River Murray Water Justice: Does the Proposed Basin Plan Protect Our Water Rights?

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5.30pm for a 6.00pm

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An old conflict

They hang the man and flog the woman
That steal the goose from the common,

But let the greater villain loose
That steal the common from the goose.

English folk poem, 1764
Where I am going tonight

Water justice the concepts
- International dimension
- The framework of laws and policies and community in Australia
- National dimension: MDBA new plan
- The instruments available and selected
- Issues and a solution

Water Justice internationally

Access to clean water and healthy watersheds for drinking, fishing, and cultural uses is arguably a human right. Globally, this access is an exception, not the norm. One billion people worldwide do not have safe drinking water within a 15 minute walk from their homes. In California, 1 million people drink from contaminated wells, mostly in poor communities in the Central Valley.
Framework for Australia

SA and Victoria Political Challenges in Water Allocation
Water justice MDBA

The concept of water justice has emerged in recent years. Water justice is the right of all people to collectively control local water sources and the watersheds that sustain them.
**Early Epochs of water laws**

- Epoch 1 **1788-1901 - Only State colonial laws** and these were highly introspective to the particular colony.
- Epoch 2 **Federation 1901 to 1983 - fiscal federalism** (CCAC) sections 96 and section 100 prohibition on Commonwealth powers.

  - Policy narrative - man can control nature and State paramountcy

**mid 2 Epochs of water laws**

- Epoch 3 **Treaties power 1983-1994** (CCAC) enhanced Federal intervention Tasmanian dam’s case, MDBC agreement (weak) and ESD principles.
- Epoch 4 **1994-2007 state power but federal incentives** Council of Australian Governments reforms, ESD and competition law reforms hence enhanced section 51 (xx) Trade Practices powers State litigation on State water plans and allocation reductions. Regional delivery, NWI federal control.
Epoch 4 Four elements of water justice

1. Sustainable use.
2. Inter-generational equity.
3. Equitable use or intra-generational equity, and
4. Integration principle integration of environmental concerns into development decisions.

Rio 1992 and various Australian government publications and State laws such as the NWI State laws and international treaties.

now resilience policy narrative no longer man can control nature and more Federal control

Australia up to 2007

McKay J. Fresh water
New perspectives on Water in Australia 2007
Melbourne University Press
Epoch 5 2008 ++

- water markets but also Commonwealth and State intervention in the water market
- buybacks for environmental purposes State and Federal
- reinstatement of federal subsidization of irrigation infrastructure but also private infrastructure facilitated
- use of PPP and alliance processes for infrastructure in cities especially desalination plants

next 4 epochs of water law

- Epoch 6 NOW attempted implementation of federal power thwarted by interest groups and conflicts at rural urban, and other levels
- Epoch 7 Future Extensive rights based claims indigenous people and others
- Epoch 8 Future foreign investment issues deeper regulation.

Solutions- new water supplier form and more Federal intervention
Federal govt should take over water


MDBA

- Two million people
- 14% of Australian land area
- 40% of the gross value of agricultural output using over 50% of water
- 94% of rainfall evaporates
- 4% runs off
- 2% groundwater recharge
- Mean annual runoff 23,850 GL presently 11,200 GL
Agriculture and specific towns identified as more sensitive to changes in water availability

Source: EBC, RMCG et al (2011a) MDBA website

Water Act 2007

- Commonwealth (under multiple powers in section 51, including the referral of powers from the States) enacts the Water Act to apply to M D Basin
- Arose out of frustration of Howard Government with States on water reforms in NWI and non implementation of water allocation plans
- Commonwealth accreditation of all State Water Plans which must aim to achieve ESD, gives a role to Australian competition and Consumer Commission to regulate process and enhances the Commonwealth environmental water holder. Buy backs of land and water start.
• The **Water Act** requires these to be done and accredited as in the *national interest*

• The accreditation process has not happened yet as the community are unhappy. **3 ATTEMPTS TO BALANCE ESD. Problem perception of unfairness and loss of State sovereignty**

• Philosophical issue can regional plans be amalgamated? Several regional interest plans do not make a whole.

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**Principal water management agencies and laws applicable to each state and territory**

<table>
<thead>
<tr>
<th>State or territory</th>
<th>Lead jurisdictional body for water management / Principal legislation</th>
<th>Name of the Plan</th>
<th>No of plans as on 30 June 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Capital Territory</td>
<td>Environment ACT/Water Resources Act 1998</td>
<td>Water Resources Management Plan</td>
<td>1</td>
</tr>
<tr>
<td>New South Wales</td>
<td>Department of Natural Resources/Water Management Act 2000; Water Act 1912</td>
<td>Water sharing plan</td>
<td>54</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>Department of Natural Resources, Environment and the Arts/Water Act 1992</td>
<td>Water allocation plan</td>
<td>3</td>
</tr>
<tr>
<td>South Australia</td>
<td>Department of Water/Natural Resources Management Act 2004; Groundwater (Border Agreement) Act 1999</td>
<td>Water allocation plans</td>
<td>15</td>
</tr>
<tr>
<td>Tasmania</td>
<td>Department of Primary Industries and Water/ Water Management Act 1999</td>
<td>Water management plans</td>
<td>6</td>
</tr>
<tr>
<td>Victoria</td>
<td>Department of Sustainability and Environment / Water Act 1989; Groundwater (Border Agreement) Act 1988</td>
<td>Regional sustainable water strategies</td>
<td>2</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Department of Water /Rights in Water and Irrigation Act 1914</td>
<td>Water management plans/Water Allocation Plans</td>
<td>11</td>
</tr>
</tbody>
</table>
Are Statutory Water Plans the right way to approach sustainable water policy? (water planners responses)

- YES - 61.5%
- But also pointed out some concerns:
  - unfairness in the processes for public consultation,
  - lack of knowledge of local,
  - cost of development and implementation of water plans, and
  - uncertainties in the science.

State Court interpretations of Water Plans

- Water Plans interpreted strictly: no discretion in Minister or court to vary a Plan.
- ESD used to reduce water allocations by up to 50%.
- Pro-rata reductions seen as fair.
- Normal administrative law rules apply, so there must be procedural fairness.
Water Governance Issues

- Constitutional
- Water law Water Act
- Institutional structures
- Basin plan and regional water plans
- Policy responses licensing and water trading.
- Community adoption of sustainable development changing to collectivity in rights and obligations
Solution 1 to deliver water justice—
Apply Water Act to the entire nation

Solution 2 have this structure for Water supply businesses

- Craft this type of special organisational form which will better balance the economic, environmental and community interests.
- Use this type of body in all regions
Complexity

The Estuary

Before barrages and weirs, the River ran deep to the Sea.
The tidal pulse was strong
The River and Sea ebbed and flowed through the Mouth
and became one.
The River was free, its waters untouched.
The Sea was free and its waters abundant.
The Estuary was bountiful and the Big Fish were king.

Thank You