

20 September 2009

Committee Secretary  
Senate Standing Committee on Environment, Communications and  
the Arts  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

Dear Secretary,

Please find attached brief submission on:

**Inquiry into Water Licences and Rights**

To be forwarded (via memory stick) Powerpoint presentation.

With regards

Acacia Rose

## TERMS OF REFERENCE:

The ability of the Commonwealth, across state borders, to sustainably manage water resources in the national interest, with particular reference to:

- a. the issuing, and sustainability of water licences under any government draft resource plans and water resource plans;
- b. the effect of relevant agreements and Commonwealth environmental legislation on the issuing of water licences, trading rights or further extraction of water from river systems;
- c. the collection, collation and analysis and dissemination of information about Australia's water resources, and the use of such information in the granting of water rights;
- d. the issuing of water rights by the states in light of Commonwealth purchases of water rights; and
- e. any other related matters.

## **PREAMBLE**

The management of water on earth and in particular, in Australia is a keystone in terms of agricultural security, environmental integrity, the quality of life in urban areas and viability of industry.

The evolution of water management in Australia, reflective of State interests and more recently, attempts for Commonwealth control of water management goes to the heart of the character of the Australian continent and its diverse environments, as well as the heart of the Australia constitution, especially Section 100.

### **Section 100**

#### **[Federal laws must not abridge State water rights]**

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.

*Water* is the underpinning medium for the majority of life forms building healthy ecosystems essential for a range of plant and animal communities.

Inherent to this discussion is the need for Constitutional reform that better reflects natural limitations of the environment, and contemporary requirements for water, preserving or reinstating water as the 'commons' for judicious management by an independent authority free from unnecessary control by governments. Government - a player, a beneficiary of water trading is no longer at arm's length from the 'best interest' for water conservation and management. Constitutional and legislative reforms to better manage Australia's natural water resources *and* importantly, ecosystems highly interactive with local, regional and continent water cycles and therefore water yield, is now essential and must take priority for all concerned agencies, State and Federal Governments. Contemporaneously, intergovernmental cooperation - for example through COAG agreements - has progressed water sharing, however, the failure for fundamental reforms between Federal and State governance including broad based funding / wealth distribution is the key stumbling block in water reforms. Issues of bipartisanship and State-Commonwealth relations must be resolved to ensure strategic planning for Australia's water resources. Therefore, constitutional and legislative reform must by virtue of the Westminster and democratic systems must position water rights outside of the domain of the States and Commonwealth whilst retaining Commonwealth funding.

## **NATIONAL WATER REFORM**

A 'National Water Authority' free from political influence, State parochialism or corporatisation is critical to our shared water future and that future by definition, must incorporate and integrate the 'biosphere' and its many ecosystems and environments.

## **PROGRESSIVE CASE FOR CONSTITUTIONAL AND LEGISLATIVE WATER REFORM**

*Water* is fundamental natural resource for most ecosystems, environments and the life they support and as such, deserves special protection.

*Water quality* is a fundamental imperative to the healthy ecosystems and in many cases, this includes the natural habit of water in special geophysical environments, for example, fast flowing rivers in the mountains, well nourished wetlands, water abundant estuaries.

*Water rights* include the rights of all species to sufficient high quality water retaining its special character sympathetic to unique environments that sustain specially evolved characteristics in entire ecosystems as well as discrete species.

*Human beings* are also entitled to clean, healthy and abundant water for biological needs first and foremost - for drinking, for washing or hygiene and for food production along with reasonable manufacturing and industrial activity.

*Water for sustainable living* is a natural right of all natural populations as distinct from *surplus water* - available from time to time - for large scale agribusiness / industry etc.

*Riparian rights* as originally practiced in pre-Federation English Common Law ensured reasonable water rights to people connected to a water course, whilst the water remained essentially a publicly owned natural resource.

*Ground water* is considered as a separate resource or process to surface water, an almost certainly uninformed view whereas scientific studies are required to build our understanding of the connectivity of systems - ground to surface to soil to vegetation and atmospheric water and moisture and include local water cycles and their relationship to prevailing weather systems and climatic changes. For example, the deteriorating condition of the Great Artesian Basin due to overextraction, and, impact on the Murray Darling Basin needs to be addressed

immediately. The vision of salt creeping from the sea at the Coorong Lakes inland across the vast networks of the Murray Darling is imminent, a man made disaster must be averted through judicious and timely legislative reforms.

*Excessive extraction* from river systems and wetlands, stream and river diversions, dams and canals as well as the new era of *ground water mining* (as opposed to well and bore extraction including uncapped bores) is an absolute travesty of natural resource management.

*Separation of Land & Water Rights* - this process - once again *not* public knowledge or presented at election / referendum, has initiated the marketing of water by public authorities diminishing and destroying the status of water as 'commons' to a tradeable commodity and shifting ownership (and ultimately cost / price) to the private domain.

*Licences, water trading and a water market* - without consultation with the Australian people and, without sufficient legislative definition and protection of ecosystem (environmental) rights to water governments in tandem have agreed to sell the last remaining commons - water. This 'tragedy of the commons' must urgently be addressed through this Senate Inquiry with legislative processes immediately introduced to redress the 'claiming' of the commons for sale, often, to the highest bidder or entity with the most efficacious buying power.

*Water scarcity* once a fact of nature is increasingly a fact of overuse, of over extraction, of increasing and often unreasonable demands on a finite resource in a 'closed biosphere'. This problem is arguably exacerbated by the 'issue' of water licences, over allocation of licences and pecuniary interest by governments in selling licences for essentially, a natural resource, a public resource. Once sold water ownership enters the private domain and becomes a 'commodity' within a market rather than a natural resource.

*Water justice & governance* - invokes a sense of sharing wisely, a climate of considered and careful water management from free political, corporate or other interests that are focussed on immediate and short term goals, or long-term economic interests that require investment in for instance, water infrastructure.

*Climate* - keeping moisture in the atmosphere and allowing natural precipitation through limiting atmospheric pollution is an immediate imperative for legislators through, more stringent and enforceable Clean Air Act 2001.

## The Case of the Snowy

Well-known to the majority of Australians, is the Snowy River. Well-known to most Australians is the Murray Darling System and less well known are the Snowy Mountains catchments, although the Snowies as a ski destination are well known throughout Australia.

Since the building of the Snowy Mountains Scheme, water management has reached a crisis point, accentuated by the corporatisation of the Snowy to Snowy Hydro Limited. The Corporations Act demands dollar dividends to 'shareholders' and awards executive compensation - not always linked to profitability or shareholder dividends. The latter paradigm perfuses many formerly publicly owned institutions including the CSIRO with arguably devastating consequences for secure funding, 'blue sky research' and impartial science in the public interest. Legislators must amend the Corporations Act to broaden the definition of 'shareholder dividends' to truly reflect the bottom line of environmental and social health and well being, not just dollars in the coffers.

The Snowy River is no longer a mighty river. At the time of building the Snowy Scheme, apparently, to secure ongoing funding, Guthega Dam and Mungah Power Station were built as a demonstration plant and ultimately, successful public relations exercise. Damming, strangling the Snowy River at Guthega Dam and *again* at Island Bend Dam is an absolutely environmental disaster, the Snowy River virtually *dead* below Guthega Dam and Island Bend (please refer to series of articles by Rosslyn Beeby in the Canberra Times).

### RECOMMENDATION:

**Immediately and permanently decommission Guthega Dam-Mungah Power Station system. The environmental cost benefit analysis does not support additional energy sales from an upgraded Mungah Power station. Commission an environmental and economic cost benefit analysis. Enable permanent 'spills' over Guthega Dam Wall. Convert Mungah to historical / tourist facility. Limit extraction through Island Bend portal. Limit pumping from Jindabyne pumping Stations. Immediately decommission all montane and subalpine aqueduct systems to enable non-regulated stream and river flows.**

*Inherent in this recommendation is legislative reform including, de-corporatisation of the Snowy Scheme where 'forward borrows' of water (often unsustainable with no follow up water) hedge products and derivatives trading are **banned** as core business for the Snowy Scheme. The issue of water licences, inception of the water market and water*

trading **combined with** ineffective legislation to ensure environmental flow targets for the montane River systems including the Snowy River, Upper Murrumbidgee, is a manifest environmental disaster. Coupled with damage to the Snowy Mountains catchments during the 2003 wildfires and drying climate (both of the latter almost certainly linked to air pollution from industry in Victoria including gas and coal fired power stations) the catchment capacity and inflows are seriously limited impacting on farmers and their extensive communities as well as river systems.

**The issue of water licences has spelled in the most definitive terms, the death of the Snowy River, the death of the Snowy estuary, the death of many key wetlands and the death of the Coorong.**

The environmental and social costs of environmental destruction when translated into economic terms probably outweighs the alleged 'economic benefits'. The question is 'who benefits' from water trading? There are many jobs to be created in environmental management and interpretation and economic benefits from environmental health (tourism, fishing etc). For example, the fishing sector below Jindabyne was worth around \$60 million pa prior to the building of Jindabyne Dam.

The ongoing push to 'lease' or privatise the Snowy Scheme to raise funds to invest in other energy enterprises including gas extraction / peak power production does not justify the allied environmental and social damage. The Snowy Scheme must be retained for water security *not* energy entrepreneurship.

## **RECOMMENDATION:**

**Immediately and permanently place the Snowy Scheme under independent management - if necessary - under the Defence Act as a part of a strategic plan to conserve, protect and better manage Australia's water resources. At no time must government consider leasing / sale of the Snowy Scheme.**

*This may include, decorporatisation of the Snowy Scheme and introduction of a special Commonwealth act of Parliament to protect public ownership of the Snowy Scheme **and** its catchments and water resources in perpetuity. Any pecuniary gains from sale of Snowy Scheme energy products must be returned for catchment research (and scholarships) and conservation, for Scheme maintenance and development of regional renewable energy products.*

**At no time should Australia divest herself of the ownership and management of water resources and if necessary, must revoke at the earliest opportunity the water licence, water trading and water market system. The Commonwealth may, introduce a water sharing plan based on water mapping, integrated ecosystem studies underpinning the economic value of ecosystem services. This plan will reflect national priorities as a mix of environmental, agricultural, industry and urban imperatives.**

### **Conclusion:**

There is an abundance of research and material on the demise of environmental and agricultural systems, most recently, the evidence points to the causality of over extraction as a result of 'water licences' and water trading stranding most often, environmental assets as well as agricultural assets, individual farms and entire communities.

Key to reforms in water use is appropriate Constitutional amendments including the removal of Section 100, that must be reasonably developed and argued. These changes must be **clearly and succinctly presented** via a Referendum at the 2010 Federal Election.

**An uncomplicated question in the affirmative supported by a positive case for reform is critical. Time is of the essence.**

Accompanying to the Referendum on Constitutional Amendment to enable Commonwealth Control of Australia's water resources, **and** public ownership of Australia's water resources, must be appropriate legislation that enjoys multi state and multi partisan support.

Failing constitutional reform or, failing to overcome objections by State Governments to a comprehensive and strategic approach to independent national management of Australia's water resources can be met invoking Defence powers to protect our shared future and importantly, reclaim public ownership of the last of the great commons, water.

Lastly, the drive to populate this continent must be carefully balanced against water sharing plans. Water sharing plans must address existing environments and populations and prioritise 'water rights' before opportunistic or unreasonably entrepreneurial water extractive processes.



