

IUCN – The World Conservation Union

IUCN Environmental Law Programme<sup>1</sup>

## Applied Integrated Water Resources Management

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### The Murray Darling Basin Initiative - Australia

#### An Overview

The Murray Darling Basin (the Basin) is over one million square kilometres in area, roughly the size of South Australia, and stretches across four States and the Australian Capital Territory, all of who are party to the Murray Darling Basin Agreement 1992 (the Agreement), the other party being the Commonwealth.

The Basin in each State and Territory <sup>3</sup>			
State	Percentage of Basin	Percentage of State	Total Diversions
Queensland	24.55	14.63	5.4 % or 611 GL
NSW	56.65	74.79	54.5 % or 6194 GL
Victoria	12.32	59.96	33.9 % or 3858 GL
South Australia	6.49	6.98	5.9 % or 667 GL
ACT	0.22	100	0.4 % or 44 GL

The collective efforts of the four States, the Commonwealth and the ACT to manage the resources of the Basin is known as the Murray Darling Basin *Initiative* (the Initiative).<sup>4</sup> In its broadest sense the Initiative involves two separate but related issues, namely:

- The sharing and distribution of the waters of the River Murray between NSW, Victoria and SA in accordance with the Agreement.

<sup>1</sup> For more information on the IUCN Environmental Law Programme see: [www.iucn.org/themes/law](http://www.iucn.org/themes/law)

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<sup>3</sup> Sources: P Crabb, *Murray Darling Resources*, MDBC 1997 and MDBC, *Murray Darling Cap on Diversions Water Year 1997/98*

<sup>4</sup> See [www.mdbc.gov.au](http://www.mdbc.gov.au) for an overview of the Initiative

The first agreement to share the waters of the river dates back to 1915.<sup>5</sup> This agreement took almost 15 years to negotiate and the River Murray Commission established under the agreement did not meet until 1917. The initial agreement has been continually revised over the past 85 years. The Ministerial Council was not established until 1985.

- The development of policies and programs to promote the integrated catchment management of the Basin.

The Commission supports a significant investigation, research, development, and education effort and seeks to maximise the return on public investment in natural resource management by coordinating the many different funding programs that operate in the Basin.

The Ministerial Council adopted integrated catchment management as the framework for tackling major natural resource management issues in the Basin back in 1990<sup>6</sup> and renewed its commitment to this approach 10 years later.

The institutional arrangements for the Initiative are set out in the Agreement. They are as follows:

### **The Ministerial Council**

The Ministerial Council was established in 1985 and is responsible for considering and determining major policy issues of common interest. It is the peak body under the Initiative.

The Council consists of up to three Ministers from each State and the Commonwealth and one from the ACT (who has observer status). Members are drawn from Ministers who have prime responsibility for matters relating to water, land and environment<sup>7</sup> and the Commonwealth Chairs the Council, traditionally through the Minister with responsibility for agriculture.<sup>8</sup>

The Initiative is in effect an inter jurisdictional compact between the Commonwealth and States that provides a means for dealing with matters of common interest. It requires high-level political engagement and the establishment of the Ministerial Council in 1985 represented a significant step forward in managing the Basin as it provided a regular forum for this to occur.

The functions of the Ministerial Council include to consider major policy issues of common interest concerning “effective planning and management for the equitable efficient and sustainable use of the water, land and other environmental resources” of the Basin and to “develop, consider and, where appropriate, to authorise measures for the equitable, efficient and sustainable use of such water, land and other environmental resources.”

The achievements of the Ministerial Council over the last 15 years stand in stark contrast to the achievements made over the first 15 years of federation. They are testament to the strength of the Federation of Australia.

The major achievements of the Ministerial Council include<sup>9</sup>:

- The 1988 Salinity and Drainage Strategy.

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<sup>5</sup> See the River Murray Waters Agreement

<sup>6</sup> Murray Darling Basin Ministerial Council (MBDMC), Natural Resources Management Strategy – Towards a Sustainable Future, 1990

<sup>7</sup> See Clause 8(3) of the Agreement

<sup>8</sup> The current Chair being Minister Warren Truss, Federal Minister for Agriculture, Fisheries and Forestry

<sup>9</sup> Other more recent initiatives that could be referred to include: The MBDMC, 1999 Salinity Audit, MBDMC 2000 Draft Basin Salinity Management Strategy and MBDMC 2000 Draft Integrated Catchment Management Strategy

From 1975-85 salinity levels when measured at Morgan exceeded 800 EC units 42% of the time. As a result of the implementation of the Salinity and Drainage Strategy, salinity levels currently exceed 800 EC units 8 % of the time, with average salinity being 520 EC units.<sup>10</sup>

- The 1995 Cap on water diversions.

This is the most significant decision ever taken by the Council, through which all jurisdictions voluntarily agreed to cap their own diversions from the Basin.<sup>11</sup>

- The 1997 Pilot Program for permanent interstate trade.

This has allowed water to move to more valuable uses and has meant that the cap on diversions has not been a cap on development.<sup>12</sup>

All major achievements, but quite clearly more needs to be done.

### **The Community Advisory Committee (CAC)**

The Ministerial Council established the CAC as a Committee in 1986. It is responsible for providing direct advice to the Ministerial Council on matters referred to it by the Council and Commission, and to provide advice on the views of the Basin's communities.

The CAC is comprised of an independent chair and 26 members, 21 of whom are chosen on a catchment or regional basis. Of the remaining five members, four are drawn from four peak non-government groups and there is an appointee to provide an individual Aboriginal perspective.

Under the leadership of current Chair,<sup>13</sup> the CAC has been an active, independent, and powerful community voice in providing an alternative source of advice to Council. Members also actively participate in Commission working groups and committees.

### **The Murray Darling Basin Commission**

One can trace the Commission back to 1917. Up until 1985, the Commission was the peak body under the various Agreements. Since then the Commission has answered to the Ministerial Council.

The current Commission was established under the 1992 Agreement and it requires members who between them represent "water, land and environmental resource management."<sup>14</sup> Two deputy commissioners are also appointed. The ACT has observer status.

Traditionally, State Commissioners have been the heads of relevant State government departments, and Commonwealth Commissioners have been deputy level secretaries of the relevant Commonwealth departments.<sup>15</sup> An independent President, appointed by unanimous vote of the Ministerial Council, chairs the Commission.

The Commission is responsible for:

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<sup>10</sup> See 1999 Salinity Audit at pages 11-13

<sup>11</sup> Queensland has agreed to a cap on diversions but is awaiting the finalisation of its Water Allocation and Management Planning process (known as WAMP) before it agrees on the level of diversions

<sup>12</sup> See Dyson M and Scanlon J, 'Trading in Water Entitlements in the Murray Darling Basin in Australia – Realizing the Potential for Environmental Benefits', IUCN ELP Newsletter Issue 1 2002. Available at: [www.iucn.org/themes/law](http://www.iucn.org/themes/law)

<sup>13</sup> Leith Bouilly

<sup>14</sup> See Clause 20(2) of the Agreement

<sup>15</sup> The author is not aware of any non public servant being appointed to the Commission, other than the head of corporatised bodies such as Goulburn-Murray Water and SA Water. This has been by tradition rather than being required by the Agreement

- Advising the Ministerial Council in relation to the “planning, development and management of the water, land and other environmental resources” of the Basin and giving effect to decisions of the Council.
- Administering the Agreement, including the sharing and distribution of the waters of the River Murray, overseeing and directing the implementation of approved works and measures, and coordinating efforts at achieving integrated natural resource management across the Basin.<sup>16</sup>

The Commission does not own any infrastructure or any land, which is all owned by the Contracting Governments, normally through the Constructing Authorities. The Constructing Authorities build, own, and operate the joint works and measures that have either been included in, or subsequently agreed through, the Agreement for and on behalf of the Commission. The Council or Commission therefore authorizes the joint works and measures<sup>17</sup> but is not responsible for their implementation, which is carried out by a nominated Contracting Government.<sup>18</sup> The Constructing Authorities are responsible for the actual release of water from the various storages as directed by the Commission, and each jurisdiction is ultimately responsible for the delivery of water to users, which may include the environment.

The Commission is in effect the supplier of bulk water to the States in accordance with the Agreement. It is reliant upon the use of the River Murray storages and the built infrastructure either constructed pursuant to the Agreement, or otherwise available to the Commission,<sup>19</sup> in carrying out its functions. The Commission does not own the resource nor issue licences for its use; rather it has the responsibility for controlling the bulk distribution of water in accordance with the Agreement. How it is utilized after the point of delivery is essentially a matter for Contracting Governments.

### **The Office of the Commission**

The Office is not specifically recognised in the Agreement, but the Commission has the power to employ staff, which it does through the Canberra based Office of the Commission.

This Office of more than 70 highly skilled staff, has been a key driving force of the Initiative and has played a vital role in helping the Initiative get through some difficult challenges. The Office also provides support to the Ministerial Council, the Commission and the CAC.

The work of the Office is separated into River Murray Water, an internal ring fenced unit to manage the sharing and distribution of water in accordance with the Agreement, and Natural Resource Management.

### **Dealing with Water, Land and Environment Together**

The Agreement requires the Commission to examine the possible effects that the exercise of its powers or functions, or the implementation of works or measures, is having on the water, land, and other environmental resources of the Basin. In doing so it may have regard to the need to give directions that will improve water management and environmental objectives consistent with the overall framework established for the distribution of waters.

The purpose of the Agreement is to “promote and coordinate the effective planning and management for the equitable efficient and sustainable use of the water, land and other environmental resources of the Murray

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<sup>16</sup> It also has a role, inter alia, in considering and commenting on proposals that may “significantly affect the flow, use, control or quality of water” in the River Murray. See clause 46 of the Agreement

<sup>17</sup> And the Commission subsequently declares them to be ‘effective’ and monitors their ongoing operation

<sup>18</sup> This may become important in the context of the application of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. See section 3 of this paper

<sup>19</sup> See clause 101

Darling Basin.”<sup>20</sup> This broad focus on the sustainable use of all of the environmental resources of the Basin is reinforced throughout the Agreement.

The importance of addressing issues relating to water, land and environment is reflected in the required composition of both the Ministerial Council and the Commission, with the Ministerial Council including up to three members from each State and the Commonwealth “who have prime responsibility for matters relating to water, land and environment” and Commission members between them representing “water, land and environmental resource management.”

The Commission is given a range of specific powers and functions that reflect the importance of addressing issues relating to water, land and environment, and they include:

- To investigate and study “the desirability and practicality of works or measures<sup>21</sup> for the equitable, efficient and sustainable use of water, land and other environmental resources” of the Basin, including the “conservation, protection and management of aquatic and riverine environments.”<sup>22</sup>
- To establish adequate and effective monitoring arrangements capable of monitoring the “quality, extent, diversity and representativeness of water, land and other environmental resources” of the Basin, including “aquatic and riverine environments.”<sup>23</sup>
- To authorize the construction, improvement and replacement of works approved through the Agreement and the implementation of any measures “to promote the equitable, efficient and sustainable use of the water, land and environmental resources” of the Basin.<sup>24</sup>
- To consider applications by individual Commissioners to meet or contribute to the costs of ancillary, preventative and remedial works, including the acquisition by a contracting government of any interest in land related to the carrying out of any works, “or for the provision of flood easements”.<sup>25</sup>
- To “have regard to” the improvement of water quality in the River Murray and “other water management and environmental objectives consistent with this Agreement”<sup>26</sup> when giving directions for the release of water from upper River Murray storages in accordance with the Agreement.

In exercising any of its powers or functions, or implementing any works or measures, the Commission “must... examine and take into account any possible effects” which the exercise of any of its powers or functions or the implementation of any works or measures may have on the “water, land and other environmental resources” of the Basin.<sup>27</sup>

## **An Improved Knowledge Base and Adaptive Management**

The Ministerial Council and the Commission now have access to an improved and evolving knowledge base generated through a long standing process of investigation, monitoring, research and development. The Agreement makes provision for changing circumstances to be built into the Murray Darling Basin *Initiative* by the Ministerial Council and/or the Commission through:

- Authorizing new works and measures.<sup>28</sup>

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<sup>20</sup> Clause 3(2) requires any provision of the Agreement to be interpreted in a manner that promotes the purpose or object underlying the Agreement

<sup>21</sup> Defined to include strategies, plans and programs

<sup>22</sup> See clause 39

<sup>23</sup> See clause 40

<sup>24</sup> See clause 50

<sup>25</sup> See clause 51

<sup>26</sup> See clause 95

<sup>27</sup> See clause 47

<sup>28</sup> See clause 50

- Determining procedures for the operation of works and implementation of measures “from time to time.”<sup>29</sup>
- The ongoing responsibility of Contracting Governments to pay compensation for damage caused or arising from carrying out any works or measures provided for in the Agreement.<sup>30</sup>
- Giving directions for the release of water from River Murray storages in the form of standing procedures, which it may “amend or suspend at any time.”<sup>31</sup>

This brief review shows that the 1992 Agreement provides for the adaptive management of:

- the operation of works and measures implemented under the Agreement, and
- the release of water from storages in accordance with the Agreement,

to meet new objectives, including environmental objectives.

It further provides for adaptive management through the inclusion of the power to authorise new works and measures.

The Agreement anticipated changing circumstances and, within the clearly defined parameters set out in the Agreement, provided for them.

Attachments:

Dyson M and Scanlon J, ‘Trading in Water Entitlements in the Murray Darling Basin in Australia – Realizing the Potential for Environmental Benefits’, IUCN ELP Newsletter Issue 1 2002

Scanlon J, ‘From Taking, to Capping to Returning: the Story of Restoring Environment Flows in the Murray Darling Basin in Australia’, SIWI 2002 Seminar Conference Papers

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<sup>29</sup> See clause 60

<sup>30</sup> See clause 83

<sup>31</sup> See clause 95