however, is that the removal of ESD principles contravenes the Queensland Government's Great Barrier Reef (GBR) Coastal Zone Program, which articulates the Government's commitment to UNESCO that future development activities (including water development) in the GBR Coastal Zone will be ecologically sustainable in order to protect the Great Barrier Reef World Heritage Area.

To not be in breach of these obligations the Bill needs to contain a clear commitment to the precautionary principle and other ESD safeguards.

5. Conclusions

Over the next 30 years Queensland's population is expected to grow by around 50%. Associated increases in water usage have not been quantified, but by way of indication, an 83% rise in Queensland's population over the last 25 years generated a 161% increase in water usage.

Also the Government intends to double agricultural production by 2040 and encourage the expansion of mining and CSG.

Agriculture is already the largest user of water in Queensland (63% of all water use). Plans to double Queensland's food production will mean intensifying existing agricultural areas or developing new areas, which will increase demand for water and threaten currently intact freshwater systems and existing industries reliant on those flows.

Currently, two-thirds of Queensland's water use comes from surface water (rivers, creeks, etc.). The remaining third comes from aquifers such as the Great Artesian Basin. Both sources of supply will become increasingly stressed as demand increases and the impacts of climate change become more pronounced.

In that context, Queensland needs to increase the rigour and integrity of its water planning framework, not go backwards. Without even considering the issue of biodiversity loss, these emerging demands for consumptive water use will require governments to factor into their water planning frameworks a more sophisticated understanding of the value of freshwater ecosystem services, as well as the economic costs and trade-offs associated with unsustainable water use (as per the Murray Darling Basin). Unfortunately, this Bill does none of these things.

For further information, please contact either of us on the contact details below.

Yours sincerely

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