



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

Environmental Defenders Office (Qld) Inc.
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The Secretariat
Chief Executive Officers' Group on Water
C/- Natural Resource Management
Department of Agriculture, Fisheries and Forestry
GPO Box 858
CANBERRA ACT 2601

Dear Secretariat,
Water Property Rights
Draft Water Entitlement and Allocation Principles

EDO Queensland comments as follows on the draft COAG Water Property Rights paper. We look forward to meeting with you to discuss this submission when you are in Brisbane later this month.

General A

It is well accepted that over allocation of water and poor controls on its use in Australia have degraded riverine ecology and adversely affected water quality¹. Therefore *restoration* and *enhancement* of the environment are required, not merely protection of the status quo. To reverse degradation we need now to give *priority* to ecological protection over consumptive use (where necessary), not to talk of 'equity' between consumptive users and the environment.

Equity is appropriate only in the following circumstances. The financial interests of tax payers and the wider community are affected by the impacts of past water use practices and by the type and security of entitlements that may be given to water users in the future. Therefore we strongly agree that the interests of tax payers and the wider community should be given equitable consideration where the interests of holders of water entitlements are debated. Equity as between consumptive water users also needs to be considered where reductions are made to consumptive water use.

Recommendations

- *Insert ', restore and enhance' after 'protect' (A line 2).*
- *Delete 'consumptive users and environmental health,' (A, line4) and insert an extra sentence 'Policy settings must give priority to protecting, restoring and enhancing ecological health of natural ecosystems over consumptive use of water.'*
- *Support the proposed wording which requires that equitable regards be given to the interests of 'the wider community (including taxpayers), and current and future generations)'.*

Initiating Trading Rights

Broadly speaking, we agree with the principles B, C, D and E.

However water allocations (followed by trading) are proposed for the Border Rivers Catchment, (Queensland), based on an end of system flow object of 60% in the draft Water Resource Plan² which is below that required to maintain an ecologically health river system. Therefore to ensure such plans are not regarded as satisfactory, we must insert into the principles some additional definitions as recommended below.

We agree that generally (and certainly in Queensland) water licensees have no legal entitlement to compensation if the quantity of water they are licensed to use is reduced. We strongly oppose granting water users any new general right to compensation for increased regulation of water use which will inhibit necessary regulation of water use by government. Water users are no worse off than the industrial sector which foresaw and accepted tighter regulatory standards for emissions without entitlement to compensation . Limited adjustment assistance is an appropriate means of providing some financial assistance to those water users with difficulties adjusting to changed availability of water.

Recommendation

- *Insert ', which ensures the health of natural ecosystems,' (In B, line 2 after 'water')*

Reconciling firm rights with on-going review of environmental needs

Broadly speaking recommendations F-I are supported. However when the consumptive pool is reassessed, for reasons mentioned above, priority must be given to ecological protection and restoration; it must not be merely be 'looked at' along with social and economic needs.

A trade should not occur if there are any adverse impacts on the health of natural ecosystems. A duty must be imposed on decision makers on trades to refuse trades unless lack of adverse impacts on the health of natural ecosystems is demonstrated. Such a rule must be built into trading rules and preferably be found in legislation.

We agree that water entitlements should include an obligation to pay full costs of water supply. Although this is not specified, this 'full costs' needs to involve paying for the costs of the resource, resource management, and enforcement of regulation as well as for any infrastructure. Full costs also needs to incorporate costs to the environment, a cost which has thus far been neglected.

'Carefully crafted processes' referred to in I for establishing and periodically reviewing the obligations on water entitlement holders need to include a duty on regulators to monitor the effects of use on ecosystems and to report on findings in a meaningful way.

Recommendations

- *Insert 'but giving priority to protection, restoration and enhancement of natural ecosystems' (H i line 2, after the words 'economic impacts')*
- *Insert 'Trading rules must require that an absence of adverse impacts on natural ecosystems be demonstrated before a trade is approved.' (I line 3, new sentence)*
- *Insert '(including costs for the resource, resource management, to the environment, regulatory enforcement and of any infrastructure) (I line 1 after 'cost of water supply').*

Draft Guidelines on Providing Adjustment Assistance for Changes in Water Entitlements

The draft Guidelines wrongly refer to water users as having rights (Biii, viii, ix) which encourages a mistaken belief that users have compensable property rights. Therefore different language must be used e.g. 'water usage' in Biii instead of rights. The draft Guidelines list 11 matters for each jurisdiction to measure and take account of. We propose a additional matters for consideration being the extent to which water costs have been subsidised in the past, (which has benefitted water users) and the bill for restoring damaged ecosystems.

Recommendation

- *Insert 'the extent to which water costs have been subsidised in the past, and the bill for restoring damaged ecosystems;' (as a new Bxii)*

As stated earlier, limited adjustment assistance is an appropriate means of providing some financial assistance to those water users with difficulties adjusting to changed availability of water. EDO notes that tasks are enumerated for the enhancement of water markets which will have impacts on users, ecosystems and the wider community. The community should have access to these reports and have an opportunity to comment and participate in the development of policy in these areas.

Recommendation

- *Insert 'The public will have access to these reports and have an opportunity to comment and participate in the development of policy in this area.'* (as a new paragraph after 2(e)).

Environmental Defenders Office (Qld) Inc. Jo Bragg, Principal Solicitor

¹ See for example Australian Water Resources Assessment 2000: Surface water and groundwater - availability and quality, National Land and Water Resources Audit, Canberra, 2001.

² Released for public comment in 2002. A resource operation plan, (based upon the water resource plan), is a further prerequisite to trading.
PL Tan, 'Water licences and property rights: the legal principles for compensation in Queensland' (1999) 16 Environmental and Planning Law Journal, 284-290.
For example, after the introduction of the Environmental Protection Act 1994 (Qld).