

# Xenophon has not given up on Storm Boy country

Nick Xenophon, Independent Senator for SA

## Key points

- Nick Xenophon was elected to the Senate on a commitment to fight for the River Murray and Lower Lakes.
- While other Senators have gone back on their promises, Nick continues to oppose the Victorian pipeline, states pursuing self interest and the Federal Government stalling for time.
- The Lower Lakes, the lungs of the Murray, are taking their last gasp and there is no time for delay.
- On 17 September 2008, Nick called for an environmental impact study into flooding the Lower Lakes, on 8 January 2009, the Federal Government announced its EIS.

## Senate Hansard

**Senator XENOPHON** (South Australia) (27/8/2008, 5:31 PM) — I want to work constructively with the government, and indeed all my colleagues, on what I believe is the biggest crisis facing our nation and my state in particular—that is, the crisis facing the Murray-Darling Basin. It is too big and too important to be treated as a partisan issue. This crisis not only reflects environmental failures but also represents a failure of Federation. For more than a century state governments have put parochial interests above the national interest and allowed this once great river system to be drained to death's door. We know from the High Court's decision on Work Choices the extent of Commonwealth power. I believe that power should be used for the good of the entire river system and the communities that depend on it for their survival. The irrigators need help and the environment needs protecting. This should not be about state against state, region against region or irrigator against environmentalist. With one river system, there should be one set of rules to run the rivers in the national interest. Governments should not give in to the temptation to play divide and rule as the river dies. It was Mark Twain who likened the River Murray to America's great river the Mississippi. However, as the *Courier-Mail's* Mike O'Connor wrote last week:

Were Twain to see the Murray River today it is unlikely he would repeat the comparison, for the Murray and its sibling the Darling are dying, strangled by a combination of political apathy, cowardice and stupidity.

In 1999 Phillip Coorey wrote in the Adelaide *Advertiser* of a leaked CSIRO report that said Adelaide's water would be too salty to drink on two days out of five by 2020 unless there was a major shift in water management along the Murray-Darling river system. We are still waiting for that major shift. I cannot accept that the Council of Australian Governments agreement of 3 July this year, which will not be fully implemented until 2018, reflects the urgency required. The science says we cannot wait. How can one of the wealthiest, smartest countries on the planet be facing an environmental disaster in the Coorong and Lower Lakes reminiscent of the devastation of the Aral Sea in the former Soviet Union? This is not a crisis the current federal government created. Like a tragic game of pass the parcel, they just got left with the mess when the music stopped. The government did not cause the problem, but they do have the power and the opportunity to deliver a solution. I believe that only a full federal government takeover of the entire basin will achieve this.

In October 1942, during the heat of a federal election campaign, allegations emerged about a 'Brisbane line'—that is, the nation north of Brisbane would be dissected from east to west and the area above the line abandoned in the event of a Japanese invasion. I wonder whether there is a vertical South Australian line. Perhaps it starts somewhere to the east of Renmark, a line not planned or premeditated but nonetheless caused by political decisions, a line that deems part of this country as expendable. Make no mistake: not acting is still making a choice. This line will come into being in the absence of bold action on water. None of us wants to see that come to pass, but perhaps by imagining the worst we will be spurred on to fix this problem.

**Senator XENOPHON** (South Australia) (17/9/2008, 4:57 PM) — The Murray-Darling crisis is arguably the greatest environmental challenge this nation has ever faced. It needs a national solution and it needs to be an informed, scientific solution. So I am deeply concerned that the federal government does not appear to be delivering on its promise of an evidence based approach to the Murray-Darling crisis. The environment in the Lower Lakes is dying. Countless irrigators in the Riverland face losing their homes and are being forced to witness the death of their communities.

So how, while all this is happening, could the federal government possibly approve the Victorian government's north-south pipeline, which will take 110 gigalitres of water away from the Murray-Darling system every year and divert it to the city of Melbourne? How could the federal government have agreed to the

purchase of the Toorale Station in New South Wales, using \$24 million of taxpayers' money, without consulting the Murray-Darling Basin Commission? And, more importantly for my state of South Australia, how could the federal government possibly be considering flooding the Lower Lakes with sea water without doing the necessary scientific research into the environmental impact of such a move?

I refer to evidence provided last week to the Senate Standing Committee on Rural and Regional Affairs and Transport inquiry into the Murray-Darling crisis by Dr Bill Phillips, the Director of RiverSmart Australia, who stated that the environmental impact of such a flooding is unknown. Dr Phillips argued very convincingly that allowing salt water into the Lower Lakes might lead to the destruction of significant parts of the Fleurieu Peninsula. This was certainly news to me and to others on the committee, and it was very bad news indeed. Dr Phillips said:

We do not know what will happen if you add sea water into that part of the system. It is highly likely it will end up in the groundwater systems, which could then flow up into the critically endangered Fleurieu Peninsula swamps. You might essentially kill off a critically endangered ecological community and the emu wrens that live there. So there are all sorts of collateral impacts that could happen from opening the barrages which force us to say that it has to be the absolute last resort.

I ask the government: what scientific study has been done on this doomsday scenario? Has the CSIRO been given the task and the resources needed to ensure that any plan to flood the lakes with salt water will not destroy the world-class wetland on the Fleurieu Peninsula and affect the groundwater? And has the CSIRO been asked to look into the role bioremediation can play in fighting the deadly spread of acid and salt in our soils?

We need to act quickly, but that is not the same as acting with undue haste. We need to act based on the best scientific knowledge available. In my first speech to this Senate a few weeks ago, I spoke of the importance of properly funding and ensuring the independence and effectiveness of bodies such as the CSIRO. I believe the approach of the government further demonstrates the need for this independence. (*Time expired*)

**Senator XENOPHON** (South Australia) (25/11/2008, 5:23 PM) —There is no greater crisis facing this country than the crisis surrounding the availability of water, and nowhere is this clearer than along the Murray-Darling Basin. The Murray-Darling Basin covers one million square kilometres and extends through Queensland, New South Wales, the ACT and Victoria, ending up in my home state, South Australia. More than 50 per cent of all water consumed in this country comes from the Murray-Darling Basin. This is the nation's food bowl and, put simply, the state of the river directly impacts upon the state of our nation. If the river is allowed to die, what will happen to our nation?

The **Water Amendment Bill 2008** was designed to give effect to the intergovernmental agreement on Murray-Darling Basin reform by amending the Water Act 2007. In particular, the amendments reflect a concession by New South Wales, Victoria, South Australia, Queensland and the ACT to refer constitutional powers to the Commonwealth to enact measures including the transfer of the current powers and functions of the Murray-Darling Basin Commission to the Murray-Darling Basin Authority, broadening the role of the ACCC in relation to water market rules and water charge rules, and expanding the Basin Plan to include arrangements for critical human needs.

The bill is supposed to enable water resources in the Murray-Darling to be managed in the national interest, optimising environmental, economic and social outcomes. If the bill actually did this, that would be great. But it does not. Instead, it seems designed to make it seem more like the federal government is taking control of the basin from the states when in fact it is doing no such thing. So why do we need a federal government takeover? For years state governments have grossly mismanaged the Murray-Darling Basin. They have treated this precious resource like a watery version of the Magic Pudding, acting like they could take as much as they like without worrying about running out. The states cannot be trusted to act in the national interest, which is why we need a federal government takeover of the river system. With one river system there should be one set of rules. But this response to the crisis, which I believe is a half-hearted, piecemeal approach in the form of the Water Amendment Bill, is not a federal takeover in any real and substantive sense.

I have been urged, along with my fellow senators, to accept the bill in its current form. The government claims that any amendments would need to go back to the referring states for consideration and could potentially lead to the collapse of the IGA. First, may I say that it cannot be a very robust agreement if sensible amendments from the Senate could jeopardise the deal. To suggest that the bill should be passed despite some fundamental flaws and without at least considering areas of improvement is both unreasonable and irresponsible. For this bill to achieve what the government claims it will, substantial amendments are needed. One of the most concerning aspects of the current Basin Plan is that it is not due to be completed until 2011, with implementation taking up until 2019. To me, this is totally unacceptable. There must be a greater sense of urgency.

Members will recall that earlier this year I introduced a bill into the Senate aimed at addressing this issue by proposing the implementation of an interim Basin Plan to deal with the crisis affecting the Murray-Darling Basin and to ensure its environmental and economic sustainability until such time as the Basin Plan is implemented. In other words, it would give the Commonwealth and the minister the powers that are needed to deal urgently with the crisis. The irrigators in the Riverland and those who live and rely on the precious Lower Lakes and

Coorong do not have years; they do not even have months. Some farming families are just weeks away from bankruptcy. For this reason I will be moving an amendment to implement an interim Basin Plan aimed at providing a short-term solution to the current crisis to give the authority to the government, to the minister, to deal with this.

Restriction on the trading of water is another area of concern, particularly given the severe constraints it imposes on the ability to purchase water for the southern Murray-Darling Basin regions. The argument for the cap is that it keeps water in a given region. However, as reported by the *Age* recently, in Victoria alone the cap is costing farmers some \$19 million and the state's economy almost \$6 million as well as potential jobs. I commend Minister Wong for her moves recently in terms of there being some sanctions, some consequences, as a result of the states keeping the caps in place, at least with respect to emergency assistance packages. That is a good first step but it needs to go much, much further. I remain deeply concerned that Victoria appears to have used its four per cent cap as a bargaining tool while negotiating its entry into the IGA. My concern is that the lifting of the four per cent limit on water trade and the application of that limit on a consistent basis must be dealt with as a matter of urgency. If this actually happens it will be an important outcome, and I will be moving amendments in relation to the issue on the four per cent cap. It is something that must at the very least be debated.

The whole issue of the north-south pipeline and the way the Victorian government has approached this is something of very serious concern to me and many others. The act of—I believe—state sanctioned environmental vandalism to take 75 billion litres of water out of the Murray-Darling Basin for the use of Melbourne is something that should not be countenanced. I do not resile from my position that the north-south pipeline project should not proceed, especially given that there has not been an independently prepared due diligence report and comprehensive audit of the savings asserted by the Victorian government. Victoria's own Auditor-General, Mr Des Pearson, has been critical of the project and has cast doubt over the anticipated water savings the project will yield. In his report *Planning for water infrastructure in Victoria*, released on 9 April this year, Mr Pearson concluded that the level of information provided to the community on water supply projects has been inadequate and needs to be improved. Specifically he noted that processes underpinning the Victorian water plan fell short of the standard the department applied when developing the white paper and the central region strategy. He further criticised the Victorian water plan for widely varying levels of rigour around the plan's costs and expected water savings benefits.

Despite this and despite the concerns of communities across the basin, Victoria has been given the green light for a project that I believe is environmentally indefensible. And yet it is made clear in the CSIRO report into sustainable yields in the basin released just yesterday that the one state most at risk from the impact of climate change is Victoria. Incidentally, I believe an organisation like the CSIRO has the independence and rigour needed to properly audit the merits of a proposal like the north-south pipeline, and that is why I foreshadow that in the committee stage of this bill I will support coalition amendments that will seek to stop the north-south pipeline.

I also think there is an issue of equity that needs to be considered. For many years South Australian farmers and irrigators across the Riverland have spent their own money modernising their farms to ensure they are amongst the most efficient users of water in the country. In fact, in the many visits I have had to the Riverland in the last 12 months, one of the points made to me has been that the Riverland started getting its act together after 1967, after the prolonged drought. From 1967 onwards they have been getting on with the business of being a very water efficient region. I issue a challenge to anyone who doubts that the Riverland, in terms of its productive capacity, is one of the most water efficient regions—if not the most water efficient region—in the nation.

It was put to me by citrus growers when I visited the Riverland just last week that they have an issue with the eastern states getting the lion's share of the \$5.8 billion allocated by the federal government to pay to modernise irrigation practices—so, in effect, those regions that have done the wrong thing or have not dealt with the issue of water saving with alacrity over the years are being rewarded for poor or bad behaviour. They are being rewarded to the tune of hundreds of millions of dollars because in a sense they did not get their act together on water for decades. That is why I propose to move an amendment to Senator Nash's structural adjustment package amendments—to have the authority give some consideration to the history of water-saving measures in a particular region in the context of structural adjustment packages. If a region such as the Riverland has done the hard yards over many years, that should be taken into account in any structural adjustment. I think that is equitable and fair.

There is also a concern about how water buyback is being dealt with. Obviously I welcome any additional environmental flows into the Murray. But there is a concern about the urgency in relation to the time frame. I agree with the Wentworth Group of Concerned Scientists and experts such as Professor Mike Young who talk about the urgency of bringing more water into the system, of dealing with overallocation and dealing with it in an equitable way.

A lot of the debate has also focused on the definition of 'critical human needs'. I look forward to the debate on that in the committee stage. There is conjecture as to what 'critical human needs' actually are. I note that Senator Fisher has been quite outspoken on her concerns in relation to that. Is it simply drinking water or is it water for showers and toilets? Does it cover gardens; does it cover commercial industries? I believe that is an important issue for consideration in the committee stage.

The independence and the actual powers of the Murray-Darling Basin Authority are also a concern. I refer honourable senators to an article by Jack Waterford, the editor-at-large of the *Canberra Times*, who wrote an opinion piece entitled 'Black hole in the basin "fix"' back on 9 July, a few days after the IGA was signed. He talked about his concerns about the minister having the final say in the Basin Plan—which is a good thing—after a lot of toing and froing on the processes set out in the bill. But, at the end of the day, the implementation is up to the states. Mr Waterford was of the view that 'If anyone kicks up a fuss on anything, paralysis is virtually inevitable' in terms of the way the plan is implemented and dealt with. I think Mr Waterford is reflecting the belief of many in the community that there ought to be a greater degree of federal control over the river system. I will be urging the government to consider an amendment to ensure that, when preparing a Basin Plan, the Murray-Darling Basin Authority takes a whole-of-basin approach, taking into account environmental, economic and hydrological considerations. There is no point having an authority unless you give it real authority.

I understand that the CSIRO has an important role in preparing its sustainable yield report. I think it is important that the CSIRO has an ongoing role to monitor in a robust, independent way the progress of assertions made as to water savings, water efficiencies and the north-south pipeline. You need an independent body with that level of expertise to do that. I also think it is important that the implementation of the act be reviewed on a regular basis by another independent body such as the Productivity Commission to look at the whole issue of water savings and efficiencies and ensure that the objects of the bill are carried out effectively and efficiently in the context of the aims of the bill.

On the issue of auditing: on 14 August the Prime Minister announced new water initiatives in response to the situation in the Murray-Darling Basin. One of those included what he claimed would be a comprehensive audit of both public and private water storages in the basin. My question to the minister for consideration and response in the committee stage is: can the minister advise what has happened to the audit that was announced, what is the progress of the audit, when will the results of the audit be provided and what were the parameters, in the context of the methodology, resources and rigour, in undertaking that audit? That audit was announced over three months ago, and my understanding was that it ought to have been released by now.

I also have a query in relation to the Menindee Lakes in New South Wales. Why aren't the Menindee Lakes counted until they reach an arbitrary level of 640 gigalitres, a level that seems to be always just out of reach? And that is something that New South Wales can control anyway, by releasing water from the Menindee Lakes. I note also that, when I visited the Menindee Lakes a number of weeks ago, the Darling River Action Group were quite adamant that for the last 10 years they had been talking about some fundamental projects, some key projects, to reduce the level of evaporation of those lakes of several hundred gigalitres a year and about the fact that Broken Hill, with the 10 to 20 gigalitres that it needs for water on an annual basis, needs to store about 200 gigalitres in the Menindee Lakes because of the level of evaporation and the lack of works that have been carried out.

I acknowledge that the bill does give South Australia carryover water rights for the first time. On the surface this seems like a good thing. But, if gross mismanagement and overallocation of the river are allowed to continue because of the flaws in this bill, how much water will be left to carry over? Will it be carryover water or will it be carryover air?

Finally, I note that the Greens will be moving amendments in relation to a quantitative regime for sharing water in the Basin Plan, something that Professor Mike Young and the Wentworth Group of Concerned Scientists have been outspoken on—and I can indicate my support for those. The government describes the Water Amendment Bill as a historic agreement for the long-term reform of water management in the Murray-Darling Basin. It describes a 'new era of cooperative arrangements between the Commonwealth and the states'. I wish I could share the government's enthusiasm. I am concerned that there is simply too much scope for the paralysis that Mr Waterford refers to.

I urge the government to have the same political determination that the Hawke government brought to the issue of the Franklin Dam, to use its constitutional powers to take on the states in order that we have one river system with one set of rules, and to heed the advice of constitutional law experts, such as Professor John Williams from the University of Adelaide law school, who are adamant that the federal government has the power to fix this problem. It needs to have the political will as well. I will support this bill going through to the committee stage, but I reserve my position in relation to the third reading stage based on the way the amendments are dealt with by this place.

**Senator XENOPHON** (South Australia) (2/12/2008, 10:26 PM) — In November last year I was elected to the Senate to represent the people of South Australia. It is not a responsibility that I will ever take lightly. Having been elected as an Independent, I knew that there would be times when I would have to stand alone if I were going to stand up for what I truly believed was right. This is one of those times.

I am not against compromise. In fact, I have worked hard to try and achieve some kind of compromise because I realise the seriousness of this issue. It is no exaggeration to say that what is at stake is the future of hundreds of Australian communities, the future of hundreds of thousands of Australians, the future of the environment, the future of food security and the future of a significant part of our economy. I am not against compromise but what we have here is just unacceptable. The government wants the chamber to endorse, without these amendments, this water bill and the intergovernmental agreement upon which it is based. 'Agreement' is a funny word. It implies common ground. Sure, the parties involved might have some

differences of opinion but the term 'agreement' implies there are enough areas of mutual understanding so that cooperation can occur. But it is not an agreement if various state and federal governments are cajoled or bullied into submission by one state government which has so little respect for the agreement that it is willing to destroy it to achieve a political end.

I believe the federal government, many of the state governments and, apparently, the opposition are mortified by what the Victorian government could do—and that is on the public record. Given Victoria's threat to trash the IGA if it does not get its way, other governments are willing to agree to what I believe is an inherently unfair deal. Acting like the political equivalent of a spoiled child, the Victorian government has thrown itself on the floor and is writhing around screaming at the top of its voice. My concern is that if you give in once to that sort of behaviour you will be giving in to it forever. I agree with the opposition and the Greens that the north-south pipeline is a disgraceful plan. How anyone could agree to allow Victoria to direct 75 billion litres of water away from a dying river system each year is beyond me. It must be stopped. We had the opportunity to do that in the Senate, but it just seems that unfortunately there is not the political will to do so for a whole range of reasons—and I am not going to be critical at all of my colleagues the Greens and those in the opposition. I understand their position but I hope they can understand mine.

I have listened to a number of my colleagues—and, interestingly, I heard this from both sides of the chamber—who have mounted the argument and it has been said in good faith that 'the perfect shouldn't be the enemy of the good'. It is a nice-sounding argument, but I do not believe that is what we have got here. What we have is the really bad being the enemy of the unacceptable. I believe the water bill is a fundamentally flawed piece of legislation. It creates the pretence of a national takeover in place of a real one. The federal government could take over the Murray-Darling Basin and run it in the national interest. Constitutional law experts, such as Professor John Williams from the University of South Australia's law school, say it can be done and that the powers are there. The federal government has the constitutional powers; it is a case of having the political will. We saw what the Hawke government did in 1983 when it took on the Tasmanian government over the Franklin Dam. It used its constitutional powers to get an outcome that has been widely applauded; it was the right thing to do. But here we are presented, instead, with a piece of legislation that I believe will not work, despite its good intentions, despite what is intended.

I wish to refer to what the editor at large of the *Canberra Times*, Jack Waterford, said in an opinion piece several months ago, a few days after this agreement. Mr Waterford pointed out that the agreement between the Commonwealth and the basin states sets out a series of principles for management of the river system and paves the way for a national plan to be created by a panel of experts from the newly created Murray-Darling Basin Authority. But how much real authority does this new authority have? That is where things started getting political and started getting watered down.

Under the agreement the authority will be assisted by a ministerial council and advisory committee, as well as a committee of federal and state officials. As Mr Waterford pointed out, the authority will only exist thanks to a limited referral of powers from the states to the Commonwealth, some complementary legislation, a base agreement and working principles, which can be changed only by the unanimous agreement of all parties. So, if one state does not agree, we can have a stalemate for any changes. Notwithstanding that, if those changes are clearly in the interests of the entire river system it can still be stalemated; it can still be held up. To me, that is a fundamental flaw. The fact that the states still have considerable veto powers in the implementation of the basin plan—the way it will operate—is a fundamental flaw.

The biggest problem is that if this bill is passed it may well give false hope to some communities. My fear is that we will be back here again in a year or two. If the drought does not break—and we know the impact of climate change—we will be back here again. It will not solve the problem. It cannot be portrayed as some sort of effective takeover strategy because it has only a limited referral of powers. The last and best hope for the river system is to have a full federal takeover. If this plan were a boat it would sink; it has enough holes. I support a national takeover, but this is not a national takeover.

My concern, and that of the Greens, is that this will take so long. I understand what the government said but it seems that in the absence of a full referral of powers, and with the current timetable, it will be too late for too many farmers. It will be too late for the environment. I cannot be a part of this bill. I do not believe that South Australians should accept the north-south pipeline. I do not think we should be waiting until 2019 and I do not think South Australians should accept that this is the best the federal government can do. In all conscience, I cannot and will not vote for this bill.

**NOTE: The Government and Coalition united to vote through this Water bill on 2/12/2008.**

#### **A note from Nick...**

*Thanks for taking the time to read this extract. If you have the time, I'd appreciate it if you were willing to share your thoughts on ways to save the Murray.*

*You can do this either by calling me: 08 82321144 or by email: [Senator.Xenophon@aph.gov.au](mailto:Senator.Xenophon@aph.gov.au)*