



Saving the Murray-Darling Basin

What Must be Done

July 2008



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1.1 Foreword

The Murray Darling Basin is in crisis from its most northern extremities to the Murray Mouth. Only national control and management of the river can save it.

A rescue will require strong leadership from Prime Minister Rudd and Labor Governments both Federal and State. The vested interests of the States must be overruled. The States must relinquish and refer their constitutional powers in respect of the river to the Commonwealth, or the Prime Minister must over rule the states and seize control using whatever powers are available. Prime Minister Hawke did this to protect the Franklin River in Tasmania.

The States will squabble over the river irrespective of which political party governs in respective States. The States have ruined the river and they will continue to do so. That is why a national approach comprised of a referral of powers from the states to the Commonwealth, the establishment of a strong independent authority to take control of the river and a genuinely national plan to preserve it are vital.

Our National government must provide for critical human needs, the river environment and the sustainability of the system and for the needs of irrigators and river users. 93% of the river's water is used upstream of the SA border. We can only lose from the status quo. There must be change.

It's time for action – South Australia deserves better.



**Martin Hamilton-Smith, MP
Leader of the Opposition**



**Mitch Williams, MP
Shadow Minister for Water**



2.1 Background

The Constitution enacted in 1901, section 100 provides that “The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.” The cause and effect of this section means that the States maintain certain rights in relation to the Murray-Darling.

Over the years the states under various governments of all political persuasions have over allocated water within the system and neglected both the environment, each other and the national interest. Previous droughts in the early 1900’s and during World War II have brought the river to the verge of collapse but never to the extent now apparent. The relatively uncontrolled allocation of water in recent decades, combined with drought and climate change have changed the dynamics unsustainably.

This drought started in 2002. Based on the twelve year drought which lasted from 1938 until 1950 this one could continue for another six years.¹ The impact of forecast climate change and reduced rainfall patterns will further exacerbate the impact of this drought.

When it does rain the States will be fighting over who gets the rainfall as storages fill, unless a nationally driven plan is in place. Clearly the governance arrangements of the past have failed. The Murray Darling Basin has been abused and misused by the States. Present arrangements cannot cope with changing climate patterns and the expanded irrigation land use of recent decades.

This is a crisis of the Federation. Labor’s “Co-operative Federalism” will not solve it. A new set of governance arrangements and a new plan are needed. Once set there can be no going back.

¹A Future-Proofed Basin – A new water management regime for the Murray-Darling Basin, Young & McColl, University of Adelaide 2008 p 20.

3.1 Opportunity Lost

In January 2007 the Howard Liberal Government announced *A National Plan for Water Security* to save the Murray-Darling. In March 2008 the Water Act 2007 was enacted. The Act provided for the referral of state powers to the Commonwealth and the establishment of the Murray-Darling Basin Authority.

On the condition that the States gave up their powers so that the Commonwealth could act decisively, the Howard Plan provided a \$10 billion package designed to ensure that rural water use was placed on a sustainable footing over the next decade. A cornerstone of the commitment was \$6 billion over 10 years to modernise irrigation infrastructure. \$3 billion was directed over 10 years to address over allocation in the basin including the buyback water licences.²

Although an agreement was never signed by the State Premiers, all State Labor governments excluding Victoria and all State Oppositions signalled their agreement.

The SA Liberal Opposition criticised Premier Rann at this time for not doing enough to secure the Victorian Labor Government's agreement to the measure. Labor State Governments and the Rudd Labor Opposition were publicly criticised for slowing up action prior to the November 2007 Federal Election. Labor played politics with the issue and continues to do so.

² A National Plan for Water Security, 25 January 2007, p 4.

4.1 The MOU and the July COAG Agreement

The Federal Government changed in November 2007. Since that time there have been four Council of Australian Government (COAG) meetings (20 December 2007, 13 April 2008, 26 March 2008 and 3 July 2008). Water was only put on the agenda on the eve of the March 2008 meeting after intense public pressure and pressure from the State Liberals. In March 2008 COAG signed a Memorandum of Understanding (MOU) on the Murray-Darling Basin which made significant changes to the Howard Government approach.

In July 2008 the MOU became a COAG Intergovernmental Agreement on the Murray Darling Basin Reform.

Labor's July 2008 COAG agreement weakens the Howard Government proposal in several significant ways including:

- The States will no longer be required to refer their powers to the Commonwealth;
- The Murray Darling Basin Authority has been weakened as a result of powers retained by the states through a Ministerial Council;
- The implementation of a national plan to manage the Murray was deferred until 2011 after respective state and federal elections. State water plans remain in place in Victoria's case until 2019.³
- State water shares will remain in place and can only be changed subject to the unanimous approval of Basin States.

Labor's COAG agreement is not an enforceable contract. It has neither penalties or remedies against recalcitrant parties. The States have not referred their powers and therefore retain a veto over decisions made by the Murray Darling Basin Authority. The so-called agreement is awash with general statements like "the Basin States agree to use their best endeavours".⁴

³ Memorandum of Understanding, March 2008 p 6.

⁴ Agreement on Murray Darling Basin Reform, 3 July 2008, p 6.

In effect the COAG agreement was an agreement to disagree. Each state will “row its own boat” and manage its share of the water at least until 2011 as it sees fit until the proposed Basin Plan comes into effect. No immediate new flows of water are provided for through the buyback of over allocated water licences.

Over \$5 billion was provided for infrastructure. The funding included \$1 billion for Victoria’s Food Bowl project with an additional \$106 million to assist private irrigators in the modernisation of their irrigation infrastructure. New South Wales received \$1.358 billion for a suite of initiatives to modernise and upgrade irrigation infrastructure plus \$650 million to private irrigators. Queensland was provided with \$510 million for irrigation planning and infrastructure investment and for buying water from willing sellers. There was \$85 million for a salt interception scheme for the Australian Capital Territory. South Australia received \$610 million to upgrade irrigation infrastructure and improve river management, this includes \$110 million for private irrigators to upgrade infrastructure, \$80 million for water purchasing from willing sellers and \$200 million for the Coorong and the Lower Lakes.

Not a drop of extra water has been secured for SA under this agreement, which has preferred infrastructure investment to the much tougher task of dealing with unsustainable over allocation of water licences along the basin.

The worst fears of people in the Lower Lakes will be realised because the infrastructure spending will alleviate the need for towns and food producers to draw fresh water from the Lower Lakes. This will enable Labor Governments to inundate the Lower Lakes with salt water by opening the barrages combined with the construction of a weir at Wellington. Mike Rann has given up on the Lower Lakes and the dye is now cast for salt water to flow into the lakes.

Clause 2.4.6 page 7 of the IGA states that there is to be a separate intergovernmental agreement yet to be agreed upon which this current document will depend, thus qualifying the agreement with further deliberation.

Clause 3.2.7 page 9. Indicates that State water shares (plans) prevail. Any disagreements "will be referred to the Ministerial Council for strategic direction" i.e. State Ministers to squabble around the table.

Clause 3.2.8 page 9. Confirms that "State water shares can only be changed by the unanimous decision of the Ministerial Council". i.e. States retain veto powers.

Clause 3.2.10 page 10. States that "The Parties agree that SA will have access to storage capacity in the Hume and Dartmouth dams for the purpose of private carryover, subject to this not affecting upstream states water availability and storage access". In other words Victoria and NSW go first.

5.1 What must be done

General

State Governments regardless of which political party is in Office in any respective State will not and cannot solve this problem. State Governments will look after their own States. That's what they have been elected to do. This is the blunt truth of water politics.

A Fresh COAG Agreement

If South Australia's stake in the River Murray is to be saved Prime Minister Rudd and Federal Labor must ensure all States go back to the drawing board and start again with a fresh COAG agreement which refers powers to the Commonwealth, which provides for the Murray-Darling Basin Authority to have all the powers needed to take control of the Basin and which delivers a new plan by the end of 2009 for the long term health of the river. Labor has got it wrong with this COAG agreement. It must be torn up. We must start again. This time we must get it right. Labor's Premier in SA, Mike Rann must make this his obsession!

Constitutional Powers

Professor John Williams of the University of Adelaide and other experts in Constitutional Law have stated that there is no constitutional impediment to the Commonwealth taking control of the Murray-Darling Basin System.

Accordingly, the Federal government should exercise those powers and enact legislation to confer all necessary authority in the Federal Minister. If, contrary to the constitutional law advice, the Commonwealth does not have the powers, the State Liberal policy is that the States' powers be referred to the Commonwealth.

Stronger Governance

The State Liberals policy is that the fresh COAG agreement must provide for a truly independent Murray Darling Basin Authority reporting to the Commonwealth Government with the power to over rule the states to manage the river in the best interests of the nation. Only COAG should be able to vary the powers of the Authority and there should be no need for a Ministerial Council outside of COAG.

No NSW, Victorian or QLD politician will ever put the interests of the environment in SA or our food producers ahead of their own constituents. South Australia needs a national plan in place sooner than 2011. The Prime Minister and the Federal Government must then act fairly, act responsibly and act in the best interests of the environment and all citizens who depend upon the river.

The multi tiered arrangement with powers devolved between the Federal Minister, the Murray-Darling Basin Authority, the new Ministerial Council, the Basin Officials Committee and the Basin Community Committee reinforces the current confused arrangements where accountability is easily avoided and vested interests are protected.

Critical Human Needs

The State Liberal's view is that Labor must ease Adelaide's reliance upon the River Murray by fast tracking Adelaide's desalination plant at Port Stanvac, by enhancing wastewater reuse capabilities and by building stormwater catchment and reuse infrastructure. The Rann Labor Government has moved far too slowly on the Liberal's desalination plan. Mr Rann plans to open the plant in late 2011. This is not good enough, it should be producing water sooner. Greater urgency is needed. The Rann Government must also implement the State Liberal's \$400 million stormwater infrastructure plan at 13 sites in the Adelaide precinct⁵ The Glenelg to Adelaide pipeline must be increased in diameter to move both wastewater and stormwater to the city. Finally Labor must do more for wastewater recycling. The key pieces of infrastructure for wastewater reuse were built by the Brown/ Olsen State Liberal Governments from Christies Beach to Bolivar.⁶ Plan to enhance these capabilities must be fast tracked. The Rudd Government must use its infrastructure funds to assist where it can. Only in this way can Adelaide's critical human needs be met without an absolute unyielding reliance upon the River Murray.

⁵ www.martin2010.com.au

⁶ Advertiser Article, Taking the plunge 23 November 1998 and Public Works Committee, Christies Brach Wastewater Treatment Plant, Environment Improvement Project, January 2001, page 9

6.1 Making a Start: A Plan of Action

Only within the framework of a fresh COAG agreement can a new national plan for the river be forged. The State Liberals believe that a national basin plan must be developed ideally within 12 months, certainly by the end of 2009. It simply cannot wait until 2011. This plan must address a range of issues including: reacquisition of over allocated water entitlements, environmental flows, the establishment of a stable water market and workable trading arrangements, annual caps on water to be traded out of any one region, access to storages and host of other concerns.

COAG must guide the development of the plan but the State Liberals note the views of Professor Mike Young and the Wentworth Group of Scientists, with particular regard to the need to compulsorily buyback all water licences in order to reset the system.⁷

The South Australian State Liberals view is that over allocation is the most pressing issue to be addressed. Only by reducing the demands on the river can environmental flows be improved. The current 'Buy Back' of licences from willing sellers is delivering too little, too slowly.

A recent report by Waterfind⁸, suggests that if all water available for sale was purchased under the current scheme, it would take at least 14 years to purchase 1500 gigalitres. The problem requires greater urgency.

Consequently the State Liberals propose that a strategic reduction in all irrigation allocations across the basin be made immediately to secure 750 gigalitres of water (this equates to 6.1% of all licensed allocation). We must make a start. This proposed reduction would be compensated at the current market value for each specific class of licence.

We must start again. A new plan for a new era.

⁷ A Future-Proofed Basin – A new water management regime for the Murray-Darling Basin, Young & McColl, University of Adelaide 2008

⁸ Analysis of the Effect of the Federal Government's Buy Back of Permanent Water Entitlements, Water Find Pty Ltd, p 1.

7.1 Bibliography

A Future-Proofed Basin – A new water management regime for the Murray-Darling Basin, Young & McColl, University of Adelaide 2008

A National Plan for Water Security, 25 January 2007

Agreement on Murray Darling Basin Reform, July 2008

Analysis of the Effect of the Federal Government's Buy Back of Permanent Water Entitlements, Water Find Pty Ltd, 2008

Waterproofing South Australia, State Liberal Policy August 2007

Public Works Committee Report, Christies Brach Wastewater Treatment Plant, Environment Improvement Project, January 2001

Memorandum of Understanding, March 2008