Federalism and Water Management in Australia

Unintended Consequences in the Murray–Darling Basin

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INTRODUCTION

There are six governments with responsibilities in the Murray–Darling Basin (MDB)—the National Commonwealth Government, the four states with territory in the catchment, New South Wales, Queensland, Victoria, and South Australia, and the Australian Capital Territory that contains its largest urban centre. Together they administer a region that is just over a million square kilometres in size, has a diverse range of landscapes, ecosystems, land uses, and climates, and includes over 30,000 wetlands, eleven of which are listed under the Ramsar Convention of Wetlands of International Importance. Divided between the southern and eastern Australian states of New South Wales, Victoria, South Australia, and Queensland and the Australian Capital Territory—each with their different systems of water entitlements and management—MDB is home to just under 2 million people and supplies much of the water used by another million in South Australia. Those 3 million people and various industrial activities use about 4 per cent of the water diverted from the regions' rivers. The other 96 per cent is used by irrigated agriculture and supports nearly three-quarters of that activity nation-wide. From all sources MDB produces approximately 40 per cent of Australia's gross value of agriculture.

The history of increasing integration in MDB parallels that of the Australian federal political system. Having witnessed minimal cooperation

in relation to only a few issues in the early twentieth century, MDB is now the subject of intense public debate about how it should be coordinated as a single region. States are struggling to manage the complex problems that are thoroughly interlinked as a result of a century of intensive development and river modification. At the same time, despite their declining capacity in terms of policy and administration, they are resisting the increasingly tight controls being imposed on them by a federal government offering much-needed funds. But they are not powerless. Much of the knowledge needed for new policy resides with them, and they have considerable support from the substantial irrigation communities in MDB that are active at all levels of the political system. These communities see themselves as the victims of new agendas driven by the environmental movement and expanding urban areas, yet they have proved adept at responding. The saga of the Melbourne desalination plant and the Food Bowl Modernization Project illustrates some of the forces at play. The Victorian government is building a desalination plant for Melbourne that could cost up to \$24 billion over the thirty-year life of the project. Adelaide is building a smaller but similar plant. In both cases the water could have been sourced from within MDB at much less cost. These and other large public investments are the result of a failure to implement the original vision for water reforms in MDB, as first outlined in the rural water reform programme approved by the Council of Australian Governments (COAG) in 1994. The COAG programme was based on an inter-governmental agreement to restore sustainability to the riverine environment in MDB, and then introduce water trading across state borders and between uses to maximize the benefits to society from what remained. This chapter discusses what has happened since.

A central theme of discussion about the Australian constitution has focused on the way it has slowly changed the distribution of financial power within the federal political system over time. Alfred Deakin, Australia's second Prime Minister and a leading figure in constitutional debates, predicted in 1902 that contrary to the expectations of members of the convention who wrote the constitution, the distribution of financial powers within the document would eventually transform the new federation (La Nauze 1965: 347):

As the power of the purse in Great Britain established by degrees the authority of the Commons, it will ultimately establish in Australia the authority of

the Commonwealth. The rights of self-government of the States have been fondly supposed to be safeguarded by the Constitution. It left them legally free, but financially bound to the chariot wheels of the central government. Their need will be its opportunity. The less populous will first succumb; those smitten by drought or similar misfortune will follow; and finally even the greatest and most prosperous will, however reluctantly, be brought to heel. Our Constitution may remain unaltered, but a vital change will have taken place in the relations between the states and the Commonwealth. The Commonwealth will have acquired a general control over the States ...

Though this result would not have been seen as desirable by most of Deakin's contemporaries, the shift in power from the states to the federal government appears irreversible. How should this unplanned power be used? The history of cross-border water management in MDB provides a number of possible answers and shows that it is very difficult for federal governments to shape policy outcomes even when they appear to be in control.

CONFEDERATE MANAGEMENT OF THE MURRAY-DARLING BASIN

MDB's history illustrates a number of significant variations of Australian fiscal federalism. Early in the twentieth century, after more than a decade of unproductive negotiations, the federal government broke the deadlock between the states by offering an extra one million pounds to fund the construction of the proposed locks and weirs that would be built if the River Murray Waters Agreement was approved (O'Collins 1965). This was a sizeable sum, more than equal to the cost of building the major storage that had been proposed upstream of Albury (the Hume Dam). All states signed on in the following year (River Murray Waters Agreement 1915). By the end of 1915, the River Murray Waters Agreement had been incorporated into identical legislation and passed by each of the four parliaments. It contained three main elements. First, working through the River Murray Commission, a programme of engineering works was planned as an integrated whole, with building and operations to be the responsibility of the state within which they were constructed. Construction costs were to be shared equally by the four governments and operations and maintenance costs were to be the

responsibility of the three states within their jurisdictions. Second were the water-sharing rules. After providing a defined monthly flow to South Australia (which would vary from month to month depending on the time of year), New South Wales and Victoria were to share the flow at Albury equally and have exclusive rights to the water in their tributaries. As recommended by the Interstate Royal Commission (1902), a proportional share arrangement between the three states was agreed for times of drought. Third, a coordinating body known as the River Murray Commission was established. It would have four members, would be chaired by a federal representative, and supported by a small secretariat, and would oversee the implementation of the works programme and water-sharing arrangements (Clark and June 1971). With small changes over time these arrangements were in place for the next fifty years.

By the 1970s serious salinity problems had begun to emerge as a result of irrigation development, and there was increasing concern about water security in South Australia. From the 1980s this resulted in a revised MDB agreement, which for the first time included Queensland and the Australian Capital Territory, although not as fully committed signatories (Powell 1989). The revised agreement was partly a product of changing ideas about how public institutions should be organized and operated. There was a broad feeling that decision-making could no longer be left to small groups of engineers who had spent their careers dealing mainly with the water resource infrastructure. Under the new institutional arrangements, the basin's river system was to be managed to improve biodiversity and sustainability as well as production. The state and federal governments sent teams of ministers and senior public servants drawn from the agencies that dealt with the often-conflicting responsibilities for production and the environment.

This brought the environment and agriculture into the institutional fold along with water management (although other potential contenders such as tourism, recreation, aboriginal affairs, and local government remained outside). In the lead up to meetings of the ministerial council and commission, each jurisdiction was expected to develop a whole-of-government position on the various issues to be discussed. As with earlier iterations, these changes were incorporated in the new legislation and passed as identical acts in each of the parliaments of MDB in 1992-03 (Commonwealth Parliament 1993).

However, most of the activities incorporated in the new agreement were advisory or discretionary in nature, and needed the enthusiastic

cooperation of all the governments and agencies involved before they could be implemented in any significant way. This applied particularly to activities outside the Murray River corridor. In addition, the long-established unanimity principle still applied to all decision-making processes. This gave the power of veto to any jurisdiction that wanted to exclude an item from the agenda, or was dissatisfied with any decision made. Despite these limitations, the early years of the MDB initiative were marked by widespread enthusiasm and considerable achievement (MDBMC 2000).

By the mid-2000s environmental problems were increasing, exacerbated by drought and stalled progress with water reforms, even though they were obviously needed. The confederate model for cross-border water management in MDB, in place for nearly ninety years, looked as if it could not cope with the new demands. Surveying the inter-jurisdictional institutions of MDB in 2004, in an oral history interview conducted for the Australian National Library, Peter Cullen, a long-standing member of the MDB Community Advisory Committee and the Wentworth Group, and a foundation commissioner of the National Water Commission, provided this explanation as to why reforms had stalled (Cullen 2004):

In the early years, after the reforms of the 1980s, the Ministerial Council was persuaded to commission a series of major investigations whose results created strong pressure for change. Although this approach caused political pain in the states, they reluctantly went along with it because of the growing public demand for action to reverse continuing degradation. It was a very good strategy. The states were uncomfortable with it but were wearing it. It could have been made to work if the federal government had given its support. Instead, it took the view that the Commission (to a large extent meaning the Commission Office) was usurping its role and it was not prepared to allow that to happen. Federal ministers and commissioners felt that it was they who should coordinate and lead change in the Basin. So the federal government undermined the Commission by channeling the new money for natural resources through the Natural Heritage Trust and the National Action Plan for Salinity and Water Quality direct to the state agencies, rather than through the multi-government process provided by the Commission. This set up an unholy alliance between the federal and state governments, in which both for their own reasons were happy to disempower the Commission. As a result you had billions of dollars going to natural resources but not through a coordinating body. This was unfortunate because when the money went

through the Commission, you had all the governments over-viewing each other's investments, and they were able to act as a quality control on each other. Under the new arrangement, the federal government negotiates one by one with each of the states, and it lacks the knowledge and experience to effectively scrutinize what each state proposes. As a result, the states have been able to take advantage of the situation and run their own agendas. We now have much less scrutiny on the spending than we had when all the governments were sitting around the table. We got so close to getting it right in the MDB but that power relationship undermined it.

By the early 2000s there was consensus among all governments that something new was required. Given its funding position and basin-wide remit, the federal government was in a unique position to define the nature of the changes. It could have used its financial strength to persuade state governments to give up their requirement for unanimous decision-making. Arguably this would have changed the dynamics within the ministerial council and resulted in more rapid reforms. Alternatively, there was the option of taking control. It chose the latter. Under this new arrangement there was much less inducement for the state and federal governments to work together in the development and implementation of difficult and complex policies. The Commonwealth Water Act of 2007 gave responsibility to the national government for high-level policymaking and the states for implementation and management (Commonwealth Parliament 2007). This created the potential for the states to blame future failures on bad policy developed by the federal government. By contrast, the federal government could assign the responsibility to ineffective implementation by the states.

THE COUNCIL OF AUSTRALIAN GOVERNMENTS

The bilateral programmes described by Peter Cullen in his assessment of the fate of the MDB initiative had been developed through COAG, which is the most recent iteration of a series of institutional processes that have been created since the federation to coordinate the two levels of government in the Australian federal system (Painter 1998). After more than a century of struggle between the states and federal governments—during which the latter has grown more powerful yet the former have continued to find effective ways to frustrate federal intentions—COAG

has become the policy sphere within which many areas of joint constitutional responsibility are coordinated. To be properly understood, the federal government's MDB water reform programme needs to be viewed in the wider context of the National Competition Policy (NCP), arguably COAG's primary concern. It is part of the nation-building enterprise that began well before the federation in 1901 and is not merely an attempt to solve Australia's contentious water management problems. The aim is to meld the semi-autonomous states into a more unified national economy and society (Painter 1998). In the sphere of water policy, the intention is to promote this process by strengthening management, encouraging water trading, and reducing the significance of state borders.

At COAG meetings the financial dominance of the national or Commonwealth government within the Australian federal system gives it a controlling influence, but the constitutional sovereignty of the state governments allows them to opt out of any given policy project. In the short term, this provides a way for the federal government to exert its increasing power, but prevents the build-up of unmanageable political pressure from states that disagree with the policy in question.

The three major rural water policies linked to COAG are the 1994 Water Resource Policy, the 2004 National Water Initiative (NWI), and the Commonwealth Water Act 2007. The main themes of the COAG agenda in play since the 1990s were clearly presented in the 1994 programme (COAG 1994). The first task was to restore hydrological systems to sustainability in order to protect the resource for the future. Next, water trading across borders and between uses was to be introduced to maximize the benefits to society of the water available after the sustainability requirement is met. Water trading provided a way to move water away from low-value unsustainable activities, and its introduction involved many changes. Until the late twentieth century the water management system focused on promoting growth and the increased use of water. Developing defined products that could be traded from region to region was not a priority. As a result there was great variation in the nature of water licences from region to region and state to state, making trade difficult. When an entitlement moved from one region to another, the question arose as to whether it should have the legal characteristics of its region of sale or its region of purchase. Among other things, the development of a system through which markets could operate involved giving clearer legal definition to water licences—originally granted free

of charge to promote development—which increasingly came to be seen as entitlements. In addition, the regional networks of delivery infrastructure were gifted to regional bodies of irrigators. In return, irrigators were to take responsibility for maintaining them and their future development and they were expected to meet a number of demanding environmental requirements. They were also to bear the cost of managing the drought and the impacts of climate change. Responsibility for the latter was made explicit in paragraphs 48 and 49 of the NWI (COAG 2004).

After some delay, the 1994 COAG rural water reform programme received its first serious test in 2004. The organization that supervised the implementation of the 1994 water reforms was the National Competition Council (NCC). Compliance with the various stages of implementation was linked to the disbursement of competition payments, made as part of the implementation of the National Competition Policy (NCP). The process conducted by NCC in relation to the 1994 reforms is described in some detail in a report of an assessment of compliance by New South Wales published in June 2004. Overall the NCC report concluded that 'the available evidence indicates that New South Wales has not gone as far as possible to provide water to sustain ecological values' (NCC 2004), and it gave advance notice that unless there was greater progress it would be recommending a 'substantial suspension or reduction in competition payments' in the final report due in 2005. In 2005 competition payments to New South Wales were reduced by 10 per cent or nearly \$26 million (later adjusted to \$13 million) as a result of its failure to satisfactorily implement this section of the COAG programme. On receiving the reduced payment from COAG, New South Wales reduced its funding to the Murray–Darling Basin Commission (MDBC). Other states subsequently ratcheted down their contributions and significantly reduced MDBC's budget for its riverine rehabilitation programmes (MDBC 2006–07). All in all this was a rather pyrrhic victory for the COAG national competition payment process.

But if that victory was doubtful, the Food Bowl Modernization Project undertaken in Victoria was a clear failure (assuming the criteria for success to be implementation in accord with the original goals). In January 2007, the then Prime Minister John Howard, on behalf of his conservative coalition, announced a \$10 billion package to support implementation of the National Water Initiative (later updated and increased, see 'Water for the Future'). Nearly \$6 billion was assigned for

infrastructure upgrades to assist communities to adapt to climate change (despite such a contribution being incompatible with the assignment of risk for climate change in NWI approved by all governments just three years before). One of the projects funded from this \$6 billion is the Food Bowl Modernization Project in central northern Victoria. It is estimated that it will eventually cost approximately \$2 billion. The irrigation community in that region (which should have been the sole funder according to COAG's 1994 rural water reforms and the 2004 NWI) is contributing \$100 million and the federal and Victorian governments are supplying the rest. There have been many criticisms of the project. An article in *The Age* newspaper (28 March 2010) summarized assessments of the scheme by prominent economists and hydrologists. Their judgments were overwhelmingly negative. Comments included 'savings not credible', 'scandalous waste of billions of dollars', and 'fewer hospitals, fewer schools and a whole heap of irrigation infrastructure that will sit there like a white elephant'. This episode illustrates some of the risks of policy capture that face governments attempting to reform sectors dominated by powerful stakeholders (not an unusual situation). In this case, even though the risk had been foreseen and apparently blocked in the COAG 1994 reform package and in NWI, that knowledge and effort was not sufficient to protect the integrity of the policy process.

There is a second stage to this story which has resulted in even higher costs. As part of the process of making government investment in the Food Bowl Modernization Project acceptable to the wider public, it was originally intended that the water that would be saved by infrastructure improvements would be divided equally between irrigation, the environment, and the city of Melbourne (Australia's second largest city), a short distance outside the MDB catchment to the south. Melbourne's need for extra water was dire. As a result of drought, by the mid-2000s its water reserves were extremely low. Looking to the future there was, and remains, an urgent need to diversify and increase Melbourne's future sources of supply. The water that would be diverted from MDB was a small proportion of the water annually extracted for irrigation in the central Victorian section of MDB, but it would have been enough to transform Melbourne's water security. In terms of economic and social benefits, the second use of water was of far greater value than the first. Despite this, the transfer to Melbourne was opposed by communities in central Victoria. After the connecting pipeline was completed it was

closed by the newly elected conservative Victorian state government with a promise that it would never be reopened. To cover the water supply shortfall the Victorian government is now building a 150 gigalitre desalination plant for Melbourne, which is estimated to potentially cost nearly \$6 billion in net present value over the thirty-year life of the project.

There is a similar story to be told about Adelaide in South Australia which is building a 100 gigalitre desalination plant. In both cases the water could have been acquired from MDB at much less cost by savings through infrastructure investment or, even better, through water trading as was originally envisaged in the 1994 COAG water reform programme and advocated for more recently by the Australian Productivity Commission (Australian Productivity Commission October 2011). Desalination plants are a useful option to diversify sources of supply for both cities but they do not need to be this large. The extra costs of these very large plants are the direct result of policy capture in defiance of the original COAG reform programme. It can be argued that much of the cost of the two desalination plants should be seen as further subsidies to irrigation communities, in that they reduce political pressure for them to allow water entitlements to be traded away for other non-agricultural uses. This saga provides an excellent case study of fiscal federalism in action in the context of Australia, illustrating some of the limitations of federal reform strategies as devices to drive reforms.

COMMONWEALTH WATER ACT 2007

Federal political systems create many sources of risk for river management. The management of large cross-border rivers such as the Murray–Darling system are typically characterized by considerable inter-governmental and inter-agency conflict, low decision-making transparency and accountability, high transaction costs, and ad hoc deals between competing subnational governments that undermine best-practice water management. In addition, strains caused by poorly managed conflicts over rivers can result in tensions within federal systems that affect other parts of the political system. The history of the implementation of the Water Act of 2007 is a case in point.

The federal government initially expected rapid reforms by the states as a result of the NWI approved by all governments in 2004. The Water

Act 2007 was introduced when that did not happen. Although the new act increased the power of the federal government, it did not give it total control over the basin's water resources. A key aspect of the legislation is the creation of the Murray-Darling Basin Authority (MDBA), charged with developing and implementing a basin plan, which for the first time will establish an integrated approach to managing MDB's water resources. This is a legally enforceable document due for implementation in 2012. The key elements of the basin plan include:

- sustainable limits for surface and groundwater;
- basin-wide environmental objectives, including water quality and salinity targets;
- rules for a basin-wide water trading regime;
- requirements for each of the four state sub-plans that will implement the basin plan objectives; and
- measures that will improve security for water entitlement holders.

Given predictions for a drier future in the southern basin, a significant issue arising from the plan is the assignment of risk for future policy changes, drought, and climate change. Should these predictions be realized, the risk of lower water allocations to water entitlements will be borne by:

- water entitlement holders in the event of bushfires, drought or climate change;
- government, if it is the result of policy change; or
- a combination of entitlement holders and governments, if it is due to an improvement in knowledge about what is needed for environmental sustainability.

Central to the basin plan will be a 'sustainable diversion limit' set for the basin as a whole with diversion limits also developed for sub-basins. At the basin-wide level there will be plans for the environment, water quality, and salinity. The basin plan will also identify key environmental assets (such as the Ramsar wetlands) and core ecological functions that must be maintained. It will be designed for a wide range of circumstances, as is appropriate for a highly variable climate, and will identify potential future risks such as climate change, bush fires, and new agricultural activities that could change run-off patterns.

A crucial body created by the Water Act is the Commonwealth Environmental Water Holder (CEWH). CEWH is responsible for using

the water gained from purchases, and some of the water gained from the federally funded infrastructure improvements, to achieve environmental objectives via a programme of active, targeted watering. Water will be held as entitlements with the same legal characteristics and levels of security as those owned by irrigators.

PROBLEMS WITH THE BASIN PLAN

There are a number of reasons for thinking that the basin plan will not be implemented as envisaged in the act. Implementation will depend on a very high degree of support from the states, which the federal government could have difficulty attracting. As already indicated, the plan is to be implemented through sub-plans developed by each of the states. There is a long history of reluctant cooperation by Australian states with national water reform programmes (Connell 2007) and it is hard to see why that pattern would change. As in the past, the federal government is attempting to gain cooperation from the states by offering funds for compliance, but the saga of the Victorian Food Bowl Modernization Project is evidence of the difficulty of ensuring that such projects are not hijacked by special interests. In practice it is difficult for the federal government to 'punish' a state because members of both houses of the federal parliament come from state electorates. If a state is deprived of expected federal investment, its voters are likely to reduce their support for federal government candidates in the next election. This electoral reality means that conflict between a federal government and one of its state governments is quite different from a conflict with an external funder such as the World Bank or a foreign aid donor (although they too have often found it difficult to exert effective financial pressure in practice).

It is also likely that preparing the state sub-plans will be even more contentious than the preparing of the first stage basin plan. It is through these state sub-plans that the general principles of the basin plan will be transformed into specific changes affecting particular places and people. Confronted with the details, opposition from groups and individuals most affected is likely to be even stronger. The federal government's swift retreat in reaction to public response to the 'draft of the draft' basin plan released in October 2010 indicates that it is very reluctant to push ahead

against vocal community opposition. The act does give the relevant federal minister the power to develop an alternative state sub-plan if she is not satisfied with what is offered, but capacity to do so is limited in practice. Lacking in-house expertise, the Commonwealth could employ consultants, but they will be hard put to proceed without detailed information and cooperation from state agency personnel and industry groups in the various regions.

Previous attempts at water reforms in MDB avoided using direct legislative instruments to drive individual and state government behaviour to achieve reform goals. The Water Act is using a much more coercive legal process. By asserting itself through legislation, the federal government has created new opportunities for opposition through the courts. The Water Act is heavily dependent on the federal government's commitment under the foreign affairs power of the constitution to protect the Ramsar-declared wetlands. A number of environmental groups have suggested that they will test the adequacy of the basin plan to protect those sites in court. If a court finds that the amount of water set aside would be insufficient for that purpose, would the federal government be ordered to increase the volume diverted from irrigation? Another example is provided by South Australia's threat to test whether restraints on water trading infringe section 92 of the constitution, regarding the imperative to allow free trade between states. Coming from a different policy position, irrigation groups have threatened to test whether section 100 of the constitution, which allows states 'reasonable use' of water in their rivers, can be used to block federal implementation of the basin plan.

It is not a matter of considering which of these issues might come into play. It is likely that all of them, and others as yet unknown, will arise as the dispute intensifies. The Water Act does contain a number of provisions that would allow for court-imposed sanctions of various sorts, though it is unlikely that significant penalties would be imposed on state public servants, irrigation industry organizations, or individuals by a court if the government and significant stakeholder groups were in serious conflict. The upshot is that the basin plan process is likely to be the centre of a complex storm of disputes for many years. Under those circumstances, implementation will be slow.

Another factor working against the Water Act is the schedule for implementation. According to the act, implementation will begin in 2019 (with a five-year phase-in period after that date) when current water

sharing plans in Victoria and New South Wales expire. This is in contrast with the implementation schedule for the COAG National Water Initiative approved in mid-2004. Attachment A of the initiative included commitments by governments to water reform targets with dates for completion. Interestingly, at the same time as the governments of MDB were approving the National Water Initiative, the state governments were preparing the water-sharing plans announced later that year. They will delay implementation of the basin plan until 2019 (plus five years for completion). A number of other observations can be made about the timing issue. For example, it is likely that when implementation begins in 2019, new knowledge gained since the approval of the plan in 2012 will render it largely redundant. There is already discussion of a possible revision in 2015. In addition, by 2019 the generation of policymakers who cobbled together the 2012 basin plan will be gone. In their place will be a new generation who were not involved in the preparation of the plan. To what degree will they, or their governments, be committed to implementation, particularly if they face community opposition?

THE ALTERNATIVE EMERGING GOVERNANCE MODEL

For reasons discussed in this chapter, it is unlikely that the basin plan will be the centre piece of the system controlling MDB high-level policy and management in the medium-term. However, the Water Act contains the potential for an alternative governance system based on CEWH. As described earlier, the Water Act established CEWH to manage water gained for the environment through Commonwealth-funded infrastructure improvements and purchases of water entitlements. As originally envisaged, CEWH was to be a subordinate body tightly controlled within the overall framework based on the basin plan. However, if the basin plan is marginalized by political wrangling and litigation, CEWH could operate with much more freedom and influence. If this does happen, it will be due to the convergence of a number of policy decisions, producing a result which was unplanned and probably unforeseen. The most important of these were:

- the allocation of \$3.1 billion to purchase water for the environment (rather than to increase water for the environment by reducing allocations without compensation as originally proposed in paragraph 49 of NWI);

- the decision to manage the water acquired for the environment actively through a targeted watering plan (rather than return it to the component of flow left in the river outside the water entitlements management regime); and
- the decision to control management of that water for the environment through a federal government agency (rather than through an agency controlled by all MDB governments as is happening with another body of water entitlements, the Living Murray programme which continues to run in parallel with CEWH's operations).

Through CEWH, the federal government will be able to achieve the environmental flow targets of the basin plan even if the states do not give their support. This means that the timetable for developing the state sub-plans to implement the basin plan will be almost irrelevant. In reality the programme will be driven by CEWH, only limited by the size of its budget and any other constraints that the federal government may place on it. When CEWH's purchasing programme is complete it will hold more than a quarter of all water entitlements in MDB.

If an alternative governance model emerges based on CEWH rather than the basin plan, it could be seen as a defeat for irrigation stakeholders who have been working to frustrate the development of the basin plan as a way of blocking increased water being assigned to the environment. Irrigation lobbyists will probably see the situation that way but this could be a mistake. Some observers think that the irrigation industry will benefit more from a settlement to the dispute that left the environment in reasonable shape. The possible consequences of blocking reductions in water for irrigation in order to improve environmental outcomes were outlined by one of the consultancy groups who assisted with the five-year review on the MDB cap on extractions undertaken in 2000. Discussing the implications for MDB if governments fail to implement an effective cap, Marsden Jacob Associates predicted that resource sustainability will become a major issue (Marsden Jacob 2000). Their report said that under those circumstances, increased irrigation development would undermine the security of established producers and act as a disincentive to new entrants. Degradation of the riverine environment and water quality would proceed at an accelerated pace and there would be increased tensions between irrigation groups and surrounding regions as water supply security declined. Water trading

would become more aggressive and the incomes and viability of irrigated enterprises and communities across the basin would be increasingly sensitive to seasonal and climatic variations. Ultimately, as end-of-valley flows continued to fall and the damage to riverine environments became stark, irrigation communities would become increasingly alienated from wider society. In other words, refusal to compromise might seriously damage the irrigation industry. By contrast, it could be that the emergence of CEWH—with its potential to satisfy some of the political pressure for riverine rehabilitation coming from the wider community—will rescue irrigators from the danger of political isolation, despite their efforts to embrace it.

THE FUTURE

As Alfred Deakin predicted in 1902, the federal government has come to dominate the Australian political system to an extent that few of his contemporaries expected. But finding ways to use that power to achieve desired results has proved difficult. The history of institutional design is dominated by stories of unintended consequences. The role of institutions is mentioned rarely in policy debates. Public discussion tends to be dominated by proposals for new projects and activities rather than institutional change. Do we need more storage? Should this or that volume of water be set aside for the environment? How can we increase the volume of water that is traded? Less often discussed is the nature of the institutional framework likely to evolve in a given set of circumstances. It is the quality and characteristics of that institutional system which determine whether the potential benefits of any new project or activity will be realized. Institutions themselves do not produce a given result, but neither is any institutional system neutral in its influence on decision-making. An institutional system unavoidably creates a management environment within which some results are more likely than others. This places a priority on the need to understand that environment so as to better recognize what is possible and what is not.

At any given time in MDB, a large number of individuals, groups, organizations, and institutions, including governments, are interacting and influencing the policy process in different ways. In practice, decisions are not made in a top-down manner. They are the product of cycles of

interaction in which the participants have varying degrees of influence yet no single voice is dominant. First, there are two levels of government—federal and state—each with considerable independence from the other and each containing a number of departments and agencies that deal with the many issues related to water management, often quite differently. In addition, much of the discussion about inter-jurisdictional water management in MDB gives the misleading impression that interaction between the federal and state governments is highly structured, yet the reality is much more elusive. The independent centres of power generated by the federal and state jurisdictions create focal points around which contending interest groups arrange themselves, moving from one to the other as their members make strategic decisions about alliances and about how best to promote their goals or block those of others.

The federal government supplies the bulk of project funds to a variety of recipients but usually has to rely on indirect processes of accountability to influence implementation. States have substantial direct regulatory power but limited funds. Regional organizations such as catchment authorities and water distribution agencies such as Goulburn Murray Water and Murray Irrigation are formally subordinate to state governments but have independent corporate standing, and they often get federal funding and have ready access to state and federal parliamentarians representing their areas. Research bodies and research and development corporations are irrelevant most of the time, though periodically they provide findings that bolster some stakeholder positions, discredit others, and sometimes shift the basic assumptions upon which such debates are conducted. Even more politically active are industry bodies and large companies which have emerged as irrigation-based agriculture becomes more business-orientated. There are also non-government organizations such as the Australian Farmers Federation and the Australian Conservation Foundation that appeal to the wider electorate and whose support is often needed by governments for major initiatives. Banks and commercial organizations such as Woolworths and Coles supermarkets can also exert significant influence through their purchasing and lending policies. In addition, local governments have planning powers that can play a decisive role at the district level. Largely excluded from all these interactions are members of the general community. They tend to be involved only intermittently, yet when activated can be a decisive and unpredictable political force.

If implementation of the basin plan process is blocked indefinitely by political and legal disputes and CEWH becomes as significant as predicted in this chapter, what sort of water governance system is likely to evolve in MDB? It could be that the federal government will end up focusing mainly on environmental outcomes and leave the states to look after irrigation, industry, supplies for urban areas etc. Despite two decades during which integrated water resource management has been the dominant water management paradigm, it could be that the effort to achieve substantial coordination, at least at the inter-government level, will be largely abandoned. This situation will be modified somewhat if CEWH uses regional bodies such as catchment authorities to deliver much of the environmental water, as has been widely recommended. At the regional level, in contrast to that of state and federal governments, there could be quite a lot of cooperation between the different water management bodies. This creates the prospect of coordinating the activities of the different levels of government by working from the bottom of the constitutional hierarchy rather than from the top, as proposed in the basin plan.

Regional delivery and coordination does raise other issues, including the threat to transparency in decision-making and the need to avoid policy capture by stakeholder groups with interests that conflict with agreed public policy goals. Here the federal government could play an important role. One of the major themes of the Water Act is support for enhanced resource and environmental auditing by organizations such as the Bureau of Meteorology, the Australian Bureau of Statistics, and the MDB. If these auditing and monitoring activities are coordinated effectively, they could become an important part of the governance framework. Comprehensive information supplied by a thorough auditing process provides a solid foundation for informed public debate which, hopefully, will produce a positive public policy outcome. Given MDB's complex political environment, it is arguably not realistic for the federal government to expect a high degree of precision in the delivery of policy outcomes, as it is attempting to do through strategies such as the MDB plan. Instruments such as water purchases for the environment and the provision of information are likely to be more enduring in their impact, if limited in their ambition. In the end, the federal government may be more successful if it aims for influence rather than control.

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