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Local Government and the Sustainable Governance of Water Resources in South Australia

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Discussion Paper

1. Objective

The objective of this discussion paper is to evaluate the capacity of integrated catchment management as a mode of governance to facilitate ecologically sustainable development in South Australia within a liberal market economy. Ecologically sustainable development arose in the 1980s as a way for governments to shape the economy/environment interactions when it was realized that the development of agriculture had been achieved at increasing environmental cost. This challenged the axiomatic assumption in both neo-classical economics and the ideology of developmentalism that more growth is better. The utilitarian policy makers had presupposed that improvements in material circumstances (standard of living) lead to increased human happiness or wellbeing.

The Murray-Darling Basin provides an example of the need for Australia to change its policy-making assumptions that allowed economic growth to dominate over all else and to shift the compass to ecologically sustainable development. The viability Murray-Darling Basin as the nation's 'bread bowl' is under threat. Rising salinity and a high demand for limited water and land resources are two of the major problems that need to be addressed by governments and community. It is accepted that, as it is not possible to protect the Basin under current levels of resource use, so all those who live in the river country must decide what they want for the future, what is possible given the constraints, and how these aims may be achieved by working together. There is a need for a commitment by the community and governments of the Murray-Darling Basin to do all that needs to be done to manage and use the resources of the Basin in a way that is ecologically sustainable.

The Murray-Darling Basin *Initiative* is the partnership between the governments and the community, which has been established to give effect to the 1992 Murray-Darling Basin Agreement. The purpose of this Agreement (Clause 1) is 'to promote and co-ordinate effective planning and management for the equitable, efficient and sustainable use of the water, land and other environmental resources of the Murray-Darling Basin'. The Murray Darling Agreement is a recognition of the fact that no one government or group of people was able to deal with the Basin's emerging natural resource management problems and that the existing management arrangements were not able to cope with them. The involvement of the community is recognition of the fact that the task was not one that the basin governments could fulfill on their own.

The *Initiative* is the largest integrated catchment management program in the world, covering the watersheds of the Murray and Darling Rivers, an area of over one million square kilometres. The Natural Resources Management Strategy developed by the Murray-Darling Basin Commission for handling natural resource management in the Basin is grounded on two foundational blocks. The first foundation block is the philosophy of integrated catchment management that recognizes the linkages between various biophysical processes, which affect or are affected by water, its movement and its uses. The second foundation is the community/government partnership that recognizes that neither party working in isolation can protect the Basin's natural resources. What does the Commission not explicitly state is that these mechanisms are a way to resolve conflict resolution over contestable matters to do with natural resources, achieve consensus on strategic action and ensure social cooperation in a liberal market society. This is being developed to countervail the dominance of strategic action in a market economy where bargaining and threats are deployed to ensure that stakeholders get their way.

The discussion paper proposes to evaluate the capacity of integrated catchment management to contribute to ecologically sustainable development in three ways. It

- * reviews the various pieces of legislation that make reference to the roles of local government in relation to water resource issues;
- * reviews the various national and state government policies, programs and other activities relevant to water management issues in South Australia currently and into the future;
- * develops an issues paper on the findings.

The purpose of this desk-top review is to assist Local Government and local community groups to identify the strategic roles and responsibilities they wish to undertake in relation to water management in South Australia; and to identify the links to water resource issues, natural resource management and community development. In the arid landscape of South Australia water will increasingly become a source of conflict, and so we need to develop new self-governing mechanisms to facilitate conflict resolution and social coordination.

2. Introduction

This review is timely because of the changes in the political landscape to managing water resources across the states in federated Australia. Traditionally, in South Australia explicit attention to natural resource management has been separated from the local government's statutory planning processes. Consequently, local government has not seen natural resource management or water issues to be part of its core business, and so it has been drawn into catchment management as a participant in the implementation of a particular policy. This is now changing as local government is expanding beyond

its basic municipal services role (eg, roads, rates and rubbish) into environmental planning and management. As in other states, effective engagement of local government in natural resource arrangements and processes remains a vexed issue. The passage of the *Water Resources Act 1997* reinforces this shift though its emphasis on the regional governance of water resources. This means that local government can *potentially* have a major influence on controlling activities that affect natural resources and which impact on the health of a catchment and its water resources. However, the South Australian Parliament's *Select Committee on the River Murray* was concerned by 'evidence that local government with a couple of notable exceptions, is not a visible active participant in the management of the Basin's resources.' (Interim Report, p.42). More often than not the action on the ground to setting the compass to a sustainable Australia comes from local community groups in civil society.

This review is premised on the view that the environmental health of the state's catchments is so poor that the management of water resources is now being driven by the necessity to ensure their ecologically sustainable use. The case argued is that the passage of the *Water Resources Act 1997* embodies a political process to cultivate an improved understanding of the relationship between people and landscapes so that South Australians can learn to manage water resources in a more sustainable way. The *Water Resources Act 1997* provides a regional platform for a pro-active local government to argue for better integration and coordination of the existing institutional arrangements and for increased community engagement in the management of water resources. The desktop review suggests that if local government is to be proactive in fostering sustainable regional development, then its actions need to be founded on technology and data transfer, capacity building and community empowerment. On the other side, the state government needs to establish a regulatory catchment-based framework that requires local government to ensure that its zoning planning, consideration of development proposals, development decisions and management of lands and planning are consistent and comply with the regional water plans developed by the catchment water boards.

3. Mode of governance

This desktop review of water legislation takes governance rather than a legal approach to the legal and policy framework, arrangements and processes within which local government operates in South Australia. It interprets the policy and institutional structure as consisting of a number of instruments or mechanisms within a particular mode of governance that is designed to shape the conduct of a population in a particular direction. A mode of governance links knowledge, modes of calculation, strategy and tactics and human subjectivities in an ad hoc manner to shape our conduct so that

subjects act in a particular direction. A mode of governance approach shifts the focus away from political power being seen as negative—as constraining, limiting or preventing individual freedom—to the performative and productive character of power. The focus shifts to the strategic and interactive operations of the power of statecraft that aims to shape the conduct of a whole population within a social order. This shaping of a population's conduct needs to be compatible with individual liberty and to provide the conditions for a social order that makes a liberal politics coherent.

There are three strands of governance that have been developed to shape the way South Australians currently govern themselves to ensure the sustainable use of water resources. These are ecologically sustainable development (ESD), neo-liberalism and integrated catchment management (ICM). These operate at the international and national level and they indicate the way that globalising and national processes impact on, and shape the strategic policy making of the South Australian region.

1. ESD in Australia is a policy strategy designed to integrate economic and environmental concerns. It arose out of the Brundtland Report of the UN World Commission on Environment and Development, which challenged national governments to do something about reconciling the relentless drive for economic growth and the burgeoning environmental crisis. ESD is defined as 'using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained and the total quality of life, now and in the future, can be increased.'¹ ESD is about meeting the needs of people today whilst conserving our ecosystems for future generations. This consensus is widely accepted and embodied in the *Agenda 21* concept of the United Nations Commission on Sustainable Development, which was developed to empower local government and communities to implement the ESD process. These principles are embodied in federal and state policy-making. When operationalised as objectives they imply that water resources should be developed, used, managed and protected in an integrated manner; that responsibility should be developed to the lowest appropriate level; that management plans are needed; and that better information and data are required.

The land care program exemplifies the practical integration of economic and environmental concerns around national resource management and it signifies a diffuse but significant shift in the ethos of the agriculture industry. Though ESD has come to be wide accepted by politicians, bureaucrats, industry leaders and the community there has been an insufficient use of market instruments to implement ESD. Many state government departments have been slow to implement ESD principles and objectives in their policymaking, or to monitor, evaluate and report on this

¹World Commission on Environment and Development, *Our Common Future*, (Oxford University Press, Oxford, 1987), p. 43.

implementation process. The culture of these government agencies is one which endeavours to evade their environmental responsibility and sideline sustainability through the use simplified of cost benefit analysis.

2. Neo-liberalism is concerned with countries deregulating and modernizing their economy in the face of the competitive pressures of the globalised market. It holds that countries should raise productivity and export performance and reposition themselves to compete successfully in the new global economy. This mode of governance places an emphasis on a deregulated free market, minimal government, efficient resource allocation and innovation to maximise economic growth through a dynamic market economy. It supports the incentives on which free markets rely (lower and flatter taxes, respect for an individual's economic initiatives and enterprise and removing regulatory obstacles to business expansion). It advocates fiscal discipline by keeping a firm lid on government spending and borrowing, with balanced budgets preferably in surplus and target welfare spending. It emphasises the individual duty's to find work, to adapt, to retrain, to relocate in search of work, even to accept whatever work is available and so become a productive member of society. Governments steer, by setting appropriate parameters for policy outcomes and funding to ensure that the key conditions required for business profitability, low inflation, an adequate supply of skilled labour and free flow of capital exist. Neo-liberalism has impacted on local government in terms of resource starvation, regional self-help and weakening the social fabric of regional and communities.

Neo-liberalism is embodied in Council of Australian Governments (CoAG) 1994 agreement to a strategic framework for water reform covering water pricing, institutional arrangements, sustainable water resources management and community consultation. This agreement held that water resource policy should be seen as delivering on the agenda for ecologically sustainable development; that there should be an integrated catchment management approach to water resource management; that pricing should reflect all the costs of supply and service (including environmental costs), with government subsidies or community service obligation payments made transparent; that water should be employed in higher value uses within the social, physical and ecological constraints of catchments; that there should be consistent approaches to pricing, property rights and entitlements, trading and environmental allocations across jurisdictions; and that institutional arrangements and responsibilities should be clearly defined.

This 1994 CoAG agreement was collapsed into National Competition Policy in 1995. This is a coordinated approach designed to further pro-competition reform across the three spheres of government to further a single market in Australia, rather than a series of markets delineated by state boundaries. These reforms extended the reach of the anti-competitive conduct laws in Part IV of the

Trade Practices Act to all private and public sector businesses; implemented reforms in electricity, gas, water and road transport industries; established third party access arrangements for the services of nationally significant monopoly infrastructure; established a review and reform of all laws that restrict competition; and improved the performance of government businesses through structural reform by introducing the principle of competitive neutrality. State governments agreed to apply these reforms to local governments.

3. A new integrated catchment-based management (ICM) for land and water governance is being implemented to deal with conflict resolution between stakeholders over natural resource issues. This regional mode of governance shifts away from the old government centred, single-issue approach to an integrated catchment approach. Catchments are naturally occurring geographic divisions in a landscape defined by the flow of surface water and they channel water into a particular watercourse or river. As an approach to managing land and water resources catchment management systems involves integrating economic, ecological and social aspects of development in a way to best ensure the long term viability of natural resources whilst serving human needs. The coordinated model of catchment management of water resources (ICM) is being promoted as a community-based, collaborative model of governance to address natural resource problems of mutual concern. ICM is based on the integration of community involvement, technical knowledge and organizational structure and policy objectives through which government and community investment can be directed.

This partnership approach is changing the institutional landscape as this strand of governance is a rupture from the minimal government of market liberalism, where the government is restricted to preserving a deregulated market economy under the rule of law. It also represents a shift away from government as an administrator on behalf of the irrigation industry with a passive community to the government as 'enabler' and facilitator' of a more empowered industry/community alliance. Unlike the critical community response to competition policy ICM is widely supported throughout regional Australia as having the potential to provide significant benefits. It implies that governments are an all-important source of resources for social and environmental investment and that communities not just bureaucracies have a central role in defining, delivering and managing the sustainable use of natural resources.

We can interpret these three strands of governance as constituting a new sustainable mode of governance that function as a steering mechanism to achieve system integration. It modifies the traditional management goal in South Australia, which has been to manage water diversions and soil erosion to protect and enhance agricultural expansion and productivity without much consideration being given to the environmental consequences. A sustainable mode of governance exercises power as a system to make us certain sort of subjects and it shapes the conduct of a population in a particular

direction of sustainability desired by political authority. This governance approach enables us to include local government in the process of policy formation in the sustainable management of a region's water resources, and to see the system of power functioning to shape the conduct of local government so that local councils act to ensure the efficient and sustainable management of water resources. The governance approach highlights the complexity of governance since the strategic framework of rules, regulations, plans and guidelines is a series of often contradictory ad hoc instruments, mechanisms and technologies welded together to govern our actions in the economic, social and ecological fields. This complexity indicates that no single tool, arrangement or approach will suffice, and that the government's reform emphasis in the near future will be on selectively and strategically implementing reforms within the existing institutional structures rather than creating a fundamentally new set of institutional arrangements.

4. SA legislative framework for regional water management

The first objective of this desktop review is to detail the various pieces of legislation that make reference to the roles of local government in relation to the sustainable governance of water resources. We approach this legal framework in terms of viewing the instrument of law being deployed by the liberal state to solve social coordination problems in the market economy where agents pursue their own advantage according to the dictates of instrumental reason, rather than seek consensus. What the law does is to confine the area for agreement to general norms that demarcate and regulate areas of free choice and action. This provides for a stable context for persons to pursue their own interests because the law is seen to issue from a discursive process that makes the norms and statutes rationally acceptable.

Because South Australia is at the lower end of the Murray-Darling Basin, its natural resource policy has focused predominantly on the management of its water resources (quality and quantity) and land/soils at a regional rather than a catchment level, usually with separate plans for each resource. Planning and management of water resources at a regional basis, is due to the prior existence of soil boards. South Australia has devolved much responsibility for water management to regional catchment boards, which have powers to levy water users and, to a limited extent, regulate land use and water practice to ensure ecologically sustainable use.

There are a variety of Acts that spell out the specific roles and responsibilities of local government that are relevant to, and impact on, the regional management of sustainable water resources. The following Acts give an indication of these instruments of governance.

A. The *Local Government Act 1999*, establishes the system of local government and provides for council's functions and powers. The Act gives councils sufficient autonomy to manage the local affairs of their area by providing appropriate services and facilities to meet the present and future needs of local communities. Under this Act one of the principle roles of a council is 'to develop its community and resources in an ecologically sustainable manner' (s.6b); whilst one of the functions of a council is to 'manage, develop, protect, restore, enhance and conserve the environment in an ecologically sustainable manner' (s.7e). Under this Act councils have a role in catchment management through their responsibility for most stormwater infrastructure within their area. The Act gives local councils power in relation to flood management, including power to acquire land in order to carry out flood mitigation or prevention works and powers to act in an emergency (s. 298). Councils also have powers to establish and manage drainage infrastructure in relation to roads, including the appointment of drainage authorities (s. 215).

B. The *Development Act 1993* covers land development and land use and establishes a system for development planning and assessment. Under this Act, each local Council has to prepare a development plan regarding the land use policies for each council area that is consistent with the objects of the Act. The Act's overall objective is the proper, orderly and efficient planning and development of the State and the development plans provide the policy framework for decision making on developmental applications. The development plans facilitate sustainable development and the protection of the environment and encourage the management of the natural and constructed environment in an ecologically sustainable manner. Whilst there is nothing specific about water bodies development plans may be used by councils to guide their use and management of natural resources: eg. to promote the conservation of a water course adjacent to a residential development.

C. Under the *Public and Environmental Health Act, 1987*, Councils have statutory powers to order a person to take action to prevent the pollution of a water supply; and to restrict or prohibit the taking of water from a particular water supply where they are of the opinion that this supply is polluted and that restrictions are necessary to prevent human consumption of water. They have a responsibility to ensure that all domestic wastewater treatment systems (including septic tanks) are correctly installed and they must enforce a high standard of operation of all septic tanks.

D. Under the *Environment Protection Act, 1993* councils have the ability to appoint authorised officers with power to carry investigations following consultation with the Environment Protection Authority (EPA).

These Acts give local government a significant role in water resource management through their responsibilities for a wide range of activities in their local government area. This management can have a direct or indirect impact on the health of the catchment and water resources. The state

government has attempted to integrate the roles and responsibilities of water resources management beginning with the *Water Resources Act 1976*. This introduced integrated water resources management legislation into Australia. It provided for community involvement in water resource management through the Water Resources Council and water resource advisory committees. The *Catchment Water Management Act 1995*, provided for the appointment of Catchment Water Management Boards (CWMB's) to manage water on a total catchment basis to improve the quality of catchment water and protect watercourses from further degradation. The Boards were required to develop catchment water management plans to describe the ways they carried out their responsibilities and were provided with a levy to fund their water management programs. This legislation was further amended by the *Water Resources Act 1997*, which further empowered the role of the community in integrated water resources planning and management.

The *Water Resources Act 1997* is now the principle legislation governing access to, and the use of, water in the state. As the principal legal framework for policy and planning it enshrines the principles and objectives of both ecologically sustainable development—managing water resources in an integrated way to achieve economic, environmental and social goal—and the principles and objectives of CoAG through establishing the legal framework for making water licences their holder's personal property not linked to land title and fully tradeable. The Act provides for a better integration between water resources management and the management of other natural resources through a number of strategic and operational linkages with other pieces of legislation. The CWMP plan must be consistent with the *Coastal Protection Act*, *National Parks and Wildlife Act* *Environment Protection Act 1993*, *Native Vegetation Act 1991*, *Soil Conservation and Land Care Act 1989*, *Local Government Act 1999* and the *Development Act 1993*.

The object of the *Water Resources Act 1997* (s.6) is to establish 'a system for the use and management of the water resources of the State that ensures sustaining the physical, economic and social wellbeing of the people of the State and facilitate the economic development of the state. The management of water resources must ensure that water resources are able to meet reasonably foreseeable needs of future generations and to protect ecosystems (including their biological diversity) that depend on these resources. This management is required to use caution and other safeguards to reduce to a minimum the detrimental effect of the use and management of water resources.

Key features of the Act are:

- * that water plans—both water allocation and local water management plans—are developed by a skills-based catchment water management board (CWMB), who are designated as the key vehicles for integrating and improving the management of water quantity and flows;

- * where a CWMB does not exist the water allocation plans are undertaken by the relevant water resources planning committee;
- * where a CWMB does not exist (eg., the southern Fleurieu Peninsula) local government can address the management of water bodies and associated ecosystems through local water management plans. They can also do so if a CWMB exists. These plans must be consistent with the State Water Plan, a catchment water management board plan (if a board exists in the area), and the Water Allocation Plans;
- * local Councils outside of water catchment boundaries (eg. the councils of the Southern Fleurieu Peninsula) have an obligation to maintain water courses or lakes and a duty not to damage water courses or lakes
- * management of water resources is through a hierarchy of catchment management plans, water allocation plans and local water management plans that are prepared and regularly reviewed through a comprehensive process of community involvement;
- * Catchment Water Management Boards have the capacity to amend development plans of local government by ensuring that controls over new land uses and buildings are aligned with catchment management strategies to ensure ecologically sustainable development.

Since the Water Resources Act 1997 requires that local councils act consistently with local water management plans and have regard to the relevant catchment water management plans, local government has become incorporated into integrated catchment management and planning. The roles and responsibilities of local government in the statutory legal framework are a crucial part of a system that favours the integration of environmental policy across government, community and industry sectors through partnerships and extensive stakeholder participation. This integrated approach that will increasingly underpin the identification of water problems, the administrative arrangements and the delivery of appropriate remedial action.

This is a schematic account of the statutory legal framework, but it does indicate the central role that the law and legal system now plays as an integrating or coordinating force in a conflict-ridden market economy. This skeletal framework holds a market economy together and steers it in the direction of sustainability. Two considerations are central. First, there is an internal tension with this mechanism between the coercive force of law that secures rule acceptance within a market economy and the idea of self-legislation that vindicates the legitimacy claims of the rules themselves and makes their ESD claims rationally acceptable. In a liberal state a coercive law tailored to individual rights and self-interested action can only be preserved as a socially integrative force if individuals accept the law as legitimate and understand themselves or their political representatives as the authors of the ESD norms. Secondly, in practice the ideal or normative ESD claims of the system of law as a

coordinating mechanism is in external tension, of not contradiction, with the reality of the actual functioning of the forms of economic and social power of the market economy and bureaucratic administration. This internal and external tension places a heavy burden on the legal system as a form of social integration and coordination.

5. Moving towards a whole-of-government approach

The second objective of this desktop review is to highlight the various national and state government policies, programs and other activities relevant to water management issues in South Australia currently and into the future. In section 2 we indicated the 'trend movement' in public policy of water resources in terms of the three national policy strands of ESD, neo-liberalism and ICM that function as a new sustainable mode of governance. This means that South Australia has a four-tiered approach to the integrated catchment management of water resources in South Australia—federal, state, regional and local. We highlighted that the legislative framework deployed to solve social coordination problems makes local government a key player in the management of water resources, since its role and responsibilities in land use planning and the management of development means that it makes the detailed decisions that balance ongoing development with the need to protect water resources.

From the perspective of the conduct of local government, the crucial policy strand in the near future is the movement to integrate the catchment management of water resources, due to the Commonwealth push towards a national framework for protecting, maintaining and enhancing natural resources. This is in response to the lack of national approach to environmental management that has resulted in poor coordination, a plethora of legislation and ill-defined responsibilities for the different levels of government. The shift to the integration of catchment management can be interpreted as a recognition that the enacted public norms of the legal system as a coordinating mechanism and binding force ultimately rest on the values and culture of everyday life in civil society and the political dialogue and deliberation of citizens through which they achieve a common or mutual understanding of what matters to them.

As the Commonwealth has a significant impact on the financial resources of natural resource management initiatives, so the federal/state institutional arrangements will be driven by the priorities and policies identified by it. For instance, the national approach taken in *Our Vital Resources: A National Action Plan for Salinity and Water Quality in Australia* sets targets and standards, adopts an integrated catchment approach and supports capacity building for local communities to overcome the current disjointed frameworks. The Action Plan's stress on the need for an improved governance

framework to secure Commonwealth/State investments involves clearly articulated roles for the different levels of government to provide an effective, integrated and coherent framework to deliver and implement the policies of the *Action Plan*. So we can ask: is South Australia moving towards addressing the ad hoc, inconsistent and confusing management system that has evolved from legislation historically enacted to deal with emerging issues? How far has SA moved towards integrated catchment management? Answering these questions needs to consider the following characteristics of SA's regional governance.

- * despite the complexity of the regulatory environment, South Australia does not have a formalised institutional structure for Integrated Catchment Management. There is no specific catchment legislation and no statutory authority or agency with a mandate to integrate natural resource management activities within the state or within a catchment. Nor are there any catchment management guidelines or policies per se in the state.

- * local government is now a key player in the success of integrated catchment management and natural resource management. The complex coverage of, and engagement with, an integrated catchment management approach to water resource issues lacks statutory authority, and so must rely on cooperation, good will and the capacity to negotiate to achieve change and reform.

- * given the complexity of the regulatory environment maintaining trust in the reform process is a difficult task when the *Water Resources Act 1997* does not provide for a fully integrated approach. Though the Act recognizes the important role of other legislation in catchment water management, its focus is on linking the different water plans and Acts that run in parallel. It does not substantively integrate the management of an area within a catchment plan that sets the ecological parameters within which land use must operate.

- * there is a risk that policies and controls being established by catchment water management boards will not be supported by, or aligned with development plan policies. There appears to be no record of amendments by CWMB to development plans of local councils.

These considerations suggest that catchments or regions can only be managed in an ecologically sustainable way if the management structure of governance is capable of delivering outcomes that address the problem of an over-allocation, and increasing salinity of water resources. A whole-of-government approach to natural resource development has been developed to manage the growing salinity problem through the formulation of the overarching policy statement, *Directions for Managing Salinity in South Australia*. A whole-of-government approach to the management of water resources can be discerned in the *State Water Plan*, which sets out the state's strategic policies for achieving the objectives of the *Water Resources Act 1997*. *The State Water Plan* provides the policy

framework for water resource management and use throughout the state, since all water plans produced under the *Water Resources Act 1997* must be consistent with the *State Water Plan*.

South Australia is moving towards addressing the ad hoc, inconsistent and confusing management system (so evident in the Coorong and Murray Mouth Management Plan) in the form of the proposed legislation of the *Integrated Natural Resource Management Bill*. This aims to enhance the coordination of all aspects of natural resource management, and it proposes new overarching legislation to facilitate a consistent and efficient legal framework to integrate natural resource management. It is not intended to immediately replace any existing legislation; rather it seeks to strengthen community involvement in regional natural resource management decision-making and to improve administrative arrangements by providing a set of policies and processes across all natural resource management legislation.

Two key issues can be identified. First, the strong, tiered planning framework being developed through the state's whole-of-government approach is not being matched by effective coordination in practice. The historical fragmentation of on-the-ground effort continues. The discordance between grand plan and fragmented action has given rise to 'planning fatigue', with this gap undercutting community acceptance of the integrated catchment management approach. This state of affairs is then reinforced by local communities often feeling that they are not adequately represented, that their views are not taken into account and their local knowledge and experience is marginalised by state agencies. Secondly, though it plays a significant part in determining whether development is ecologically and socially sustainable at a local and catchment level, local government is not recognized or represented on National Ministerial Councils. Consequently, the Commonwealth and State governments are seen as trying to force on-the-ground delivery of sustainable water management without adequate consideration of existing processes.

The indicated the 'trend movement' integrated management does connect the system of law to the everyday values and culture of individuals and the shared values and traditions of local communities to give the public norms of ESD their rational basis and to accept them as legitimate and thus deserving of obedience. The marked failure of integrated management as a mode of governance is that it fails to connect the system of law to deliberative democracy. It fails to make explicit the internal connection of the rule of law to the process of political deliberation by citizens in local communities about the direction of regional development and the kind of place they inhabit. This is surprising since, in a liberal society free subjects are self-governing in terms of their conduct, and so they need to assent to the public laws that constrain and shape their conduct in terms of the sustainable use of natural resources.

6. Roles of local government in regional governance

We can respond to this failure by indicating the future role of local government and local community groups within integrated catchment management that underpins the law as a coordinating and integrative mechanism for a market economy. To do so requires us to make explicit the context of public policy concerns about federalism. One common claim here is that, since Australians are over-governed, then there is a need for political reform of the institutions of liberal democracy.

This reform of our political institutions is frequently seen to be the last frontier of economic reform to establish an open and competitive Australia. A popular proposal is to adopt a minimalist approach to government, abolish the states and accept a service-delivery role for local government. This is the pathway mapped by the Business Council of Australia. It identifies the problem of governance as the need to overcome an archaic and inefficient structure of government by removing the overlapping responsibilities for services, the uncoordinated approaches to regulation, and the mismatch between spending and revenue-raising responsibilities. According to Business SA the proper role for local government is the conventional services role.² Lindsay Tanner, one of the freewheeling thinkers in the federal Labor Party, develops this line of thinking. He says that as it is widely acknowledged that there has been a serious erosion of public confidence and trust in our democratic political institutions so there is a need for a comprehensive overhaul of the processes and structure of government.³

Lindsay says:

A primary source of alienation from government in our society and the paramount target for modernising reform, is our absurd three-tier system of government ... It is a costly and obstructive anachronism which makes no sense at all ... As government has evolved from around this cumbersome structure from the horse and buggy era, endless unnecessary complexities have developed. In many areas at least two and sometimes three levels of government are involved, usually with no clear demarcation or lines of responsibility. Governments inevitably respond to the temptation to cost-shift and pass the buck when it suits them. The poor citizen is left in a state of total confusion when he or she tries to achieve an outcome from this tangled bureaucratic web.⁴

Tanner says we need 'to adapt government to the new economy and build a new role that focuses on facilitating economic interaction and enhancing the capacity to participate.'⁵ He proposes to do this by doing away with the States and devolving their functions to appropriately sized local and regional bodies. He says:

Footnotes

²Business SA, *Manifesto for SA Business*, (Adelaide, February 2002), p. 19.

³L. Tanner, *Open Australia*, (Pluto Press, Annandale, 1999), pp. 192 & 204.

⁴Ibid, pp. 206-7.

The basic conceptual division should be between regulation and service delivery. The regulatory functions of the States should be national, and their service delivery functions should be regional. A two-tier system of government is already in place in the ACT, and it functions reasonably effectively. Although it is easier for such a government to function in Canberra, than elsewhere because of its size and quite distinct status, there is no reason why another twenty-five or such entities should not emerge to assume many of the responsibilities of State Governments.⁶

This is standard federal Labor Party rhetoric about abolishing the States and centralizing power in the commonwealth government.⁷

The reality in natural resource management is that the States under s.100 of the Constitution have the constitutional power for natural resource management in Australia. Many federal members of parliament recognize this federal aspect of our liberal constitutional state. The response by some those politicians from South Australia who are concerned with what is happening in the Murray–Darling Basin, is to say that the Commonwealth should take a leading role. Christopher Pyne, for instance, addresses this by calling for a referendum to remove the power over the Murray Darling Basin from the states and give it to the Commonwealth government. This requires the removal of s.100 from the Constitution and a new head of power under section 51 that gave the Commonwealth power of over the control and regulation of the Murray-Darling Basin and the use of the water thereof. This new head of power would be a concurrent one so that the states would be entitled to legislate with respect to the Murray-Darling Basin; but any laws that they introduce that were at odds with Commonwealth power would be invalid and the Commonwealth power would override whatever state law was in place.⁸

The political reality is that constitutional change is not on the political horizon, and the abolition of the states has no hope of passing at a referendum in the near future. The political reality is to accept

⁵Ibid, p. 211.

⁶Ibid, p. 210.

⁷Chris Hurford, a former housing Minister in the federal Hawke Labor government during the 1980s, outlines what Tanner may have in mind. Hurford advocates abolishing the states and territories and replaces them with a federation of 51 regions. In the Hurford model each region would represent a community of interest tied to a specific geographical region. Each region would have single House Legislature and elect a chief Minister to represent it in a revamped Federal Senate. Regions would elect members to sit on their behalf in a revamped Federal House of Representatives, with the number of members determined by each region's population. Under a system of "cooperative federalism" the Commonwealth would fund the basic basic health, education and other services which regions would deliver. Independent taxation powers would allow regions to raise revenue to fund extra services. See D. Eccles, "Advance Australia Where?", *The Advertiser*, (January 26, 2001), p. 65. See also Rodney Hall, *Abolish the States*, (Pan Macmillian, Melbourne, 1998).

⁸ C. Pyne, Grievance Debate: Murray–Darling Basin, (House Hansard, ???), pp.??? Also Governor General's Speech: Address-in-Reply, (House Hansard, 18 02 2002), pp. ????

our federal political institutions and to find ways to make this federalism work to bring about a more sustainable Australia. If we put Tanner's centralized conception of "federalism" to one side, and continue to work within the federal three-tiered system, this then leaves us with Tanner's service delivery role for local government. Tanner more or less collapses local government into regional government, which is primarily concerned with service delivery. He says that this would allow regional communities to influence the distribution of resources—he mentions health—in their own areas. This means that local government per se is downgraded as it is not seen to an effective partner in governing the conduct of a population to ensure a more ecologically sustainable Australia. The delivery service function of regional governance is disconnected from deliberative democracy and conflict resolution about the tradeoffs that local communities will have to make to ensure a more sustainable use of natural resources. Consequently, the system of law becomes ever more coercive, the political process is instrumentalised for strategic purposes by powerful business organizations and we have indirect administrative measures guided by bureaucratic knowledge.

The policy and decision makers at the Commonwealth level also marginalise the potential substantive role of local government in natural resource management. Their proposed national policy framework, which concentrates on agricultural production, sustainability and the regional level, recognizes that:

...regions and catchments are the most suitable focus points for managing regional resources in rural Australia ... A regional approach offers a framework for planning and action for natural resource management, industry and community development that suits specific circumstances. It means that the social, economic and environmental dimensions of a region can be considered in an integrated way. The regional scale is also the most suitable scale for negotiating trade-offs and resolving conflict and for determining priorities and shared investment arrangements where there is a need for coordinated action over large areas involving many people.⁹

The technologies deployed by this regional approach of working together are centred on the State governments. These are responsible for the establishment of new 'institutional structures that give the people of a region greater authority over natural resource management' in the form of a regionally-based statutory bodies/authorities that would 'represent individual and local interests in the region.' The regional bodies' integrated approach to regional planning and development would 'be linked to those institutions that are involved in broader regional development and have close links with local government.'¹⁰ This policy instrument advocates federal and state governments supporting 'capacity building among landholders and regional communities by enhancing skills to adapt and use new

⁹Natural Resource Management Task Force, *Managing Natural Resources in Rural Australia for a Sustainable Future*, (AFFA, Canberra, December, 1999), p. 33.

¹⁰Ibid, p. 34.

technologies, data information and expert advice and increasing the availability and use of decision-supported tools.¹¹

However, local government fades into the background as the emphasis is on leaders and champions who can demonstrate benefits and motivate action, on training courses in natural resource management for producers and enhancing the role of the Landcare movement in natural resource management. Though local government is deemed to be a partner in developing and implementing a regional approach, it is seen to be only one of a number of important stakeholders in natural resource management, and it is required to adopt the policies and engage in activities that are consistent with State and national policies and regional plans for natural resource management.¹² Its representation in regional catchment management organizations as a stakeholder enables it to be a part of the strategic planning process and delivery mechanism. What is missing from this is any substantive role for local government to help develop institutions for democratic governance that would enable or facilitate greater emphasis on political deliberation by citizens, and their increased participation in policy formulation and decision-making by associations in civil society.

So what should the role of local government in the sustainable management of our water resources be? Should local government be primarily a subservient service delivery organization or should it be actively involved in regional policy making? Should local government play an effective proactive role in integrated catchment management and governing the conduct of a population to ensure sustainable regional development? Our governance approach includes local government in the process of policy formation for the sustainable management of a region's water resources, and it implies that this involvement requires a good understanding of the ecological health of the region and increased funding and a strong coordinated and integrated approach. The actual on-the-ground trend is for local government's role and responsibilities to widen, and so more local government influence and involvement in governing a population's conduct is to be expected. This trend should be supported, since local government is the level of government that is closest to regional communities, it can attach conditions that protect water resources in the public interest, and it has the flexibility to act in the public interest to address catchment management issues. It is this level of government that can enable democratic governance by the local groups in civil society who are driving the shift to sustainability.

¹¹Ibid, p. 73.

¹²Ibid, p. 28.

The best way to indicate the complexities involved in integrated catchment management as a form of governance that is connected to the deliberative side of democratic institutions is in terms of a case study. This shows citizens as engaged participants in water issues troubling the region.

7. Case Study: Eyre Peninsula

Eyre Peninsula is chosen because it is at the pointy end of water politics in South Australia. This region has a long history of development in the form of pastoralism (sheep), dryland farming (cereals), irrigation-based horticulture (wine), tuna fish processing in Port Lincoln and tourism. The development of this low rainfall region has been closely dependent on the availability of water, and successive state governments have had to build an extensive infrastructure to secure supplies of water to a sparse population. This pipeline infrastructure, which taps into the Tod River reservoir and various groundwater basins, has high operating costs that are roughly double the statewide price. The history of inappropriate land use, past and present government policies coupled to the failure of markets to adequately value soil, water and vegetation has led to major water imbalances, falling levels of aquifer water, increasingly saline ground water and collapsing underground wells. Consequently, there are two prescribed wells in the region—Southern Basin Prescribed Wells Area and County Musgrave Prescribed Wells Area. These were proclaimed to conserve groundwater resources for public water supply and stock and domestic use. As the future of this arid region of South Australia is one where development is severely constrained by lack of water, so the social trust and mutual understanding based on the shared vision, ideals and goals of the taken for granted settler developmentalism is being eroded.

The politics of water became a pressing public issue in late 2001 when the former Liberal government implemented a plan to connect Streaky Bay, which had suffered water and development restrictions, to the Lower Eyre Peninsula Pipeline. SA Water justified this pipeline extension on the grounds that the additional draw down would have negligible impact on the Uley South basin. The newly elected Labor Government recently supported this decision. The politics of water is expressed in the considerable confusion and conflict over the figures indicating water table levels, whether or not the region is actually suffering from a water shortage and what is a sustainable yield of the southern basins. The Department for Water Resources continues to be upbeat about the availability of water recharge. The State Water Plan 2000 says there is an abundance of water, though it adds that this position is currently under review (Vol. 2, p. 128). It says that more efficient water resource use can permit further regional development. The Department says that it is actively conducting extensive on-the-ground research in support of community concerns. Local on-the-ground knowledge holds that

the region's water supply is already stressed without the extra demand of the new Streaky Bay pipeline, that SA Water's customers currently use considerably more water than the sustainable yield and there is not enough surface and groundwater water to sustain large-scale developments. Local knowledge holds that the state government should be putting resources into finding alternative sources of water for Streaky Bay and the region in the form of desalination plants.

The intense public debate over water and development came to a head at the Wudinna Water Summit in April 2002. What can be inferred from the public debate is a formation of a consensus position that:

1. Eyre Peninsula has a serious water problem and the solution does not lie in further exploitation of the underground water basins or drawing water from an already over-allocated Murray River;
2. the lack of water on Eyre Peninsula stunts the region's development;
3. conservation and recycling of storm and waste water is necessary yet it is not being implemented;
4. desalination plants is the most efficient and cost effective solution;
5. consumers will need pay a lot more for their water. Estimates are that it will be up from the current 94 cents a kilolitre to between \$1.50 and \$3.50 a kilolitre.

The water summit is politically significant. It indicated a mobilised community with a critical mass of people with an understanding of the need for effective partnerships as collaborative arrangements to fill the gap left by the failure of both regulation and market forces. The summit indicated a greater community ownership of issues with stakeholders getting together to build consensus on the region's water problems by placing the local issues in a regional perspective. Networks have assumed increasing importance in information gathering, information sharing, building capacity and providing a support environment. They have developed a critical review function, fostered social capital, played an educational role and have a strategic focus. The partnership and networks have laid the foundation for improved community participation in managing water resources and integrated catchment management and point to the need to address democratic governance of the region.

Democratic governance arises because the integrated catchment management mechanisms that have been put into place are not working well in terms of ensuring ecologically sustainable development. The Eyre Peninsula Catchment Water Management Board (EPCWMB) does not a regional plan; is under-resourced; says that the water problems have risen from an eight year dry spell; and considers obtaining water from the Murray River via the Morgan-Whyalla pipeline to be an option that should be considered. It is seen by the community to have a lack of commitment to solving local water issues on a long-term basis and to be more concerned with managing the developing political crisis. Some local councils (eg., the District Council of the Lower Eyre Peninsula) are fostering development that presumes an over allocation of water and are unwilling to provide information about development

applications that will use in excess of 1000 kilolitres of water annually (the District Council of the Lower Eyre Peninsula, Streaky Bay and Ceduna). SA Water proposes an overdraw of water resources in the short term to prevent water restrictions from being introduced because it is more cost effective than desalination plants. The state government has shown little interest in the long-term environmental sustainability posed by the water problems of the region, and it has been extremely slow in taking up the desalination option that would provide alternative supplies of water.

What has been put in place is a task force from SA Water, United Utilities and the EPCWMB, which is working on a regional EP Water Supply Master Plan. This deals with the current situation, high and low scenarios of projected future water demand, possible solutions and an agreed strategy by which to move forward. The Master Plan appears to favour the desalination of the brackish water of the Tod River as a short-term, cost effective option. This form of master planning does not address the long-term need for alternative supplies of water for this arid region. This would require considering the option of having a number of small desalination plants scattered around the region that are linked into new forms of green energy connected to the region's electricity grid.

The running on the issue has been made by community action in civil society and this has seen the formation of EP Water, a community-based resource information facility without public funding. This powerful championing for change towards sustainability has been actively supported by some of the local councils, which include those of Port Lincoln (reduced water consumption, conservation and increased price of water), Elliston (a wind-powered desalination plant) and Whyalla (a solar desalination plant and recycling of waste and storm water to cut its dependence on River Murray water. This community action challenges the tendency of political system to become a closed, self-referential system with its round table arrangements, coordinating committees in the grey area of state and civil society and its own circuit of communication and codes. The unresponsiveness of this neo-corporate political system to citizens concerns is challenged by the debate in the public sphere that highlights issues that needs to be addressed by the political system because they cannot be solved elsewhere.

8. Policy implications for regional governance

The above case study of Eyre Peninsula indicates a region struggling with its management of water resources to achieve ecologically sustainable development. The pressing water issues mean that the challenge for regional Australia in the 21st century is not just to fix its social and economic problems, but rather to build socially, economically and environmentally strong communities that have the necessary linkages to the global market. It affirms that the regional level provides the way to best

understand the connections between community viability, economic development and environmental protection and to make the planning decisions for sustainable regional development.

The Eyre Peninsula case study provides us with a way to begin to develop the outlines for an issues paper based on the desktop review. Though those in Eyre Peninsula recognize themselves to be part of a regional community, this does not mean that the case study is a unique situation that does not have general governance implications for the rest of South Australia. Various policy implications for regional governance of water resources can be inferred:

- * though the various parts of the catchment management system are rational in themselves the whole is not, as it is failing to achieve its goal of ecologically sustainable development;
- * the catchment management policies have been generally reactive not proactive. The policies have been developed to respond to specific issues or circumstances, rather than as part of a long-term planning process;
- * the water resource governance system clearly lacks coordination and policy level integration. Instead of integrated catchment management we have an ad hoc, fragmented and disjointed institutional management of water resources that has led to gridlock or institutional inertia and a failure to embrace integrative and creative solutions;
- * there has been a breakdown in trust, working relationships and community/agency capacities to negotiate and to evolve a common interpretation of an agreed problem that focuses on collective action;
- * there is a need for institutional change that moves beyond the traditional top-down consultative approach to public participation based on master servant relationship to one centred around more community engagement and partnerships;
- * the conventional approach of local government nesting in at the bottom of a hierarchy of agencies acts as a constraint on the proactive stance taken by those local councils who have made the running on seriously addressing the water problem and made water resource management part of their core businesses;
- * there is a need to explore a horizontal model of integration in which all participants are viewed more as equal partners;
- * the failure of the EPWCMB to act as a lead agency and establish workable cooperative arrangements for integrated catchment management suggest the need to devolve more responsibility to local communities to manage their own water resources;
- * if local government appears to be the institution offering the best arena for an institutional regional framework then local government in the region is fragmented and disparate. Despite their potentially

widening responsibilities and roles they have not been allocated by state government the powers, revenue-raising capabilities and capacities to take the initiatives;

* there is a need for clarification of powers, functions and linkages to make the governance system more compatible with community aspirations and concerns;

* rather than a major restructuring of the three tier system of federal government, the emphasis should be on improving the coordination of spheres at the catchment scale;

* despite the activities of some councils being constrained by rural conservatism and developmentalism, there is great value in the potential co-operation amongst the local councils to sustain regionalism, share resources and co-ordinate their activities to obtain greater control and autonomy over their affairs.

One overall policy implication that we can infer from these considerations is that integrated catchment management should not be abandoned as a mode of governance in South Australia as the basis for a regional community's response to water problems. The above problems should be interpreted as primarily arising from how catchment management has been put into effect by state governments, whilst the response to the problems should be interpreted as the need to strengthen the system of catchment management as a regional mode of governance. This policy implication implies a shift away from the closed neo-corporate political world by treating local government, local associations in civil society and local communities as valuable and active partners in the system of catchment management. Since they are actively involved in sustainable regional development so they have considerable normative responsibility for the democratic process that constitutes itself through agreement orientated to the common good that is reached by dialogue. It is reaching an understanding through political deliberation about the rule so for our life in common that underpins the legitimacy of the rule of law as an enacted actionable norms and a coordinating mechanism.

Towards an Issues Paper: Sustainable regional development

The third objective of the desktop review is to develop an issues paper around local government and the management of water resources based on its finding of the statutory framework. An outline of the issues can be sketched if we locate the statutory framework of governance that acts as a coordinating mechanism within regional development. Issues about water allocation and management are inherently political since much of the history of the Murray–Darling Basin water politics has been about growing a bigger cake. We can then interpret the new water politics of the region as a case study in changing the conduct of a population from the ‘growth machine’ politics favored by local elites towards a more sustainable regional development. On this interpretation Eyre Peninsula, as the pointy end of water politics in South Australia, can illuminate the issues in the current structure of the integrated management of water resources across the state.

Background Issues

What the case study shows in terms of broad policy is that the admission of ecological concerns into debates about economic growth has been a step forward. Sustainable economic growth cannot be achieved in the long run if environmental damage is disregarded and if those who cause the environmental harm continue to escape bearing the full cost of their actions. Secondly, the case study shows that the concern with the relationship between water and economic growth also involves the social and cultural dimensions of development associated with prosperous communities. It involves the cultural traditions, beliefs, values and networks of local communities and their capacity building. Thirdly, sustainable development is connected to intergenerational equity in that the local community needs to ensure that water resources are available for future generations.

However, the case study also highlights the limitations to the current understanding of ecologically sustainable development. When defined as ‘using, conserving and enhancing the community’s resources so that ecological processes, on which life depends, are maintained and the total quality of life, now and in the future, can be increased.’ The reference to natural resources in integrated catchment management within policy making circles is more about conserving agricultural resources to promote economic development than it is about native flora, fauna and ecological processes. Hence most of the Natural Heritage Trust funding and state matching funds have been channeled into various agricultural programs, rather than biodiversity programs to help endangered and threatened species. Yet the imminent closure of the Murray Mouth, which is due to lack of river flow in the River Murray, indicates the need to think of resources as ecological reserves to ensure the rivers health, the ecological integrity of the Coorong wetlands and of the migratory birds who depend on that habitat.

What is still lacking in South Australian policy making circles is a clearly defined long-term vision for the State's environment that goes beyond efficiently using the landscape for human production (eg., grapes, olives, citrus) to a concern to sustain the ecological systems and their wildlife. The current emphasis on the River Murray as 'a healthy working river' highlights the 'working' at the expense of 'healthy' and 'river'. With no river flows over the Goolwa Barrages since November 2001, and with this situation likely to continue for the rest of 2002, the Murray is not healthy and not a river. It has become a series of irrigation pools. The buildup of salinised groundwater from the Upper South East Drainage scheme into the southern lagoon indicates that the Coorong has become little more than a plughole for an ecologically unsustainable European-style agriculture. We have yet to devise a vision for an ecologically sustainable South Australia.

The case study also indicates that the issues of governing to change our conduct are crucial. Governance arrangements have been structured to both shield the government from apparent responsibility and criticism and to manage markets to produce the desired environmental outcome. Governing through the liberalization of the market from the 1980s to 2000 to achieve economic growth presumed that the undesirable environmental outcomes of growth could be offset by other environmental measures. The assumption was that the economic liberal reform program would expand the national cake and that fixing up the ecological consequences would be a matter for political choice. Since 1996 the political choice has been for small government, and the commonwealth's packages of financial assistance (Natural Heritage Trust) to local groups to achieve environmental goals has ensured that it is seen to be less directly responsible for repairing the landscape. It has effectively sidestepped the political strain of mediating between competing economic and environmental claims.

However, the instruments of reform ultimately need to shift from solely using market instruments to attain the efficient allocation of resources and to continually prop up an European agriculture production system in a globalised world. The instruments of reform need to address the core issue of the problem: namely the extensive landclearing to develop intensive European-style agricultural production systems, re-establish deep rooted native vegetation and reduce the over-allocation of water in the Basin. Dryland salinity, waterlogged land and reduced river flows are consequences of the extensive landclearing and development of an unsustainable agriculture system. Addressing the consequences in terms of an extensive drainage system in the South East props up this agricultural system but fails to address the need for extensive vegetation. The political system's reliance on governing through coordinating a liberal market has failed to address the core issue of the decline of the River Murray, and this has reinforced the marked decline of confidence and trust in government by the basin states. Yet 'saving the Murray' requires bringing citizens back into the political process to

find new ways for citizens to participate, fostering social capital and new associations in civil society and developing new mechanism to foster deliberative democracy. There is very little rethinking of government beyond the neo-liberal one of steering not rowing and ensuring the smooth delivery of services to customers. In a market economy with less government interference the guardian of environmental public law is the independent regulator (such as the EPA's) who uses legal instruments to prevent damage to the environment from development and to steer the conduct within the economy in a more desirable direction.

The objects of the *Environment Protection Act 1993* are clear. They are to promote the principles of ecologically sustainable development. The Act says that this means that 'the use, development and protection of the environment should be managed in a way, and at a rate, that will enable people and communities to provide for their economic, social and physical well-being and for their health and safety, while

- (A) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
- (B) safeguarding the life-supporting capacity of air, water, land and ecosystems; and
- (C) avoiding, remedying or mitigating any adverse effects of activities on the environment.

The Act then says that proper weight should be given to both long and short term economic, environmental, social and equity considerations in deciding all matters relating to environmental protection, restoration and enhancement. This involves ensuring that all reasonable and practicable measures are taken to protect, restore and enhance the quality of the environment having regard to the principles of ecologically sustainable development. This also means preventing, reducing, minimizing and, where practicable, eliminating harm to the environment.

Unlike the ACCC, the EPA regulators are quite weak as they failed to act to prevent the long-term damage to the environment caused by the impact of agricultural production and townships on the quality of water. It is also likely that the regulatory agencies are unlikely to act to prevent the damage caused by the salinised groundwater flows from the Upper South East Drainage scheme currently flooding the Coorong's southern lagoon. Public law has failed to ensure wise environmental management and to coordinate action towards a more sustainable economy. The steering towards economic growth by the market and administrative power has overwhelmed the ESD norms of public law, and it is this steering that determined the way natural resources have been utilized. As an illustration, the EPA's *State of the Environment Report for South Australia 1998*, indicates that groundwater use in the Northern Adelaide Plains, Barossa Valley, Southern Vales and Angas-Bremer areas 'is either at or above resource capacity, with decreases in yield and quality being experienced. In

1995 water use in the Northern Adelaide Plains was more than twice the estimated sustainable resource capacity. Groundwater quality is declining in some parts of the South East.

We should not be surprised at this failure of the legal system. Historically water law was about facilitating the management of our groundwater and rivers for consumptive demand with scant understanding of the fragility of the ecosystems that were dependent on water. The legal system has been complicit in allowing a significant overallocation of water to irrigators, the significant degradation of riverine environments, the draining of wetlands and the destruction of natural habitats. It also failed to ensure the allocation of water for ecosystem use. If the regulatory agencies are to act in terms of the objectives of the *Environment Protection Act*, then they should advocate that a legislative duty is imposed on all persons in the allocation and management of water to comply with ecologically sustainable management to rehabilitate degraded ecosystems, protect freshwater ecosystems and allocate water for rivers, floodplains and wetlands. Water agencies, such as SA Water, should be made accountable for their performance in acting on their ecological duty on behalf of the people of the state who have open access to water plans and increased involvement remedies for mitigating any adverse effects of activities on the environment.

ICM Issues

The new kid on the block is integrated catchment management with its partnership ethos. This involves the promise of extending the process of dialogue between a government and community and building the social capital in the social networks of local communities to enable citizens to participate. Possibilities exist for this regional form of government to facilitate associative and deliberative democracy.

One issue is the need to find ways to support local government's role in ICM. Whilst water management is not currently seen to be core business by some local councils—ie., they still see it as the domain of State and Commonwealth government—the growing importance of water management is now recognized by local government. Local council issues of development are part of a broader space and time context, and it is recognized that a clear vision is needed of how water catchments should be managed within the context of the ecologically sustainable development of the region. The marked variation in the willingness of local government to develop and take part in integrated catchment management (ICM) indicates an urgent need for guidelines to be developed to support local government's coordinated role in ICM.

The case study also highlights that the problems associated with water are not simply issues solved by more hydrological scientific research. They involve social and institutional issues associated with governing the conduct of a regional population so that the issue of regional growth needs to be addressed in relation to water problems. One aspect of this is the need to strengthen and integrate the

institutional arrangements and organizational structures of governance of catchment management. The Interim Report of the SA. Select Committee on the River Murray said that it had heard that the roles and responsibilities of each level of governance of natural resources 'is unclear and that there is widespread confusion amongst groups and the wider community.' It said that it was concerned this situation is leading to 'duplication of effort, poor co-ordination, and integration of activities within the SA Murray-Darling Basin, and is thus giving rise to frustration amongst the community and the wasting of valuable financial and human resources.'(p. 24). This leads to frustration and a lack of progress in implementing catchment management plans especially amongst the local action planning groups (LAPS). The Final Report of the S. A. Select Committee on the Murray River highlighted the lack of implementation to deliver change on the ground, and it mentioned the lack of professional and technical support from state agencies and catchment management boards, the lack of security of funding and short-term employment arrangements for project officers.(p. 42).

A third issue that can be identified is that institutional and social issues are the key impediments to effective catchment management. The problems that can be identified are those relating to coordination; to capacity building; contradictions between bottom-up consultation and community participation and top-down policy; the lack of integration of economic development with ecological management; institutional barriers to effective integration and the effectiveness of local institutions. Several areas can be identified in blocking the implementation of integrated catchment management:

- * volunteerism is a major issue due to the overload on individual and agency staff leading to burnout, over-dependency on good will and avoiding tackling the hard issues.

- * the resources to community organizations from the short-term 3 year grants are connected to political cycles and are inadequate to enable them to equitably and effectively plan and manage for sustainability.

- * there has been a withdrawal of state core funding for ICM as well as agency support services. Responsibility without resources cannot be called empowerment.

- * there has been an emphasis on getting the science and hard data nailed down to develop effective action, rather than evolving the institutional governance mechanisms to shape our conduct with current understandings of the problems and solutions.

- * there is a need for a culture change amongst the government agencies which traditionally hold they have the power to care, restore and conserve natural resources and they privilege their own particular knowledge as they hold that they are the primary and most informed players. Partnership requires a deep systematic cultural change within state bureaucracies so they are willing to devolve their power and decision-making capacity to regional bodies and local government.

These institutional and social impediments to the development of integrated catchment management highlight a fourth issue. The effort spent on the development of catchment management strategies and plans has not been matched by the on-the-ground implementation of these plans. Catchment management will not be effective unless these regional organizations have decision-making authority, adequate resources, appropriate management capacities and are seen to be legitimate institutions by a majority of stakeholders. This legitimation involves local government being a genuine partner, since it has a strong resource allocation powers and a clear local mandate and jurisdiction in environmental management.

A fifth issue involves the devolution of power to the regions. Eyre Peninsula as a case study of sustainable regional development indicates that regional communities are not the passive recipients of policy initiatives from state government. The regional autonomy of Eyre Peninsula is such that the people of the region are taking responsibility for regional development. This autonomy challenges the process of decentralisation fostered by the state government centred in metropolitan Adelaide. Decentralisation means the devolution of responsibility is coupled to subservience and it legitimates the withdrawal of funding whilst pointing to community incapacity to engage in self-help. Within decentralisation local government is subordinated to, and a product of, state government within a structure of top-down planning. Consultation means that stakeholders in a region are brought together by a government agency, asked their views, and following the consultation period, action is then taken by government agencies with little consideration for local groups. If local government was created to be subservient, then its current development of initiatives to address the over-allocation of water expresses some autonomy from the state government. Local government can act as a catalyst to help drive sustainable regional development in which decisions are made to balance ongoing development with the protection of water resources.

The Eyre Peninsula case study shows that, for a more autonomous model of regional governance to work, there must be strategic investment in community capacity-building and empowerment so that regional communities can determine their priorities in relation to regional development. The devolution of power, vertical integration and decision-making capacity of the partnership approach could be centred around a community-based resource information centre where the geographic information, scientific data and socially-robust knowledge can be used more effectively to ensure development that is ecologically sustainable. The state agencies could then provide the technical support that the community requires whilst the regional catchment boards could act as regional facilitators. The Herbert River Resource Information Centre in North Queensland provides a model of a joint approach in which the effective relationships amongst a variety of groups or stakeholders in a

catchment work together to ensure sustainable, regional development. This integrates community involvement, technical knowledge, organizational structure and policy objectives.

However, the democratic model of governance is blocked by power not being devolved to the region, the lack of regional decision-making, flawed management structures and the lack of funding. Consequently, people's organizational abilities and capacities are not being raised so that their initiatives and plans can be implemented. Those in the regions are being asked to undertake the complex activity of regional planning for the sustainable use for water resources without the intellectual tools, social capital or the support mechanisms to help them in the task. This is the central flaw with the current approach to sustainable regional development in a globalised world, and it challenges the future role of local government in developing a sustainable regional community. It indicates that more is needed than leadership and visioning by a few enlightened leaders, who define a development trajectory for regional communities, since this is a way to ensure elite control of the agenda of regional development. What is needed is to give regions the autonomy to build their own collective social capital.

Conclusion

We have argued that governance in a liberal market economy cannot rely on market instruments to achieve ecologically sustainable development. If it does so, then opposition will increase over the environmental damage and the failure to repair damaged landscapes. So new approaches to public governance will need to be devised and revised. Integrated catchment management is one such instrument and this will need to be supplemented with compensation for irrigators and assistance for capacity building.

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ADDITIONAL INFORMATION HELD BY THE SECRETARIAT

Attachment to Submission No. 62 - Dr Gary Sauer-Thompson

Appendix One

**Summary of discussion Paper for EP inquiry into future water supplies for
Australia's rural industries and communities**