

# Disaster in the Murray Darling Basin: the background

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# Constitutional Powers to Manage Water Resources

- The Commonwealth government has no explicit Constitutional power to manage natural resources
- The Commonwealth has the implied power to pass legislation to manage natural resources if it has signed an internationally relevant treaty (‘external affairs power’)
- State governments have the Constitutional authority to manage all natural resources including water

# The 1994 Council of Australian Governments' Reform of Water Law

Consistently with the neoliberal competition reforms of the Australian economy, following the Hilmer Review in 1991, the key goals of COAG's water law reforms were:

- To establish a water market to realise the economic aspects of water
- To protect the environmental health of water and associated ecosystems
- State governments were paid \$16 billion by the Commonwealth in National Competition Payments to amend their water legislation and implement these reforms

## 2004 COAG National Water Initiative

- Recognising the pressing need to refresh its 1994 water reform agenda
- An objective of the NWI was to achieve an efficient water market structure and expand markets to their widest practical geographical scope, enabling increased returns from water use, by 2014

# 2007 Commonwealth takeover of Murray-Darling Basin

- Following 2006 drought, Prime Minister John Howard requested State and Territory leaders to hand over their water management powers over Murray-Darling Basin (MDB) to the Commonwealth government
- *Water Act 2007 (Cth)* was enacted establishing the Murray Darling Basin Authority and requiring the making of the Basin Plan
  - Act is based on Australia's ratification of international **environmental** treaties
  - Basin Plan is to set 'sustainable diversion limits' (SDL) to 'reflect an environmentally sustainable level of take' (ESLT)
- \$3.1 billion over 10 years for Commonwealth to purchase water for the environment – 'buybacks'

# Sustainable Diversions in the Murray-Darling Basin

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An analysis of the options for achieving a sustainable  
diversion limit in the Murray-Darling Basin

June 2010

WENTWORTH GROUP OF CONCERNED SCIENTISTS

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IN ASSOCIATION WITH

Prof R. Quentin Grafton, Ian Kowalick, Prof Chris Miller,  
Tim Stubbs, A/Prof Fiona Verity, A/Prof Keith Walker

- The best available science suggests that the environment's share of the existing Cap on diversion would need to be increased by approximately **4,400GL**

## Guide to the Basin Plan released in 2010

- The Authority examined three scenarios for providing additional water to the environment of **3,000 GL/y, 3,500 GL/y and 4,000 GL/y.**
- Following **community reactions** to the release of the Guide to the Plan, the Chair and CEO of the MDBA resigned as did Wentworth Group of Scientists



## 2012 Basin Plan

- Basin Plan identifies **2750 GL/y** as the amount of water that is to be recovered from surface water systems for environmental use
  - 5% adjustment up or down allowed (adaptive management technique)
- Plan is to be implemented in 2019 through state Water Resource Plans being accredited as consistent with the Plan

## Coalition government: 'the triple bottom line approach' to balancing social, economic and environmental objectives

- The priority for future recovery of water will be through \$2.3 billion **infrastructure investment** and **removing physical constraints** to free flow of water
- A **1500 GL cap on surface water buybacks** was imposed 'to implement the Basin Plan in a way that would **minimise the impact on Basin communities**'
- In 2018 the Northern Basin **water recovery target was reduced by 70 GL** 'to improve our knowledge and understanding of communities, industries and the needs of the environment in the northern Basin'

# Critique of neoliberal values underlying water reforms

- Neoliberalism valorises market mechanisms and economic valuation, private property rights and private sector actors
- Neoliberalism pessimistically denies the role that democratic politics and public institutions can play in shaping and disciplining economic affairs
- Neoliberalism calls for a particular kind of state, and decides which interests will enjoy protection and which will be left vulnerable or neglected
- Neoliberal rules, practices and institutions present barriers to effective climate change adaptation and impose limitations on adaptive capacity

## **NSW Aboriginal Land Council's submission on reform of NSW Water Law in 2000**

- Aboriginal peoples' interests are 'to redress past injustices and to establish policy based on a contemporary understanding of Aboriginal legal interests, human rights, citizenship entitlements and social justice'

# **South Australian Murray-Darling Basin Royal Commission**

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## **Murray-Darling Basin Royal Commission Report**

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**Bret Walker SC  
Commissioner**

29 January 2019

- The damage and depletion of the water resources, ecosystems and biodiversity of the Murray-Darling Basin since European colonisation, and **the trauma and dislocation experienced by Aboriginal people**, are part of the same story. The necessary work to protect and restore the river systems must go hand in hand with the necessary measures to **include Traditional Owners centrally in decision-making** about water planning and management.

- The habitual behaviour of the Murray-Darling Basin Authority (MDBA), and to a lesser but alarming extent the CSIRO, is marked by an **unfathomable predilection for secrecy**. That is the **bane of good science** — and an **obstacle to the democratic and informed design and improvement of public policy** that must be based on science

- The most pernicious of the polemical uses to which the slogan of the **triple bottom line** has been turned is to argue...that the triple bottom line requires the volume of reduction in consumptive take to be less than it would be on **solely the environmental grounds stipulated in the Water Act**, whenever it can be seen that **recovering less would benefit farming, therefore the economy and therefore society**.
  - impermissible



- The MDBA and the Commonwealth Government of the day can be seen not to have followed the plain requirements of the Water Act. Instead of trying to fix the (sustainable diversion) limit beyond which key environmental values would be compromised, **they appear to have set out to gauge the limit of sectional or political tolerance** for a recovery amount.
- The story of this **cynical disregard for the clear statutory framework for decision-making** on this crucial measure is **unedifying, to the lasting discredit of all those who manipulated** the processes to this end

- Officials were and are bound by the law to determine the ESLT/SDL **on the basis of the best available science** and for the purpose of preventing compromise of the key environmental values pertaining to the Basin water resources. They **have not done so, and not inadvertently.**
  - Unlawful and maladministration

- The MDBA **completely ignored climate change projections** for the determination of the ESLT and the setting of a Basin-wide SDL that reflects this. That is **unlawful**. It ignores the best available scientific knowledge. As an administrative decision it is **indefensible**.

- the Basin Plan in its current form, its implementation, and any proposed amendments to the Plan, are **not adequate** to achieve the objects and purposes of the Act and Basin Plan, and the ‘enhanced environmental outcomes’ taking into account likely, future climate change.

## MDBA response

- The Basin Plan and subsequent amendments were prepared consistently with the Water Act, relying on the Government's legal advice and stand as law. The fact that the South Australian Royal Commission report puts forward a different legal opinion on some aspects is not conclusive. It is simply a different opinion.