

The Senate

Rural and Regional Affairs
and Transport
References Committee

Integrity of the water market in the
Murray-Darling Basin

Interim report

November 2017

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Membership of the committee

Members

| | |
|--|-------------------------|
| Senator Glenn Sterle, Chair | Western Australia, ALP |
| Senator Barry O'Sullivan, Deputy Chair | Queensland, NATS |
| Senator Slade Brockman | Western Australia, LP |
| Senator Anthony Chisholm | Queensland, ALP |
| Senator Malarndirri McCarthy | Northern Territory, ALP |
| Senator Janet Rice | Victoria, AG |

Substitute members for this inquiry

| | |
|---|----------------------|
| Senator Alex Gallacher | South Australia, ALP |
| to replace Senator Malarndirri McCarthy | |
| Senator Sarah Hanson-Young | South Australia, AG |
| to replace Senator Janet Rice | |
| Senator Jenny McAllister | New South Wales, ALP |
| to replace Senator Anthony Chisholm | |

Other Senators participating in this inquiry

| | |
|--|----------------------|
| Senator Cory Bernardi | South Australia, AC |
| Senator Sterling Griff | South Australia, NXT |
| Senator Skye Kakoschke-Moore (to 22 November 2017) | South Australia, NXT |
| Senator Rex Patrick (from 15 November 2017) | South Australia, NXT |
| Senator Nick Xenophon (to 31 October 2017) | South Australia, NXT |

Secretariat

Dr Jane Thomson, Secretary

Ms Sarah Redden, Principal Research Officer

Ms Trish Carling, Senior Research Officer

Ms Erin Pynor, Senior Research Officer (to 6 October 2017)

Ms Lillian Tern, Senior Research Officer (from 23 October 2017)

Ms Leonie Lam, Research Officer (from 25 August 2017 to 10 November 2017)

Ms Helen Ulcoq, Research Officer

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Interim Report

1.1 On 16 August 2017, the following matter was referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 5 December 2017:

The integrity of the water market in the Murray-Darling Basin, with particular reference to:

- (a) the allegations of theft and corruption in the management of water resources in the Murray-Darling Basin,
- (b) the investigation and public disclosure by authorities, including the New South Wales Government and the Murray-Darling Basin Authority, of reported breaches within the Murray-Darling Basin, including the Barwon-Darling Water Sharing Plan,
- (c) the actions of member states in responding to allegations of corruption and the potential undermining of the Murray-Darling Basin Plan,
- (d) the use of Commonwealth-owned environmental water for irrigation purposes, and the impact on Basin communities and the environment,
- (e) the operation, expenditure and oversight of the Water for the Environment Special Account, and
- (f) any other related matters.¹

Background

1.2 On 24 July 2017, the ABC Four Corners program aired allegations about water theft and corruption in the Murray-Darling Basin. The episode made a number of negative assertions about the manner in which the Murray-Darling Basin Plan (MDBP) is working, and included 'accusations of illegal water use, pumping water from fragile rivers and tampering with [water] metres'.²

1.3 The program also aired claims that top NSW Government officials deliberately assisted wealthy irrigators along the Barwon and Darling Rivers, around Bourke and Brewarrina, to undermine the MDBP. There was also discussion about NSW possibly withdrawing from the MDBP.³

1 *Journals of the Senate* No. 54, 16 August 2017, p. 1733.

2 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 24 July 2017, broadcast transcript, <http://www.abc.net.au/4corners/pumped/8727826> (accessed 16 November 2017).

3 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 24 July 2017.

Allegations aired on the ABC Four Corners program

1.4 A number of the allegations raised by the program concerned a prominent cotton farmer from the Brewarrina and Bourke area. Further allegations were made about other large property owners and irrigators breaching water use rules. Some of the information and allegations presented in Four Corners included that:

- large volumes of water were being extracted beyond licensed limits;
- pumping of large volumes of water was occurring at times when pumping was not allowed;
- appropriate records and log books were not maintained in instances where water meters were not working, as required under NSW water legislation;
- water channels and other structures were being constructed by large property owners, on Crown land, without approval;
- water pumping was occurring during embargo periods;
- water meters appeared to have been tampered with and had parts removed;
- the relevant NSW Government agencies had no appetite for water compliance activities;
- a senior officer in the NSW Department of Primary Industries (DPI) shared confidential departmental documents with irrigator lobbyists; and
- irrigation companies were making money by selling water at a profit.⁴

Relevant developments

1.5 The allegations described in the Four Corners program have given rise to a number of inquiries and investigations, particularly within NSW. The inquiries underway to date include:

- an independent investigation into NSW water management and compliance, by Mr Ken Matthews AO, examining the allegations raised by Four Corners that involve the responsibilities of DPI-Water and its employees. An interim report was presented on 8 September, with a final report due end of November 2017;⁵

4 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 24 July 2017.

5 NSW Department of Industry, *Independent review of water management and compliance*, <https://www.industry.nsw.gov.au/about/our-business/independent-review-water-management-and-compliance> (accessed 17 November 2017).

- a NSW Ombudsman investigation into water compliance and enforcement. An interim report was presented on 15 November, with a final report due no earlier than April 2018;⁶
- a NSW Independent Commission Against Corruption investigation into the allegations raised by Four Corners and the actions of senior government officers;⁷ and
- the announcement by the Premier of South Australia, on 26 November 2017, of a state royal commission into the allegations of water theft in the Murray-Darling Basin. The royal commission is set to begin in early 2018.⁸

1.6 On 28 November 2017, the Australian National Audit Office released its audit report into New South Wales' Protection and use of Environmental Water under the National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin.⁹ The committee will consider this report and its findings as it progresses its inquiry.

Purpose of this inquiry

1.7 This inquiry was instigated by the Senate to examine, from a federal perspective, the management of water resources in the Murray-Darling, the allegations of theft and corruption within the Basin, and the actions of Basin states which may be undermining the MDBP.

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- 6 NSW Ombudsman, *Investigation into water compliance and enforcement 2007-17*, <https://www.ombo.nsw.gov.au/news-and-publications/publications/reports/state-and-local-government/investigation-into-water-compliance-and-enforcement-2007-17> (accessed 17 November 2017).
- 7 In light of the ICAC investigation, and to reduce the complications of concurrent investigations, Mr Matthews agreed to suspend further investigatory work by his investigation team, and provided ICAC with the relevant materials gathered by his investigations.
- Ken Matthews AO, *Independent investigation into NSW water management and compliance – interim report*, 8 September 2017, pp. 14-15.
- 8 AAP, 'South Australia launches water theft royal commission', *The Australian*, 26 November 2017, <http://www.theaustralian.com.au/national-affairs/south-australia-launches-water-theft-royal-commission/news-story/7b99b0c103cb8daac3bf03c0a688f44d> (accessed 27 November 2017).
- 9 Australian National Audit Office, *Department of Agriculture and Water Resources' Assessment of New South Wales' Protection and use of Environmental Water under the National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin*, <https://www.anao.gov.au/work/assurance-review/dept-agriculture-water-resources-assessment-nsw-protection-use-environmental-water-mdb> (accessed 27 November 2017).
- See also Australian National Audit Office, *Allegations concerning the Murray-Darling Basin*, <https://www.anao.gov.au/work/request/allegations-concerning-murray-darling-basin> (accessed 17 November 2017).

1.8 In progressing its inquiry, the committee has also been tasked with identifying possible solutions that would address issues with compliance and transparency in the water market. This may include improved enforcement measures, better water metering and monitoring systems, and timely public disclosures about breaches of water use rules along the Murray-Darling.

1.9 On 25 November 2017, the Murray-Darling Basin Authority (MDBA) and an Independent Review Panel released reports considering the legislative, policy and practical implementation of water management across the Murray-Darling Basin, as part of a Basin-wide review. The reports found that Basin states had significant and concerning differences in compliance and enforcement policy and activity, and that the MDBA had not given 'sufficient attention' to compliance or dealt appropriately with allegations of compliance breaches.¹⁰

1.10 These reports examined important issues of compliance and transparency in the water market, and made a number of valuable recommendations for both the MDBA and Basin states to action. Given their alignment with the committee's objectives, the committee will closely examine these reports and the progress of implementation of the recommendations.

Evidence

1.11 The committee has received substantial evidence asserting support for the allegations made in Four Corners, along with claims of other alleged instances of water theft, over-extraction and insufficient water metering.¹¹

1.12 The committee has also received submissions disputing the claims made by Four Corners and other media outlets. A number of submitters have argued that water users along the Murray-Darling, and in particular irrigators, comply with water extraction rules.

1.13 A large number of submitters have stressed the need for improved water monitoring throughout the Basin, and in particular in the Northern Basin. Submitters have called for improved water use compliance regimes, including more effective metering and enforcement mechanisms. Similar concerns have been raised in the interim reports of Ken Matthews and the NSW Ombudsman, and in the Basin-wide compliance review undertaken by the MDBA.

10 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, pp. 12-15, <https://www.mdba.gov.au/publications/mdba-reports/murray-darling-basin-water-compliance-review> (accessed 27 November 2017).

11 Submissions made to the inquiry can be found on the committee's webpage here: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/MurrayDarlingPlan/Submissions

Conduct of the inquiry

Further hearings

1.14 As part of its inquiries to date, on 31 October 2017 the committee travelled to Broken Hill and undertook a site visit around the region. This was followed by public hearings in Broken Hill on 1 November 2017, and Adelaide on 2 November 2017.

1.15 The committee plans to conduct additional public hearings in Sydney and Canberra, to receive evidence from witnesses. Further, the committee intends to travel to Brewarrina, NSW, for a further site visit and public hearing.

1.16 The purpose of these hearings is to hear first-hand what possible steps can be taken to strengthen compliance with water use rules, and the adequacy of those rules. Additionally, the hearings will help to clarify the role of the MDBA regarding its compliance and enforcement activities across the Basin, and how it operates alongside the rules and regulations of Basin states.

Existing inquiries

1.17 The committee holds a keen interest in the findings of the inquiries and investigations already in train.

1.18 The Matthews interim report from September, and the NSW Ombudsman report from November, highlight the important issues under consideration by these inquiries, particularly with regard to compliance, enforcement and transparency in the water market. The findings of these reports have been supported by the findings of the MDBA Water Compliance Review and Independent Review Panel, which found serious flaws in the compliance regime of both the MDBA and Basin states.

1.19 Many of the current investigations are due to report by the end of 2017, and will greatly assist the committee in its deliberations. Many of these reviews are examining individual jurisdictional issues, and will make appropriate recommendations in that context. The committee will take the opportunity to apply any relevant findings to improving the Commonwealth approach to water management and the MDBP.

Further evidence

1.20 The evidence so far received, coupled with the material gathered by the respective reviews and investigations, has provided the committee with considerable insight into the concerns of the communities along the Barwon-Darling and greater Murray-Darling systems.

1.21 This evidence has given the committee a thorough understanding of the key issues with regard to water use, over-extraction, protection of low flows, as well as insufficient metering, monitoring and compliance across the Murray-Darling Basin.

1.22 The site visit around Broken Hill allowed the committee to see and hear first-hand the devastating impacts of inadequate water flows. The committee appreciates that many individuals have come forward during this inquiry, and in contribution to the other ongoing reviews, to detail their individual experiences and hardships in operating within the Murray-Darling water market.

1.23 The committee recognises the seriousness of the allegations raised to date, and the impact such allegations have on water users across the Basin. Inadequate water supply along the Murray-Darling presents considerable risks to river communities and industries, and to individual livelihoods. The committee understands why many stakeholders are therefore calling for, at the least, a judicial inquiry to investigate the overall integrity of the water market.

1.24 Underpinning the respective allegations of water theft and corruption are issues of transparency and compliance, and the need for appropriate repercussions in instances of water rule breaches. While there is near-universal agreement on the need to maintain the integrity of the water market in the Murray-Darling Basin, the evidence suggests that considerable improvements to compliance and monitoring regimes are required.

1.25 The committee stresses that it is not in a position to investigate individual cases of alleged water theft. Nor can the committee provide any legal remedy for matters, many of which are already before the courts or subject to other legal proceedings. However, the individual matters raised by submitters will assist in illustrating systemic or wider policy issues across the Murray-Darling Basin.

1.26 Moving forward, the committee will be keen to acquire evidence about how to improve compliance, transparency and monitoring of water use across the Basin. The committee will consider matters such as:

- areas of the Murray-Darling Basin that are not metered and monitored and whether they should be;
- water compliance obligations, including recording methods for water use and reporting requirements;
- the adequacy of compliance and enforcement powers, especially for the MDBA;
- the benefits to more transparent, real-time water monitoring systems;
- improvements to public disclosures and reporting on breaches of water use in the Murray-Darling;
- practices within the water trading market, including buybacks; and
- the transparency around the expenditure of public money in the water market.

1.27 The committee hopes the evidence received at future hearings, in addition to the findings of the other inquiries, will help to address the issues above. It is the

committee's view that sufficient time should be provided to allow the hearings to occur and to properly consider the findings of the other reviews.

1.28 Therefore, the committee recommends that the final reporting date for the inquiry be extended to 28 March 2018.

Recommendation 1

1.29 The committee recommends that the Senate grant an extension of time for the committee to report, to 28 March 2018.

Senator Glenn Sterle

Chair

Dissenting Report by Government Senators O'Sullivan and Brockman

1.1 During hearings for this inquiry, a participating senator made a number of unfounded and unsubstantiated allegations on the public record, reflecting negatively on the conduct of the committee and its members. Since making these allegations, that senator has refused to provide any evidence in support of the claims made, nor has that senator withdrawn their comments. As a result, Government senators withdrew their participation from the inquiry.

1.2 Senate committees should reflect the composition of the Senate. The withdrawal of Government senators from this inquiry therefore calls into serious question the adequacy of representation on the committee, and whilst the committee continues to labour under the existence of serious allegations their work and their findings will be subject to question.

1.3 The Government Senators have absolute confidence in the conduct of all Senators participating in the enquiry with exception of the Senator making the allegations.

Senator Barry O'Sullivan
Deputy Chair

Senator Slade Brockman
Senator for Western Australia

Appendix 1

Submissions received

| Submission Number | Submitter |
|--------------------------|---|
| 1 | Ms Jennifer Powers |
| 2 | Ms Elisabeth Dark |
| 3 | Mr Rob Foster |
| 4 | Mr Brian Stevens |
| 5 | Mr Mark Zanker |
| 6 | Ms Kirsten Duncan |
| 7 | Queensland Farmers' Federation |
| 8 | Ms Melissa Gray |
| 9 | Department of the Environment and Heritage |
| 10 | Law Council of Australia |
| 11 | River Lakes and Coorong Action Group |
| 12 | Dr Adam Loch |
| 13 | NSW Department of Industry |
| 14 | Mr Rob McBride |
| 15 | WWF Australia |
| 16 | Nature Conservation Council of NSW |
| 17 | Mr Michael Murray |
| 18 | EDOs of Australia |
| 19 | Ms Sarah Moles |
| 20 | Macquarie Marshes Environmental Landholders Association |
| 21 | Goulburn Valley Environment Group |
| 22 | Environmental Farmers Network |
| 23 | Dr Anne E Jensen |
| 24 | Dr Kerri Muller |
| 25 | Broken Hill City Council |
| 26 | Murray-Darling Basin Authority |
| 27 | Professor Richard Kingsford |
| 28 | Moree Plains Shire Council |
| 29 | Alexandrina Council |
| 30 | Mrs Margaret McDonald |
| 31 | National Irrigators Council |
| 32 | Mr Paul Harvey |
| 33 | Wentworth Group of Concerned Scientists |
| 34 | Ms Anne Hartnett |
| 35 | South Australian Murray Irrigators |
| 36 | Mr Ed Fessey |
| 37 | Australian Conservation Foundation |
| 38 | Ms Anne E. Reeves OAM |

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| 39 | Lachlan Valley Water |
| 40 | Pastoralists' Association of West Darling |
| 41 | Murray Irrigation |
| 42 | National Farmers' Federation |
| 43 | Ms Margaret Moxon |
| 44 | Australian Floodplain Association |
| 45 | Victorian Department of Environment, Land, Water and Planning |
| 46 | Gwydir Valley Irrigators Association Inc |
| 47 | Department of Agriculture and Water Resources |
| 48 | NSW Irrigators Council |
| 49 | Mr Drew Martin |
| 50 | Barwon-Darling Water |
| 51 | Mr Geoff Wise |
| 52 | Ms Ruby Davies |

Additional information received

- Received on 12 October 2017. Correspondence from the Hon Dr Anthony Lynham MP, Queensland Minister for State Development and Minister for Natural Resources and Mines;
- Received on 1 November 2017. Additional information provided by the Broken Hill City Council. Correspondence between Mayor Darriea Turley and the Hon Gladys Berejiklian, NSW Premier;
- Received on 1 November 2017. Additional information provided by Mr Bill Elliot, President, Wilcannia Community Tourism Association Inc. Document and pictures regarding a weir at Wilcannia;
- Received on 3 November 2017. Additional information provided by the River Lakes and Coorong Action Group. Copy of the opening statement from a public hearing in Adelaide on 2 November 2017 and a copy of a presentation given by Dr Anne Jensen;
- Received on 6 November 2017. Additional information provided by the Australian Floodplain Association. Correspondence between Terry Korn PSM, President, Australian Floodplain Association and the Hon Barnaby Joyce MP;
- Received on 20 November 2017. Answers to questions taken on notice by Ms Caren Martin, Chairperson, South Australian Murray Irrigators at a public hearing in Adelaide on 2 November 2017.

Tabled documents

- Document presented by Mr Lachlan Gall of the Pastoralist's Association of West Darling at a public hearing in Broken Hill on 1 November 2017. Document detailing the importance of floodplain water;
- Document presented by Mayor Lindsay Godfrey, Paroo Shire Council at a public hearing in Adelaide on 2 November 2017. 1992 document detailing information on the management of water in the Warrego area.

Appendix 2

Public hearings and witnesses

Wednesday, 1 November 2017, Broken Hill, NSW

- BROWNE, Councillor Marion, Deputy Mayor, Broken Hill City Council
- GALL, Mr Lachlan, President, Pastoralists' Association of West Darling
- JOHNSON, Mr Bill, Private capacity
- LeLIEVRE, Mr Stuart, Vice President, Australian Floodplain Association
- McBRIDE, Miss Kate Elizabeth, Owner, Tolarno Station
- McBRIDE, Mr Robert Eowin, Owner, Tolarno Station
- McCLURE, Mr Justin, Member, Australian Floodplain Association
- McCLURE, Ms Julie, Secretary, Australian Floodplain Association
- O'CONNOR, Councillor Phillip, Mayor, Brewarrina Shire Council
- SMITH, Mr Terry, Councillor, Pastoralists' Association of West Darling
- SOWIAK, Mr Jeffery, General Manager, Brewarrina Shire Council
- TURLEY, Councillor Darriea, Mayor, Broken Hill City Council
- ZANKER, Mr Leon, Member, Australian Floodplain Association

Thursday, 2 November 2017, Adelaide, SA

- BEAL, Mr Andrew, Director, River Murray Operations, Department of Environment, Water and Natural Resources, South Australia
- BRUCE, Mr Ben, Group Executive Director, Water, Department of Environment, Water and Natural Resources, South Australia
- FULLER, Mr Mike, Program Manager, Water and Fauna Permits, Department of Environment
of Environment
Water and Natural Resources, South Australia
- GODFREY, Mr Lindsay, Mayor, Paroo Shire Council
- JORDAN, Mr Dan, Director, Water Policy, Department of Environment, Water
and Natural Resources, South Australia
- MARTIN, Mrs Caren, Chairperson, South Australian Murray Irrigators
- MURRAY, Mr Michael Bernard, General Manager, Cotton Australia
- REEDY, Mr Richard, Board member, South Australian Murray Irrigators
- RIGNEY, Mr Grant, Director, Murray Lower Darling Rivers Indigenous
Nations
- SHANKS, Mr Paul, Board member, South Australian Murray Irrigators
- TREGENZA, Ms Elizabeth, Secretary, River Lakes and Coorong Action Group
Inc.
- WOODS, Mr Rene Paul, Chairperson, Murray Lower Darling Rivers
Indigenous Nations