



7 November 2002

Committee Secretary  
House of Representatives  
Standing Committee on Agriculture, Fisheries and Forestry  
Suite R1 110  
Parliament House  
CANBERRA ACT 2600

Secretary: *afan*

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HOUSE OF REPRESENTATIVES  
STANDING COMMITTEE ON  
AGRICULTURE, FISHERIES  
AND FORESTRY

Dear Secretary

**Re: Inquiry into future water supplies for Australia's rural industries and communities**

An inquiry into Australia's future water supplies is particularly timely given the perilous state of the Murray Darling Basin.

I welcome the opportunity to provide a submission to your Inquiry, specifically addressing the need for the Commonwealth to take control over the management of the Basin from the states.

For over a hundred years state-interests and political considerations have prevailed over a national approach to fixing the river's ills.

The Murray-Darling Basin is of critical economic and ecological importance to the nation. It is Australia's most important agricultural region with 51,672 farms accounting for 41 per cent of the nation's gross value of agricultural production.

The basin is also a powerhouse for manufacturing in Australia. There are 3,280 manufacturing plants in the Murray-Darling Basin, employing 62,400 Australians in the food, beverage and tobacco industries. It also accounts for 16 per cent of Australia's total textiles industry and is home of three-quarters of the mainland's hydro-electric power stations.

It is in our national interest to ensure that the Murray Darling Basin is a healthy ecology. But there is mounting evidence that the future of the river is in jeopardy.

Three recent authoritative studies on the ecology of the basin have been conducted – the Australian Dryland Salinity Assessment 2000, the National Land and Water Resource Audits Australian water resources: environmental perspective and the Murray Darling Basin Commission's salinity audit.

The findings of these studies are unequivocal. The Murray-Darling river system is dying.



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That is why the Commonwealth Government needs to take matters into its own hands and assume management of the basin. There is too much at stake not to.

But at present, section 100 of the Constitution leaves the power for the "reasonable use of the waters of rivers for conservation or irrigation" in the hands of the states.

That raises the question of what "reasonable use" means and whether current water usage practices meet that criterion. If they don't, have the states forfeited their power to the Commonwealth? Could the Commonwealth now "cover the field" in this area of law?

It is a matter that has never been put to the test in the High Court and I would submit that it should be. The definition of "reasonable use" needs to be settled.

Is it a "reasonable use" of the river to use so much water for irrigation that Adelaide's population of one million people won't have drinking water two out of every five days by the year 2020?

Is using a disproportionate amount of water to irrigate rice fields a "reasonable use"?

Is "reasonable use" of the river occurring when it is necessary to dredge its mouth to prevent it closing or when fish populations are down more than 80 per cent on original population numbers in some parts of the river?

Is it "reasonable use" when 70 per cent of the river's median annual low never reaches the Murray mouth in South Australia?

I am sure that most Australians would not regard the current practices as "reasonable use".

Indeed, Professor of Law at the University of NSW, George Williams, believes that "in this day and age, when we're thinking about 'reasonable' in the context of waterways and land use, quite clearly people would understand environmental factors as being part of any such decision".

In 1971 now Professor Sandy Clark wrote a paper on contemporary legal opinions as to the rights of respective states along the River Murray. It was noted that in the United States, Switzerland and Canada there is a long tradition of federal intervention on issues regarding water rights to impose a national view.

Clark's paper visited several constitutional issues in relation to water rights along the basin. The 1878 case of Earl of Sandwich versus Great Northern Railway Co would seem to support the suggestion that

"reasonable" in section 100 provided that the use by an upper riparian which interfered with the customary flow was necessarily "unreasonable".

But there is also plenty of support among scholars for the opposing view that provided due regard was had to "proper methods of conservation or irrigation known at the time" then there is no unreasonable use of water.

I would submit that the Commonwealth should take a test case to the High Court to argue this point and obtain a ruling as to whether we have passed the point when it can be considered that the states have reasonably used the waters of the basin. It is too important a matter not to address.

If ever we needed proof that state governments can't be trusted when it comes to water management it can be found in the Queensland Government's refusal to sign the water cap agreement. Despite Queensland's obfuscation, Victoria, New South Wales and South Australia signed the agreement in 1997 based on 1993-94 extractions from the Murray and the Darling.

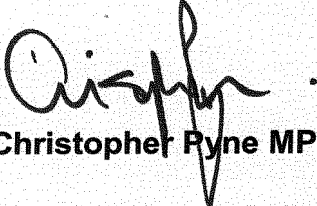
In fact, Queensland still takes all the water from some rivers that are supposed to flow into the Darling, such as the Condamine River. A report by the National Competition Council noted that in 1993-94, 60 per cent of the natural flow from the Balonne River reached the Murray-Darling Basin wetlands. By 2000 the flow had plummeted to just 26 per cent.

We must remedy the debilitating situation of state governments creating water management policy based on parochial interests. The Commonwealth Government can provide the sort of leadership that is required to repair the enormous environmental damage inflicted on the Murray Darling Basin.

I see a High Court test case on the words "reasonable use" as one possible way of achieving that aim.

Thank you again for providing an opportunity for me to make this submission. Please don't hesitate to contact me if you would like me to appear before your committee.

Yours sincerely

  
Christopher Pyne MP