Radical reforms versus incremental change in water policy: Some ideas

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**Reflections on water reform in the Colorado and Murray-­‐Darling Basins**

**This essay is part of a series of fifteen ‘reflections’ papers from the September 2013 Workshop: Rivers of Reform – Lessons from the Colorado and Murray Darling Basin Water Reforms. The purpose of the series was to take stock of lessons learned from the past two decades of sustainable water reform, stimulate continued exchange across the basins, and promote more structured comparisons to learn from similarities and differences, and successes and failures.**

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Water is a strategic resource for Australia and our policies have evolved and have been stress tested by the variable climate. Much can be gained by critically examining Australia’s experience in evolving water policies that suit our conditions including our highly variable climate.

There are two fundamentally different types of water policy reform – radical and incremental. Most is incremental and most R&D is focused on refining the existing system without altering the underpinning legal and conceptual frameworks, but there are examples of radical reform.

The “Deakin” or Victorian Water Act of 1886 is an example of radical reform. It fundamentally altered water law in Australia and is still the basis of almost all our water law. It was brought in at the height of the booming 1880’s when Victoria was rich beyond compare from gold, ambitious, and optimistic about building lasting institutions along with grand Victoria architecture that is so characteristic of cities like Melbourne and Bendigo.

This law established the State as the owner and allocator of water use rights and provides the basis for Australia’s state centric water planning. While there is no “real property” right to water – as tested in a high court decision recently – Australian water law in practice is moving increasingly to recognise “private use rights” as in effect similar to tradable property. While this is the case, I only see it as a matter of time before there are significant legal claims by indigenous peoples to water. These claims will be not dissimilar to the Wik, Mabo and other successful native title claims like sea country claims and are likely to stir controversy.

Due to the framing of Australia’s constitution, water policy reform relies on “cooperative federalism” or as it appears at times, uncooperative federalism. However, a more fundamental problem is that current reforms

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lack a coherent architecture, despite the National Water Initiative (NWI) providing a set of aspirational goals. The reason I make this claim is that the current institutional arrangements are baroque, messy and many roles and responsibilities remain unclearly defined. Some agencies continue to be resource managers, regulators and market operatives. While the current reforms deal with a wide range of issues and aim for significant improvement in many areas, it is unclear what the underpinning principles and criteria for policy and institutional redesign are. Without these how will we know what success is and the pathways for transition? In addition, water planning is not integrated with landuse and natural resource planning

Furthermore, Australia’s arrangements are baroque, elaborate and demanding. Both the NWI and the Murray-Darling Basin Authority (MDBA) Plan require the development of detailed subsidiary regional water plans. The resolution of many difficult problems are deferred to these planning processes and there is an expectation and statutory requirement that the plans will be prepared to a new, high standard, yet all Governments are reducing their budgets and their professional capacity in these critical areas.

Another serious risk to the achievement of the current water policy goals is gaming by the states and, as a result, it is feasible that by the end of the decade billions will be spent and desired outcomes not achieved.

Given the situation, what is needed is public policy architecture that has clearly defined criteria and principles to guide further reforms that aims for a set of institutional arrangements that are both elegant and efficient. This is required because it is unrealistic to expect the intensely detailed and baroque arrangements to continue in the face of governments’ budget situations.

The need for further reform is well illustrated by the water markets in the Murray-Darling Basin. Today I can trade shares with the click of a mouse, yet due to the transaction intensity and administrative complexity involved in permanent interstate water trade almost nobody is trading entitlements across state boundaries. Therefore there is a modernisation agenda required, not only in the markets, but also in the underpinning relationships between water users and governments.

While I am big fan of water markets, I am wary of putting too much faith in market-based ideologies when it comes to water policy.

The ways in which we conceive of and think about nature and natural resources, frames much of what we think is possible and desirable. Yet rarely are the underlying paradigms and philosophies that drive policy choice made explicit. Further research in the fundamental relationships and the option for reframing our relationship with rivers is critical. Still too often the default approach to setting targets is by reference to some idealised “natural” or pre 1770 state. More sophisticated approaches to planning and the setting of targets and objectives are required.

Rivers are complex systems that evolve through long-standing “negotiations” between “nature” and cultures. The negotiators need to do so more consciously of the values and beliefs that drive our collectively view about what future is desirable and what kinds of relationships we want to have with our rivers.

Finally, I would like to make three closing suggestions.

Firstly a plea for comparative research; not just across national boundaries but across sectors. There is merit in looking to reforms in forestry, fisheries and urban planning for relevant lessons and examples. For example, very little urban planning starts with a clean slate, interventions

are planned to enhance the functioning of a city whilst it continues to function.

Secondly, I believe that given reforms like the Water Act have objectives framed around protecting biodiversity and ecosystems, there are significant opportunities from using and adapting systematic conservation planning tools and approaches. Australia has a proud history of developing useful methods such as bioregional conservation planning and mathematical tools for optimising conservation decisions. These elegant spatial planning tools assist the identification of priorities for conservation. These could be used much more in the planning and management of aquatic systems. They will

assist in providing predictive planning tools with strong foundations in ecology.

Finally, I will emphasise what I started with: there is a need to consider how radical reforms to the underlying legal and conceptual (intellectual) basis of water policy could be used to redirect societies’ relationship to water and rivers. There is no valid reason to assume that we have built the most appropriate systems for handling the contemporary or forthcoming challenges. Water policy must continue to evolve if it is to handle the changing social values and the challenges of the 21-century – high quality research will assist us in illustrating and determining what is feasible, possible and desirable – but it should be bold and far ranging.

# About the author(s)

*Jason Alexandra has 30 years of experience in working at the intersection of research, policy and practice in sustainability, conservation, water and natural resources management. Jason has published widely on a diversity of subjects and has worked in the private, government and NGO sectors.*

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