Australia: Royal commission finds that Murray-Darling Basin Authority acted unlawfully

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A royal commission report, released earlier this month, has accused the federal government body responsible for overseeing Australia's largest river system of "gross negligence" and "unlawful conduct."

The Murray-Darling Basin, which spans much of south-eastern Australia, has been the scene of a series of recent mass fish-kill events. The incidents follow years of complaints over poor river management policies.

In response to allegations of illegal water use made by the Australian Broadcasting Corporation's "Four Corners" program in 2017, the South Australian state Labor government called for a royal commission into water management in the Basin. This was aimed at diverting growing anger behind a harmless inquiry and diverting attention from Labor's own responsibility for the crisis.

In his findings, Commissioner Bret Walker was particularly critical of the Murray-Darling Basin Authority (MDBA), which he said had attempted to adhere to a "triple-bottom-line" approach. This had allowed the health of the Basin to be subordinated to economic and political interests.

Walker found that the MDBA had failed to use the "best available science" in determining the Environmentally Sustainable Level of Take (ESLT) and setting the Sustainable Diversion Limit (SDL), which regulates how much water can be used for irrigation.

Notably absent from the commissioner's report was any criticism of the market approach to allocating water.

Walker said that the existing system allowed highly profitable agribusinesses to dictate the allocation of water at the expense of smaller farms. This was not, he claimed, "an undesirable side-effect of the market," but "the overt intention of those of us who devised and supported it."

Walker's comments underscored the attempt by the commission to cover-up the inherent bankruptcy of environmental planning under capitalism revealed by the Murray-Darling Basin crisis.

A substantial question addressed in the report was how political considerations were able to dramatically reduce the potency of the Murray-Darling Basin Plan as it was being drafted.

The MDBA was established with the introduction of the Water Act in 2007 by the federal Liberal-National government of Prime Minister John Howard. It was responsible for drawing up the Murray-Darling Basin Plan. The proposal was subsequently rolled-out by Julia Gillard's Labor government in 2013.

Ostensibly, the Basin Plan was designed to address the over-allocation of water for irrigation and improve the condition of the river system by reserving more water for environmental flows.

When the "Guide to the proposed Basin Plan' was released early in October 2010, it was met with hostility in basin communities. In the New South Wales (NSW) town of Griffith, irrigators and workers burned copies of the Guide.

The commissioner stated that this was not a "truly grassroots reaction." He pointed to *Crikey* reports from 2010 about a summit hosted by the NSW Irrigators' Council, and attended by representatives of the National Irrigators' Council, the National Farmers' Federation, the major banks, and the Australian Workers' Union. The meeting had resolved upon a campaign to lobby the government to change the Water Act and dilute the Basin Plan. The Gillard Labor government and the MDBA responded by quickly distancing itself from the Guide.

Labor government minister Tony Burke sought advice from the Australian Government Solicitor (AGS) on whether the Water Act demanded that the Basin Plan should balance social, economic, and environmental interests.

The AGS handed down an opinion in favour of the "triple-bottom-line" approach, contrary to previous legal advice sought by the MDBA.

Commissioner Walker criticised the AGS's advice that the Basin Plan should "optimise economic, social, and environmental outcomes," as a "fundamentally incorrect"

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reading of the Water Act, and said that in following it, the MDBA acted unlawfully.

Walker takes the view that economic, social, and environmental interests are inherently at odds with one another. This antagonism is rooted in the anarchic character of the capitalist system, in which profitability is the decisive factor in economic planning.

The question of whether heavily irrigated crops, such as cotton, should be grown in arid areas is never directly addressed. Instead, water is allocated according to who can afford to pay for it with massive agribusinesses free to grow whichever crop is most profitable for them.

Rational planning, determining what agricultural land is used for, based on an assessment of human need and environmental suitability, would enable natural resources to be used in a sustainable way, without workers and farming families losing their livelihoods.

Announcing his resignation in December 2010, MDBA chair Mike Taylor expressed the view that the Water Act did not allow the MDBA to harness "the minimum level of water required to restore the system's environment on social or economic grounds."

Taylor was replaced by former NSW Labor Party minister Craig Knowles, who considered it "as plain as day" that the legislation demanded a "triple-bottom-line" approach.

David Bell, former director of environmental water planning at the MDBA, told the royal commission that around the time of Knowles' appointment, "The idea that the SDL [Sustainable Diversion Limit] needed to start with a '2' became well understood within the MDBA."

Bell was referring to this assessment that the recovery target of 2,750 gigalitres (GL) was arrived at on a purely political basis. "Those people who were responsible for landing the plan didn't think they could land it with numbers that high, hence the reason for the shift to a number beginning with two," he stated.

No evidence was presented to the royal commission that contradicted his view.

There were also criticisms of the Guide by scientists. The Commonwealth Scientific and Industrial Research Organisation (CSIRO) raised concerns, particularly over the failure of the MDBA to reveal the environmental modelling it had used in preparing it.

The CSIRO questioned why social and economic concerns had stopped the MDBA from exploring recovery targets higher than 4,000 GL. They noted that the Guide stated a reduction of between 3,856 GL and 6,983 GL would be necessary to restore the Basin to health.

While scientists had concerns about the figures in the Guide, they were outraged when the draft Basin Plan was released in late 2011. Claiming that it now had access to superior modelling, the MDBA had revised the recovery target down to 2,750 GL, nearly 30 percent less than the low end of the range initially presented.

The commissioner's report stated that: "No scientist was prepared to accept that the SDL, giving rise to a recovery amount of 2,750 GL, reflected an ESLT [Environmentally Sustainable Level of Take]."

The "superior modelling" employed in preparing the Basin Plan did not incorporate climate change predictions at all. Commissioner Walker rejected the MDBA's justification that this was because they were "too uncertain," and further criticised the Authority for failing to conduct a review of climate change risks in the seven years since the Basin Plan was implemented.

Walker noted that climate change research in Australia had been "significantly curtailed" due to "a lack of direction and funding by the Commonwealth Government."

The royal commission was called not by the federal government, but by the government of South Australia, one of five states and territories with interests in the Basin.

Much of the commentary in the wake of the report has centred on accusations of bias towards South Australia, fuelling antagonism between the states and giving rise to the threat of one or more of them withdrawing from the Basin Plan.

It is likely that the other Basin states will use the suggestions of bias as justification for refusing to act on the Commissioner's recommendations.

The *Weekly Times*, an agriculture-focussed newspaper published in Victoria, claimed that South Australia was hoarding water to sell back to irrigators in other states for an inflated price, and, adding insult to injury, by holding a regatta while fish died and crops went unwatered upstream.

South Australia's *Advertiser* highlighted the commissioner's remark that the South Australian government's 2018 agreement to allow an additional 450 GL be used for irrigation upstream was "nothing short of a capitulation" to the interests of Victoria and NSW.

The conflicts over control of the Basin are another expression of the unviability of environmental planning and management within the existing economic and political framework. They also demonstrate that the commission and its recommendations will do nothing to resolve the Basin crisis.

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