The myths and realities of our water supply- and the Murray Darling Basin Plan

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conflicts between water users - the oldest 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

Mark Twain said.. Whisky is for drinking water is for fighting about
Where I am going today

• The Myths of our water system
• The realities of water management
• The framework of laws and policies and community in Australia
• National dimension: MDBA new plan
• Issues and a solution to the real issues in current management laws and policies
• International dimension
• a reflection on the human right to water
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](https://www.mdba.gov.au)
Myths in present governance arrangements

- Water is plentiful
- Many small decisions add up to good sustainable development - sub myth
  - State interests equal national interests
- 3 to 4 year political cycles work
- Urban and rural water work together
Myth- water is plentiful

• that myth drove expansion into inappropriate places such as in SA
• Goyder line
• urban development premised on unlimited water and the drought showed that this was a mistake
• we do have enough water for sustainable development and food security but require different governance arrangements
• political conflict over water
• several States with differing agendas and certainly very different ways of using water allocating it and now supplying it. Several different ways to measure water use as well and different regimes as well. These change over a political life time for example in the drought we had State and federal Water Ministers. Now these abolished in each State
SA and Victoria Political Challenges in Water Allocation 1890’s
Victoria is the epitome of the frivolous woman of fashion of the day – her dress elaborately flounced and trimmed, her neckline daringly exposed and her skirts short enough to reveal very high-heeled shoes. She has attached a garden hose to the water tank, once again allowing only an isolated drop to fall into South Australia’s little bucket. The caption reads: ’You see I intend to treat you with sisterly regard in the
The caption reads: ’You see I intend to treat you with sisterly regard in the matter.

You will observe that the droppings I allow to go to you absolutely without condition’. The caption was a bitter critique of the ‘family’ of Federation, in which the smaller states languished at the mercy of the larger.
Appeals to Prime Minister Deakin

South Australia is appealing to the Commonwealth, shown in the figure of the dapper Prime Minister Alfred Deakin, also of course a Victorian. 'Here, Deakin!', he says, 'make him turn off the tap. Look at the dribble he's leaving me.'
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previous documents

- Margaret Anderson
- Director, History Trust of South Australia
From the 1880s each of the colonies had also conducted a number of official enquiries into the use of the waters of the Murray. At first New South Wales and Victoria refused to include South Australia in their deliberations.
Hydro-illogical cycle
Barrages being built - structural
New technology NSW
Inaccurate old technology
Meters a great planning innovation unique in the world as having wide coverage
Myths about governance

• it will work out in the end
Reality- too complex and governance structures too different

• that State public servants and the community want the system to stay the same

no see our research
more nuanced approach requested
Governance types 2008 urban and rural
see Australian Business Law Review article

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State Water planners

Published in Water

Water governance responsibility between the federal, state, local governments is defined clearly in Australia.

Water governance issues should be considered at the national level.

Federal government should take over the power of water allocation from the states.

Federal government should take main responsibility for water planning and development strategies.

- Strongly disagree
- Disagree
- Neutral
- Agree
- Strongly agree
Three Communities

Figure 1. Water governance issues should be considered at a national level.

Figure 2. Federal Government should take over the power of water allocation from states.

Figure 3. Federal Government should take the main responsibility for water planning and development strategies.

City of Salisbury (% of total N=103) City of Charles Sturt (% of total N=104) City of Gold Coast (% of total N=113)
Current issues in MDB plan

• disputes over the balance between economic, ecological and social in the plan. Specific criticism that environment given too much in some sectors and that consumptive use given too much in other sectors
• burning of an earlier draft
• orchestrated and managed protest
Framework for Australia

Framework to Evaluate Individual Preferences and Collective Outcomes of Sustainable Water Institutions, Policies, and Laws

Sources of powers for laws requiring sustainable development:
- Constitutional power sharing arrangements and influence of treaties
- Customary international law

Social Capacity to adapt behaviour to achieve sustainable water use
- Multiple sectors of society
- Engagement with issue
- Perception of institutions
- Perception of problem

Legal Capacity to draft water laws requiring sustainable outcomes

Institutional Capacity to implement the laws
- Multiple factors
- Policy analysis
- Coherence of institutions
- Water planning process
- Skills of staff

Modifications of the Laws, Institutions and Policies based on monitoring and social responses and decisions of courts

Sustainable Water Institutions, Policies, and Laws with Optimal Outcomes

Courts and decisions on facts


Strong sustainability means that some things such as green plants, water cycles, and biodiversity are critical and must be retained at all costs. Daly and Cobb. 1989 “For the Common Good”. Beacon Press Boston
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 is the policy narrative no longer man can control nature and more Federal control
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.
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.
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.
**Solution 1 to deliver water justice—**

Apply **Water Act** to the entire nation

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**Water Act 2007 (MDB Area)**

*Objects to achieve:*
- Ecologically Sustainable Development (ESD)
- National Interest
- International Agreements

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**Murray Darling Basin Commission**

Water Allocation Plans in Regions (State Based)

*Interaction with:*
- State Government Departments
- Commodity Groups
- Environmental Lobbies

*Policies*
- Levies for Natural Resources Management
- Water Markets
- Buy Backs

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**Non Murray Darling Basin Commission**

Water Allocation Plans in Regions (State Based)

*Interaction with:*
- State Government Departments
- Commodity Groups
- Environmental Lobbies

*Policies*
- Levies for Natural Resources Management
- Water Markets
- Buy Backs

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*Sustainability Entrepreneurs*
- Governments
- Private Sector
- NGOs
- Other Altruists

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*Other mediation systems in all jurisdictions*

*Outcomes court case to change allocations (State Based)*

*High Court*
Water Act whole nation

- After social capital and understanding of the environmental and community issues.

Advantages

1. manifestly transparent
2. conflict resolution organisations singing to the same hymn book
3. Precedent decisions for the entire nation
4. Full consideration of all options for water supply
Solution 2 have this structure for Water supply businesses urban and rural

- 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
Advantages

1. Neutral party can act as a bridge to short circuit vested interests looking for short term sustainable decisions

2. Have evidence based policy, fund and collect data and views at the regional level and ensure coherent reporting between and within all States

3. Have a longer life than the political cycle
Continuum of Institutional Models - world scale

**Municipal Public:**
- Part of City government
- Traditional charter
- Assets publicly owned

**Corporatized Public:**
- Separate agency with commercial charter
- Assets publicly owned

**Delegated to Private Sector:**
- Typically turnkey private provider to public authority
- Assets publicly owned

**Fully Private:**
- Private corporation with publicly traded share
- Assets privately held

**Key Variants:**
- Role of national governments
- Degree of fiscal isolation
- Level of private participation

- Legal structure of the entity
- Access to private finance
- Composition of board

- Nature and sophistication of contracting authority
- Financial arrangement

- Evolutionary context for full privatization
- Regulatory environment

Separation from Gov't

Asset Owner

Service Provider
Access to clean water and healthy watersheds for drinking, fishing, and cultural uses is arguably a human right since 2010. 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.
the developing world
• Water is special and unique.
• Australia is world class in several aspects but like other countries (US) struggling with governance form to achieve sustainable development.
• The challenge is to forge new governance arrangements to manage the scarce water, the shallow soils, the depleted river and aquifer systems for a growing population.
Thank You

Centre for Comparative Water Policies and Laws