

Secretary
Senate Standing Committee on Rural and Regional Affairs and Transport

Submission to the References Committee's inquiry into the integrity of the water market in the Murray-Darling Basin

This submission is made in my private capacity.

Draining the Darling

Over recent years, I travelled extensively around rural NSW and South Australia, and in particular along the Darling river valley. I often wondered why it was that the Menindee Lakes and the river downstream of Bourke had so little water in them, that was not readily explicable given the weather conditions. I was conscious that massive water extraction for cotton growing had taken place upstream of Bourke, and along the Barwon valley.

2. When I saw the Four Corners programme Pumped, about theft of water out of the Barwon river, the penny dropped with me about what was really happening. There seems to be no doubt that there has been theft and that the NSW Government has done very little if anything to ensure that water legislation is enforced. Moreover, it seems, senior officials in the NSW government seem to have taken the view that their job is not to manage water in the interests of the community as a whole, rather to manipulate the system in the interests of wealthy and influential vested irrigator interests. These are matters currently subject to reviews commissioned in NSW being conducted by Ken Matthews, and also by the Independent Commission against Corruption in that state. However it is often the case that politicians call for inquiries that are probably unnecessary - a prosecution by the police would probably be justified. Often it is not the legislative framework relating to a particular subject that is deficient, rather problems arise because of unwillingness to apply resources to ensuring that the statutory regime is complied with.

Water policy settings and allied issues

3. The policy of allowing very large private dams to be constructed close to rivers and for massive amounts of water to be diverted into them is a kind of legalised theft that should no longer be tolerated, especially now when climate change is starting to substantially reduce rainfalls in south eastern Australia.

4. I have no particular issue with irrigation as such - irrigated agriculture has contributed a great deal to Australian prosperity, but there must be some reasonable limits on what activities are regarded as within the legitimate scope of permissible irrigation. I consider those reasonable limits are exceeded when downstream users, such as those in the lower Darling system have insufficient river water for stock and domestic purposes, as has been the case for people in such places as Wilcannia, Louth, Pooncarie and places between.

5. There is a real question about whether irrigated cotton production should be permitted into the future. Unlimited economic growth and industry expansion is not sustainable - there are serious limits on water availability in a dry country like Australia that cannot be wished away, or adequately addressed by market solutions such as the commodification of water, such as has been brought about by water market regimes.

Deficiencies in the water market

6. Although the Productivity Commission in its draft report on water reform released on 15 September 2017 claims that there have been significant gains in efficient water use from the national water initiative, it does suggest a range of further reforms that need to be undertaken.

7. I do not believe that the water market is operating appropriately. I think this was amply demonstrated by the purchase by the Commonwealth of the Webster Ltd water rights associated with the Lake Tandou cotton farming operation earlier this year.

8. Lake Tandou is one of the Menindee Lakes that are part of the Darling River system. These lakes are partly regulated to facilitate water supply to Broken Hill and also for the purposes of irrigated agriculture. The lakes are ephemeral in that they can be completely dry for lengthy

periods, as has been the case in recent years where no water flowed along the Darling downstream of Bourke. Webster Limited owns the land area of the Tandou Lake and had, until 2014, been producing gossypium (cotton) but in 2016, the cotton producing facilities were put into "care and maintenance" mode. Cotton is a very water intensive crop and there was no water available. On 21 June 2017, the Commonwealth contracted to acquire 21.9 GL of gap-bridging water in the New South Wales Lower Darling catchment from Tandou Limited, announced in a Department of Agriculture media release.

9. Among other things, it stated that the purchase was a significant strategic water purchase that would contribute towards a number of the remaining objectives in delivering the Murray-Darling Basin Plan, involving the acquisition of water entitlements and decommissioning of irrigation operations. It would also enable more efficient operation of the Menindee Lakes Storage Scheme resulting in reduced evaporative losses, particularly in Lake Cawndilla. It would also involve a lesser socio-economic impact than water recovery in other areas. The property owners intend to use the property for expanded organic Dorper lamb production, that is said will continue to contribute to the economy of the region.

10. The price of the sale was not mentioned in the media release, but the ABC reported that Tandou stated that it would receive \$78m from the transaction. That would be used by Tandou (Webster Ltd) to retire debt. The ABC interviewed Tom Rooney, one of the founding directors of the water broking firm Waterfind Australia, based in Adelaide. He was asked for his assessment of the price paid and whether the deal was a good one for Webster Ltd. Rooney described the deal as a "fantastic deal" for Webster. The reason for that was that the purchase price paid by the Commonwealth was, roughly, \$3,500 per megalitre, whereas the running average price of water in the Lower Darling traded on the water market over recent years was \$140 per megalitre.

11. The price of \$140 per megalitre of water, as the running average market price referred to by Rooney, appears to be greatly inflated, as the fact is that there has been no water at all associated with this price, so a potential purchaser is paying that sum on a wing and a prayer. Absent climatological features – like a strongly negative Indian Ocean dipole, as was experienced in Australia during 2016 – the money may be paid for nothing.

12. On its face, apologists for this purchase price may say, as the Department of Agriculture website suggests, that it is a good outcome environmentally because it will aid the attainment of the triple bottom line that the Murray Darling Basin plan is premised upon – in particular, that there should be no adverse socioeconomic effects from environmental water recovery. But that seems only to hold true for areas upstream of Bourke. Downstream, there will be no change in environmental conditions at all if, as has occurred in recent years, no water flows past that location. One also might wonder what traditional land owners along the Darling think of this outcome.

13. This transaction highlighted a significant deficiency with the water market, and one that caused Commonwealth funds in all probability to be wasted. The water market does not appear to recognise the real possibility that the so-called water entitlements associated with a class A water licence or any other class of licence for that matter, may be illusory - stranded assets that have no real value, because in truth, there is no water associated with them, and there is no person or group willing to pay the price, other than a Commonwealth agency doing so for political reasons, rather than reasons of sensible policy and administration. The entitlement may have a notional market value, but no value in reality. The inability of people like the Lower Darling Horticulture Group to dispose of their licenses, and their failure to obtain a structural adjustment package, as mentioned in their submissions to the NSW Legislative Council inquiry on water allocation illustrates that point.

14. Even more heinous in all this, the proposal by the NSW Government to build a water pipeline from Wentworth to Broken Hill to secure that town's water supply should on any view of historical water flows be completely unnecessary as that water has for many decades been drawn from the Menindee Lakes. This pipeline will also disadvantage communities in South Australia downstream of Wentworth, with an unnecessary diversion of water out of the Murray River to hide the incompetence of the NSW Government and its officials in water management.

15. An excerpt from the NSW DPI website that I accessed on 16 September 2017 dealing with water meters states as follows:

"Accurate and up-to-date information on water extraction is essential to protect the rights of all water users, including the environment.

"Information collected from water meters is used to:

- determine if water users are complying with the rules and limits placed on water extraction
- inform the preparation and review of water sharing plans, which set water extraction limits and pumping rules
- determine water metering and usage charges for licence holders
- help determine if environmental objectives are being achieved
- inform water trading activities.

"Every licence holder must ensure they are within their water allocation account balance. Some licence holders are required to install and operate a water meter. Others are required to keep a log book.

"Check your licence or approval conditions to see what metering requirements apply to you.

"Penalties of up to \$1.1 million for individuals and \$2.2 million for corporations may apply if you break the rules.

"If you are required to fit a meter to your water extraction works, you may need to comply with State and National water metering standards.

"Work is underway to ensure that NSW complies with these standards and meets its National Water Initiative commitments. Government owned meters are being installed in some NSW river valleys.

16 There is of course a mountain of information available on the internet these days about all manner of things, such as water controls in NSW. However the mere fact that these items appear on departmental and other government websites does not necessarily mean that they are true. In the absence of appropriate enforcement mechanisms paid for and funded by government in a serious manner, statements such as this are meaningless.

Proposals by the Wentworth Group of Concerned Scientists

17. In its publication of 26 June 2017, the Wentworth Group of Concerned Scientists outlined 5 actions necessary to deliver the Murray Darling Basin in full and on time. In particular, point 4 stated there was a need to build trust and greater transparency by:

- improving metering and compliance by Commonwealth, Territory and State governments
- agreeing to comprehensive measurement of consumptive water use and interception, including ground water use to a suitable standard to enable proper compliance action;
- reinstating a basin wide monitoring program to measure and report on all 23 rivers comprising the system;
- having proper audits of government expenditure, (such as the Lake Tandou water purchase referred to earlier in this submission);
- strengthening the capacity of the MDBA to fulfil duties as a regulator.

18. Clearly in NSW monitoring and compliance have been wound back, as has been identified by Ken Matthews AO in the interim report of his inquiry in NSW, and proper administration of the water laws appears to have been undermined by unprofessional or corrupt conduct in the public service and a failure of political oversight. It also seems that the current Commonwealth water minister is also intent on subverting the Murray Darling Basin Plan - as set out in the attached article by Mike Secombe in the Saturday Paper of 23 September 2017.

Conclusions

19. I adopt as my own views the views expressed by Ken Matthews AO in the interim report of his inquiry into water management in NSW, the opinions expressed in the article by Mike Secombe in the attached article reproduced from The Saturday Paper of 23 September 2017 and also the proposals of the Wentworth Group of Concerned Scientists.

20. I believe that the time has come to outlaw large scale diversion dams being constructed on private land anywhere in the Murray Darling Basin. To continue to permit this means that water,

our most precious and limited resource is diverted away from communities to rent-seeking private interests at great cost to the community as a whole.

21. I consider that water buybacks by the Commonwealth such as the Webster/Land Tandou transaction have probably not achieved any purpose related to improving river health, because the values attributed to the water licences concerned are not realistic, but rather in the realm of fantasy - Webster offloaded the rights to a gullible Commonwealth because it considered that in truth the licenses had no real value in terms of water flows at all, notwithstanding the alleged value in the water market. I was so concerned about that transaction that I wrote to the Auditor-General asking them to examine the matter, but they refused to do so (see attachment 2).

22. I think the whole water law enforcement mechanism is broken and liable to political interference in the interests of powerful lobby groups. That it can be deprived of resources so as to prevent it performing monitoring and enforcement of existing legislation represents a significant failure of governance in the public interest.

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