

Chapter 2

Issues raised during the inquiry

Introduction

2.1 A large number of the submissions made to this inquiry related to the specific issue of the proposal of the Victorian Government to extract 75 gigalitres of water from the Goulburn River for use by the City of Melbourne via the Sugarloaf (North-South) pipeline. Given the high level of community interest, this report will examine the issue of this proposal in some detail.

2.2 The bill seeks to impose a Basin-wide prohibition on any new extraction of water for use outside the Basin (with certain exceptions). This chapter commences with an examination of the Basin-wide implications of the bill.

Extraction of water resources from the Murray-Darling Basin

Future extraction for use outside the Basin

2.3 Significant evidence is available concerning the scarcity of water resources in the Murray-Darling Basin. In February 2009, the Murray-Darling Basin Authority reported that continued drought conditions saw active storage of water in the Basin at 16% of capacity (or 1470 GL), with January inflow into the system falling to 70GL, approaching the historic minimum of 50GL.¹

2.4 The principal effect of the bill would be to prevent further extraction of water resources from the Murray-Darling Basin. A particularly common theme among submissions was that water from the Murray-Darling Basin is already over allocated and, consequently, no new extractions should be authorised. For example:

1. The over-allocation of water from the Murray Darling Basin.

This problem is now widely recognised but dealing with it will take many years and there is no clear way of knowing exactly how many. Therefore no further water should be taken from the basin until existing needs are met.²

2.5 This was a view echoed in other submissions. For example, the Warby Ranges Landcare and Rabbit Control Group put forward the principle that 'taking water from one catchment to another should be avoided at all costs'.³ Other submissions expressed the view that existing water shortages and overallocation of water resources

1 Murray-Darling Basin Authority, *Murray River System Drought Update*, No. 17, February 2009.

2 Cr Judi Harris, Mildura Rural City Council, *Submission 22*, p. 1.

3 Warby Ranges Landcare and Rabbit Control Group, *Submission 17*, p. 1.

in the Murray-Darling Basin require a restriction on new extractions of Murray-Darling water resources for use outside the basin, and argued against additional population centres drawing on those resources:

The simple task for this inquiry is to assess the failing health of the lower River Murray, lakes and wetlands and to take strong action in denying further diversions to distant growing population centres. Those centres must recognise that limited resources must be the main consideration in determining whether populations can grow. Melbourne's focus has to be on water conservation and re-use.⁴

2.6 The fact that water resources in the Murray-Darling Basin are scarce, with overallocation being a significant contributor to this scarcity, has been long acknowledged by governments. Overallocation of water resources was directly acknowledged by the Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray Darling Basin (June 2003 - which formalised the 'Living Murray Initiative'), it is directly referred to in the objectives of the National Water Initiative: objective (iv) of the initiative calls for the 'complete return of all currently overallocated or overused systems to *environmentally-sustainable levels of extraction* [italics in original]'.⁵

2.7 Clearly, a ban on future extraction (i.e. only on water which was not being taken for use outside the Basin prior to 3 July 2008) will not restore the Murray-Darling Basin to health.

2.8 The committee supports the general consensus that action is required to restore the Murray-Darling to health, and does not dispute that overallocation is a significant cause of scarcity of water in the basin.

2.9 However, whilst there is general agreement on the extent of the problem, this does not mean that imposing restrictions on particular types of extraction (such as that proposed by the bill) is an appropriate response. The South Australian Government noted:

South Australia currently uses River Murray water outside the Basin for metropolitan Adelaide and communities across the state, including country towns as far west as Ceduna. This water is supplied from within the long-term diversion cap for South Australia for water taken from the River Murray. For many of these communities River Murray supply is the only available source of water and for others it is an essential component of maintaining water security... The amendments could effectively prevent not only new or additional use of water outside the Basin, but also changes in timing, manner, volume and location of supply for existing purposes.⁶

4 Alexandrina Council, *Submission 21*.

5 Intergovernmental Agreement on a National Water Initiative, paragraph 23 (iv), 25 June 2004.

6 Hon Karlene Maywald MP, Minister for the River Murray, Government of South Australia, *Submission 32*, p. 1.

2.10 The South Australian Government expressed a desire that, rather than restricting any possible future use of water outside the Basin, use of water outside the Basin should be permitted, provided it is sustainable use consistent with the Basin Plan:

The South Australian Government is concerned about the health of the River Murray and strongly supports the need to address over-allocation and use water within sustainable diversion limits. However, it also supports the need for States to retain flexibility regarding how they use water within sustainable diversion limits.⁷

2.11 The idea that all future extractions for use outside the Basin should be prohibited was a concern to the Northern Irrigators Council, who pointed out:

The Amendment would prevent growth in centres outside the Basin now dependent on Goulburn or Murray River water. Consequently places like Ballarat, Adelaide, Port Pirie or Port Augusta would have no right to additional supply. Whilst NVI is uncomfortable with other non Basin users competing for supply we recognise that the cost of acquiring such water will constrain demand and that the political power of population centres will carry weight.⁸

2.12 The view that sustainable use of water outside the Basin is acceptable under particular circumstances was expressed by the Australian Government. Amendments similar to the current bill were rejected by the House of Representatives during debate on the *Water Amendment Act 2008*. At that time the government stated that it was:

not supportive of mechanisms that pre-determine how water can be used, so long as the extraction of that water is within the sustainable diversion limit established under the Basin Plan.⁹

2.13 The committee agrees.

2.14 A number of submissions questioned whether further extraction of water from the Basin (specifically in the case of the Sugarloaf Pipeline, but also in other cases of water extraction approved by state governments) was consistent with national agreements:

A diversions [sic] of water out of the Murray-Darling catchment is in breach with the Intergovernmental Federal Murray-Darling Basin Reform and should be prohibited and only allowed under a COAG agreement as a

7 Hon Karlene Maywald MP, Minister for the River Murray, Government of South Australia, *Submission 32*, p. 2.

8 Northern Victorian Irrigators Inc, *Submission 26*, p. 4.

9 Reasons of the House of Representatives for disagreeing to the amendments of the Senate, Senate Amendments 6, 7 and 13, Debate on Water Amendment Bill 2008 – Senate's Amendments, House of Representatives *Votes and Proceedings*, No. 66 – 1 December 2008, p. 759.

last resort, if all other forms of urban water supply (including stormwater harvesting, water recycling, etc.) are exhausted.¹⁰

There are other reasons why this Bill should be passed, such as the fact that the Goulburn River water diversion to Melbourne via the Sugarloaf Pipeline is in breach of the Intergovernmental Federal Murray-Darling Basin Reform.¹¹

2.15 The committee believes these claims to be incorrect. The COAG Agreement on Murray-Darling Basin Reform, agreed on 3 July 2008, provides as follows:

State Water Shares and Sustainable Diversion Limits

3.2.8. The parties affirm the following in relation to State water shares and sustainable diversion limits:

(a) State water shares only apply to surface water in the River Murray System and refer to the apportioning of the shared water resource between Victoria and New South Wales and the entitlement to South Australia. State water shares can only be changed by the unanimous decision of the Ministerial Council;

(b) Sustainable diversion limits in the Basin Plan (as defined in Part 2 of the Water Act) will set the quantity of water that can be taken from any part of the Basin water resources ; and

(c) For surface water in the River Murray System, the Basin Plan will determine the quantity of water available to be taken by NSW, Victoria and South Australia from their State water shares, but not alter the State water shares themselves, which can only be changed by the unanimous decision of the Ministerial Council.

Operation of the River Murray

3.2.9. The parties note the considerable body of decisions and practice that determine the operation of the River Murray System, as part of the delivery of water under State water shares. The Authority will continue these arrangements unless otherwise agreed by all parties through the Ministerial Council or the Basin Officials Committee as appropriate.¹²

2.16 The committee notes that the Intergovernmental Agreement does not restrict the purpose to which state water shares are used. Therefore, it is arguable that introducing a restriction in the Act on the use of water outside the basin by states would itself be regarded as a breach of the Intergovernmental Agreement.

2.17 The view of the committee is that, in general, there are circumstances in which Basin water may appropriately be used outside the Basin. This is already happening in a number of instances, including the provision of water supplies to

10 Acheron Valley Watch, *Submission 5*, p. 6.

11 Cr Judi Harris, *Submission 22*, p. 2.

12 IGA, 3 July 2008.

regional centres in several states. It follows that there may well be occasions in the future in which either the amount of water being extracted for use outside the basin, or additional destinations, will be subject to change. It is conceivable that some future use of water (either permanent or temporary diversion) could be of higher priority or necessity than an existing use of water. A blanket ban on any future use of water could be unnecessarily broad, and could have unforeseen consequences.

2.18 The committee is of the view that future extractions of water for use outside the basin should clearly be confined only to situations where the use of such water is sustainable. The committee notes that the effect of the bill would appear to undermine the provisions of the 3 July 2008 Intergovernmental Agreement on Water Reform.

2.19 The bill would also effectively signal to state governments that, even for an initiative that is entirely state government funded (as is the case for NVIRP Stage 1) and complies with intergovernmental agreements and basin caps, the Commonwealth is going to tell them how they should use their water. The committee does not believe this to be appropriate.

Sugarloaf Pipeline

2.20 The bill would impose Basin-wide measures. However, the title of the bill (referring to 'saving the Goulburn and Murray Rivers'), the second reading speech at the time of introduction by Senator Birmingham, and most submissions provided by stakeholders concentrated on the particular example of extraction of water from the Goulburn River via the Sugarloaf (or North-South) pipeline. The committee acknowledges previous work in relation to this pipeline by previous Senate Committee investigations.¹³

The pipeline project in the context of the Victorian Water Strategy

2.21 The Victorian Government set out its water strategy in the 2004 White Paper, *Our Water Our Future*, and further developed in the 2007 policy document, *Our Water Our Future: the Next Stage of the Government's Water Plan*.

2.22 The 2004 White Paper outlined some 110 initiatives seeking to deliver water to sustain growth in the state for the next 50 years. The strategy included water pricing, river restoration works, urban water savings initiatives and water trading systems. A critical aim was to 'manage the water allocation to find the right balance between its economic, environmental and social values'.¹⁴

13 See Senate Standing Committee on Rural and Regional Affairs and Transport Reports, *Water Management in the Coorong and Lower Lakes (including consideration of the Emergency Water (Murray-Darling Basin Rescue) Bill 2008)*, October 2008, pp 47-48; and *Water Amendment Bill 2008 [Provisions]*, November 2008, pp 11-12.

14 Victorian Government, *Our Water Our Future*, <http://www.ourwater.vic.gov.au/programs/owof>, (accessed 13 March 2009).

2.23 *The Next Stage of the Government's Water Plan* (2007) was released in the context of continued water shortages and reduced inflows into water catchments. It announced a five year, \$4.9 billion dollar package of initiatives to:

secure our water supplies by building a desalination plant, saving water through upgrading irrigation channels, expanding the Water Grid to pipe water around the State and extending conservation programs and recycling... to manage the risk that Victoria's worst drought will continue.¹⁵

2.24 A key aspect of the 2007 package was the Northern Victorian Irrigation Renewal Project (NVIRP), also referred to as the Food Bowl Modernisation Project. The NVIRP will administer a \$2 billion program of works to modernise and upgrade aging irrigation infrastructure in northern Victoria.¹⁶

2.25 It is estimated that Stage 1 of the NVIRP will yield 225 gigalitres in water savings per year from 2010/11, at a cost of \$1 billion.¹⁷ Contributions for Stage 1 of the project will be \$600 million from the Victorian Government, \$300 million to be provided by Melbourne Water and \$100 million to be provided by Goulburn Murray Water.¹⁸ Stage 2 of the NVIRP will be funded by the Commonwealth, with water savings to be shared equally between irrigators and the environment.¹⁹

Victorian commitments regarding water for the Sugarloaf Pipeline

2.26 The Victorian Government announced that the water savings of 'up to 225 GL annually, will be shared equally with the irrigators, the environment and Melbourne'.²⁰ The Victorian government has also indicated that 75GL is the maximum amount that would be extracted after 2010. In its *Frequently Asked Questions* leaflet it states:

Will water savings vary year by year?

Losses will be recovered every year where there is an irrigation allocation. There has not been a year to date where the Goulburn or Murray systems have not had an allocation.

15 Victorian Government, *The Next Stage of the Government's Plan*, <http://www.ourwater.vic.gov.au/programs/next-stage> (accessed 13 March 2009).

16 <http://www.ourwater.vic.gov.au/programs/irrigation-renewal/nvirp> (accessed 11 March 2009).

17 NVIRP, 'Frequently asked questions', available: http://www.ourwater.vic.gov.au/_data/assets/pdf_file/0012/13611/NVIRP_FAQ.pdf (accessed 17 April 2009).

18 NVIRP, 'Fact sheet', available: http://www.ourwater.vic.gov.au/_data/assets/pdf_file/0013/13711/5-NVIRP-fact-sheet-Aug-08.pdf (accessed 17 April 2009).

19 NVIRP, 'Fact sheet', available: http://www.ourwater.vic.gov.au/_data/assets/pdf_file/0013/13711/5-NVIRP-fact-sheet-Aug-08.pdf (accessed 17 April 2009).

20 Victorian Government, 'Our Water Our Future: The Next Stage of the Government's Water Plan', available: http://www.ourwater.vic.gov.au/_data/assets/pdf_file/0015/366/The-Next-Stage-of-the-Governments-Water-Plan-2007.pdf (accessed 17 April 2009), p. 4.

The amount of savings will vary from year to year depending on the level of seasonal allocations, but will average 225 billion litres from the Stage 1 works.

How will this impact on the distribution of savings?

The new water shares will be subject to seasonal allocations, like existing water shares, and will vary from year to year. Melbourne's share of the savings will have the same security as the shares for irrigators and the environment.

...

What is Melbourne's share of the water savings?

Melbourne's Bulk Entitlement will be capped at 75 billion litres per year. Its share of the savings will have the same level of security as the savings for irrigators and the environment.

...

What is the environment's share of the savings?

The environment will receive one-third of the savings from Stage 1, or an average of 75 billion litres a year, which will be legally enshrined as an environmental entitlement.²¹

2.27 Although these statements indicate that the pipeline may carry less than 75GL in the event of savings being below 225GL, this may not be the case in 2010. In that year, the Victorian Government has indicated that 75GL of water may be provided to Melbourne via the Sugarloaf Pipeline.²² The government has justified extraction of water from 2010/11 (i.e. prior to NVIRP savings being available) on the grounds that 'if the pattern of record low inflows during the last three years continues, Melbourne may need water in 2010 before the 150-billion litre desalination plant near Wonthaggi is operational in 2011'.²³ It has identified the following sources for the water in the period 2010/11:

Melbourne will be provided with 75 billion litres in water in 2010/11 from savings achieved from existing projects including Central Goulburn 1-4, the

21 NVIRP, 'Frequently Asked Questions', available; http://www.ourwater.vic.gov.au/_data/assets/pdf_file/0012/13611/NVIRP_FAQ.pdf (accessed 17 April 2009).

22 NVIRP, 'Frequently Asked Questions', available; http://www.ourwater.vic.gov.au/_data/assets/pdf_file/0012/13611/NVIRP_FAQ.pdf (accessed 17 April 2009).

23 NVIRP, 'Frequently Asked Questions', available; http://www.ourwater.vic.gov.au/_data/assets/pdf_file/0012/13611/NVIRP_FAQ.pdf (accessed 17 April 2009).

Shepparton Modernisation Project and, if necessary, transferring water from the Goulburn River water quality reserve.²⁴

2.28 Apart from the special circumstances of 2010, however, the Victorian Government has made clear public commitments not only that the maximum annual water extraction for the pipeline will be 75GL, but that extraction will be limited to one third of the savings delivered through the NVIRP Stage 1 project.

Commonwealth commitments regarding water for the Sugarloaf Pipeline

2.29 On 12 September 2008, the Minister for the Environment, Heritage and the Arts, the Hon Peter Garrett MP, approved the construction and operation of the pipeline and associated infrastructure to transfer up to 75 gigalitres of water per year from the Goulburn River under the *Environment Protection and Biodiversity Conservation Act 1999*, with certain conditions. Most of the conditions concern the construction of the pipeline itself, and are out of scope of this inquiry. However, two conditions refer specifically to the extraction of water from the Goulburn River:

11. To protect EPBC listed fish species (Trout Cod (*Maccullochella macquariensis*), Murray Cod (*Maccullochella peelii*), and Macquarie Perch (*Macquaria australasica*) that occur or may occur in the Goulburn River, the Melbourne water extracted to the Sugarloaf Pipeline must be:

a. not more than 75GL in any one year;

...

e. zero if the necessary regulated releases are for the maintenance of environmental flows or materially deplete water stored in Eildon Weir that is designated as being an environmental reserve.

All water savings taken from the Goulburn River must be sourced from projects that comply with the requirements of the *Environment Protection and Biodiversity Conservation Act 1999*.

...

14. The person taking the action must provide by August each year an annual report on the compliance with these conditions, including... independent audited reports of any water savings achieved and the amount of water allocated for extraction.²⁵

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- 24 Victorian Government, Northern Victoria Irrigation Renewal Project: Frequently Asked Questions', http://www.ourwater.vic.gov.au/_data/assets/pdf_file/0012/13611/NVIRP_FAQ.pdf, p. 5.
- 25 DEWHA, 'Approval Decision: Sugarloaf Pipeline Project, Goulburn River to Sugarloaf Reservoir, Victoria (EPBC/3960)', conditions attached to the approval, 12 September 2008, http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=referral_detail&proposal_id=3960, viewed 13 March 2009.

2.30 The Department of the Environment, Water, Heritage and the Arts has stated that these conditions will ensure that water will only be taken if offset by water savings:

Construction of the Sugarloaf Pipeline has been approved under the *Environment Protection and Biodiversity Conservation Act 1999*, subject to a number of conditions, including that the water it transports is demonstrably acquired through water savings achieved through the Food Bowl Modernisation Project. An independent audit is required under the conditions of the EPBC Act to demonstrate this. These approval conditions are enforceable under the Act.²⁶

2.31 This condition imposed by the Commonwealth ensures that the water to be extracted will be offset by savings from other points in the Basin.

2.32 In February 2009, the Department was asked during Estimates hearings about the source of the savings:

Senator XENOPHON—...if there are not savings following this process, does that mean that the Sugarloaf pipeline cannot be used to convey water?

Ms Skippington—That is right. The water that needs to go down this pipeline is subject to the provision that it is being saved through improvements in water systems. That means it can be identified that there are savings and that those savings need to be divided one-third to irrigators, one-third to the environment and one third to Melbourne. If there are no savings then there would be no water diverted.²⁷

2.33 The committee followed up this issue during its inquiry:

Senator BIRMINGHAM—Condition 11(a) sets the condition that extraction not be more than 75 gigalitres in any one year. On what basis was that figure come to?

Ms Skippington—That figure is based on the Victorian government's proposal that the water savings that would be used to source the water for this pipeline would come from stage 1 of food bowl, which is now named the Northern Victoria Irrigation Renewal Project. Their position is that, out of the 225 gigalitres that would be saved in stage 1, one-third, one-third and one-third would be allocated to Melbourne Water, to irrigators and to the environment. On that basis, a third would go to Melbourne if they achieved the 225 gigalitres in savings. That is where the 75 gigalitres figure—saying it would be no more than 75—came from.²⁸

26 Dr Horne, DEWHA, *Rural and Regional Affairs and Transport Committee Hansard* (Inquiry into Water Amendment Bill 2008), 13 November 2008, pp 26–27.

27 *Environment, Communications and the Arts Committee Proof Hansard (Estimates)*, 24 February 2009, pp 107–108.

28 *Proof Committee Hansard*, 15 April 2009, p. 4.

2.34 The committee notes that the NVIRP will also be the subject of referral to the Commonwealth and that this referral may result in further conditions being placed upon the development.²⁹

2.35 There is a vigorous debate amongst stakeholders about what savings will actually be delivered by NVIRP.³⁰ The committee heard widely diverging views at its hearing in Shepparton about what the project would deliver and whether it was worthwhile.

2.36 The committee simply makes two points. First, the Victorian and Commonwealth governments have both taken steps to guarantee that any water extracted by the pipeline will come from savings generated by the NVIRP, and that only one third of savings will be allowed to go to Melbourne (up to a maximum of 75GL). Whatever savings are realised and confirmed by external audit, these conditions will apply. The committee understands that, if the savings are less than 225GL in any year, then the amount of water that can be extracted through the Sugarloaf Pipeline will be reduced accordingly.

2.37 Second, the blanket ban on water extractions proposed in the bill is completely unnecessary as a vehicle to address any concerns about either this pipeline or indeed any other project. It stands to undermine inter-governmental agreements and to detrimentally affect all governments, including South Australia which might be expected to have the greatest interest in ensuring water stays in the Murray River system. It is a divisive proposal which does nothing to address the problems faced by all governments and communities both in and out of the Murray Darling Basin.

Recommendation 1

2.38 The committee recommends that the bill not be passed.

**Senator Anne McEwen
Chair**

29 Ms Catherine Skippington, Assistant Secretary, DEWHA, *Proof Committee Hansard*, 15 April 2009, pp 7–14.

30 *Proof Committee Hansard*, 14 April 2009.