



## Opinion Article – 16<sup>th</sup> August 2010

# Water Reform Fails South Australia

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Water Reform has been in progress for 16 years and has failed to deliver a fair and reasonable share of the waters of the Murray-Darling Basin (MDB) to the residents of South Australia and ensure the sustainability of their precious environments.

Both the Howard and Rudd Governments failed to deliver as the drought deepened, became a crisis, then an emergency and again when the rain and floods returned to the MDB during the last 12 months.

The agencies created and appointed by Government, the Murray-Darling Basin Authority (MDBA) and the previous Murray-Darling Basin Commission (MDBC) have also failed to address the crisis that water reform has created. There has been a failure of leadership over many decades caused by a conflict of interest between acting for the public good vs. acting for private interest.

The Keating Government, the Howard Government and the Rudd Government have put the creation of a National Water Market above all else. Since 1994 the Council of Australian Governments (COAG) has been used to coordinate with State Governments to achieve that goal.

South Australians are being dispossessed of their human right to water under section 100 of the Australian Constitution. Their rights to a fair share of water have been sacrificed to guarantee the creation of the new National Water Market.

The average yearly total diversion made by South Australia between 2003/08 was 573.8 GL vs. a self-imposed Cap of 724 GL, a difference of 150.2 GL. During the first two years of the new national water market from 2007/09 a total of 3,752 GL of temporary water was traded. South Australians who depended on the river and their precious environments were made to purchase what is a right under the Constitution and the common property of Australia.

The Productivity Commission in 2009 reported that the highest average allocation price paid for temporary water in 2008/09 in the MDB was \$370 per Megalitre. The cost of 100 GL temporary would cost a mere \$37 million raising serious questions about the viability of building desalination plants in South Australia.

South Australia's minimum entitlement from the River Murray is currently 1850 GL. The state capped its diversions as a result of the 1967/68 drought and effectively created Australia's first Sustainable Diversion Limit (SDL). Former Minister Maywald increased the cap for irrigation by 76 GL in 2008 and the Cap now stands at 805 GL or 43.5% of South Australia's minimum entitlement of 1850 GL.

It is the reduction of South Australia's minimum entitlement that has caused the crisis in South Australia's River Murray. This began in the early 90s following the reduction in storage volumes that both New South Wales and Victoria were required to keep to guarantee South Australia's minimum entitlement of 1850 GL from 2250 GL to just 850 GL. The drought was used as an opportunity to not only wean the city of Adelaide and towns of South Australia off their average cap of 180 GL per year but wean South Australians off Lake Alexandrina and Lake Albert that have been in existence for thousands of years.

In Australia the primary initiative of Water Reform is to establish water markets and water trading. The environment is being used as a Trojan horse and as an empty promise that the political parties continue to make but fail to deliver.

The major political parties need to tell Australians the truth about water reform and develop solutions based on science but address operational problems. By not releasing the draft Basin Plan before the 2010 Federal Election and allowing enough time for full public scrutiny, the incoming Government has no mandate to implement the draft Basin Plan. It also calls into question the integrity of the policies of the major parties on the MDB that were placed before the electorate at the August 2010 poll.

Australians need to know where all the political parties and their candidates contesting the election stand on upholding the public's trust that water is the common property of Australia vs. the idea that water is the private property of irrigators best controlled by markets.

Australians require a referendum to decide whether we want to privatise the water of our rivers or continue to hold it in public trust as the common property of Australia for future generations as intended by our founding fathers.

History records that over many decades South Australians have been the most frugal users of water and have evolved into the most efficient users in the whole of the MDB.

The crisis in the River Murray should have been addressed by the Commonwealth as soon as the reduction in flows began to cause a crisis in the Murray Mouth. It has the executive powers to work with the States to establish a State of Emergency, which would aim to conserve and prioritise water use in the MDB to address South Australia's emergency.

In addition, nothing short of a full public inquiry with the powers of a Royal Commission can unravel the decades of bad policy at all levels, gross mismanagement and ongoing exploitation of the waters of the MDB that has continued to this day. As the Victorian Bushfires Royal Commission has demonstrated, Royal Commissions are required to determine the systemic root causes and propose solutions fundamental to achieving long-term corrective action.

Maude Barlow recently campaigned to establish a human right resolution to "safe and clean drinking water and sanitation" in the UN General Assembly which was passed with a considerable majority. Australia chose to abstain from that vote and Australians are entitled to know why the Government abstained from this resolution before the August.

The South Australian Government has used the River Murray crisis to justify building desalination plants which our Gulfs don't need, communities don't want and which don't make economic sense. Blocking dams have been built on Lake Alexandrina and Lake Albert. Billions of dollars of the public's money are being wasted on water security measures in South Australia which could have been more wisely spent. Meanwhile the River Murray below Lock 1 to the sea, Gulf St Vincent and Spencer Gulf all continue to be endangered and still need to be saved.

In 2007-08 while South Australia was on a dribble and on life support, the National Water Commission in its first national water market report on the MDB reported that 1,594 GL of temporary water was traded. Those with money could buy whatever they wanted and they did. In 2008-09 this grew to 2,000 GL when the total diversion from the Basin was reported by the MDBA to be around 4,000 GL. Water was not conserved as inflows fell and nor was its use by agriculture prioritised to meet Australian needs first and foremost and before the export of virtual water.

The Bureau of Metrology Rainfall Analysis for the last 12 months reveals that substantial rainfall has fallen in the MDB. South Australians are entitled to ask where our fair and reasonable share of this water is under section 100 of the Constitution and why the South Australian Government has failed to act.

The incoming Government must commit to an immediate and independent audit of the MDB of all

private and public water storages in the MDB within two weeks of election. This audit needs to account for every drop of water diverted in the MDB during the last 12 months, its use and the proportion exported as virtual water.

The MDBA web site reports that the current water in storage as at 4<sup>th</sup> August 2010 is as follows:

- Whole of Basin Storage is 8,728 GL (39% of 22,664 GL),
- The Menindee Lakes is 1,564 GL (90% of 1,731 GL and 137% above its long-term average of 1,145 GL).
- Lake Victoria is 388 GL (57% of 677 GL and 67% of its long-term average of 578 GL)

All flows above 1850 GL that flow over the border into South Australia flows to the sea. This has been the practice since the 50s but came to an abrupt stop in early 2000. Expensive dredging has since been used to keep the Murray Mouth open and the Coorong on life support.

Actual average demand between 2003/04 to 2007/08 averaged a meagre 31.3 GL for towns of South Australia 97 GL for the City of Adelaide and 382 GL for irrigation. Industry use was a paltry 2.8 GL. The City of Adelaide uses as little as 40 GL in wet years and as much as 200 GL during droughts in the Mount Lofty Ranges.

Total diversions from the MDB were dramatically increased from around 3,500 GL in the 1950s to around 11,600 GL by 2000, a 331% increase. Total urban and industry use is just 5%; the rest is used for irrigation. Irrigation use must be changed to match the natural variability of the MDB that ranges from floods to extreme protracted droughts. Further more, use must be shared and the practice of using an increasing share of the waters of the MDB as flows reduce reversed. Crops that can be grown as flows reduce must be prioritised and Australian domestic needs must come first.

In the late 80's South Australia agreed to a reduction in volume required to be kept in public MDBC storages by NSW and Victoria from 2250 GL to just 850 GL. This was done so that New South Wales and Victoria could divert more water while still able to guarantee South Australia's minimum entitlement of 1850 GL. Since 1989 the trend of in-flows to South Australia has dramatically dropped and by 2003 South Australia's minimum entitlement of 1850 GL was reached and inflows never recovered. Successive South Australian governments have been asleep at the wheel since the 1990s and so have its Senators. The storage volume of 2250 GL needs to be re-instated in the Murray-Darling Basin Agreement as a matter of urgency as this policy change has failed South Australia.

The minimum entitlement was never designed to keep the Murray Mouth open but it did guarantee sustainability of the environment to the Murray Mouth, economy and society. However its sustainability depends upon a commitment of the Commonwealth and eastern states to ensuring South Australia received its minimum entitlement during low flows and droughts. History records that South Australia's conservation was abused by the Eastern states as they continued to increase diversions and over-allocation of water license entitlements. In some water years some allocations were made that were 200% of their entitlement in some irrigation districts in Victoria.

In 2009 the Productivity Commission revealed the number of tradeable water entitlements in existence in 2007-08 (SOUTH AUSTRALIA's share is shown in brackets). This shows how over-allocated the MDB has been allowed to become.

- 16,200 GL (6%) for regulated water,
- 622 GL for unregulated water (0.2%), and
- 1,786 GL (12%) for Groundwater.

The volume of water diverted from the MDB between 1997 and 2008 has ranged from 12,000 GL to just under 4,000 GL as in-flows were reduced. Clearly, significant quantities of these entitlements are worthless and need to be cancelled by the States.

State Governments have granted the water licenses to irrigators the Commonwealth is buying back and which were originally granted for free. A significant proportion of these licenses have no real water volume except when it floods. The Government is wasting billions of dollars of the public's money purchasing water to give irrigators a soft landing when the draft Basin Plan is released and to give the public the impression it is taking action. Compensation for any water used in the national or state interest during a crisis or emergency must be based upon the allocation to an irrigator and its value in terms of lost production.

Section 100 of the Australian Constitution states:

*The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.*

Sir Isaacs Isaacs was the Victorian delegate at the Constitutional Convention in the early 1900s when section 100 was being discussed. Isaacs stressed the need for a decision to be made on its merits from a national perspective, given that rivers "by their very existence and course, are the common property of Australia" (page 63 Water Politics in the Murray-Darling Basin). Sir Isaacs went on to become a Commonwealth Attorney-General, Chief Justice of the High Court and Governor General of Australia.

In December 2009 the High Court of Australia made a judgement against ICM Agriculture Pty Ltd, who were seeking compensation for significant reductions in groundwater entitlements pointed out in Clause 55 "The second point of interest is that the language of the 1896 Act and the 1912 Act does not disturb the common law notion that water, like light and air, is **common** property not especially amenable to private ownership and best vested in a sovereign state [55]."

Of course successive governments aided by a supportive national media and national environmental organisations have all believed in the power of markets to be their magic pudding which it is clearly not.

Augusto Pinochet openly privatised water in Chile in 1980. Pinochet was a radical right wing dictator who unilaterally changed Chile's Constitution to turn water into a commodity and allowed it to be controlled by markets. Not once have the Australian people been truthfully informed about the true nature of water reform and its consequences.

Stripped of its essentials it is just another economic experiment designed to pass control of the public's assets, in this case water, to the private sector to become another commodity for global financial markets. This is the consequence of privatising the rivers of the MDB. This is a decision that should not be made by politicians alone but needs to be re-affirmed by the Australian people in a referendum as it is being applied to all waters in Australia.

## References

- **WAC Senate Inquiry Speech Notes**, Parliament House Canberra, Issue 1.1 30<sup>th</sup> June 2010.
- **WAC Submission to Senate Inquiry Water** (Crisis Powers & Floodwater Diversion) Bill 2010, WAC-D-002 Issue 1.0 dated 16 June 2010

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