

Defending Our Rivers Public Interest Litigation in Australia

Pepe Clarke, Programs Manager,
Environmental Defender's Office, Australia

Background

- In Australia, river flows have been drastically altered by irrigation and consumptive uses over the last five decades.
- Large scale water extraction for agricultural purposes has reduced environmental flows and altered natural flow patterns, resulting in significant impacts on aquatic species, riparian vegetation, wetlands and floodplain ecosystems.
- Land clearing and use of agricultural chemicals has led to significant decline in water quality, resulting in negative impacts on riverine, coastal and marine ecosystems.

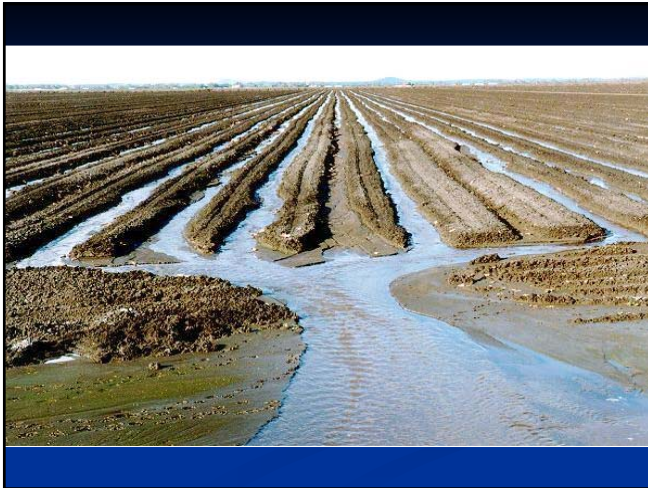
Case Studies

- Case Study I - Downstream Impacts of the Nathan Dam
 - environmental issues: water quality impacts on coral reefs
 - legal context: federal environmental assessment legislation
 - litigation: *Queensland Conservation Council v Minister (2004)*
- Case Study II - Environmental Flows for the Gwydir River
 - environmental issues: reduced flows for wetland habitat
 - legal context: state water management legislation
 - litigation: *NSW Nature Conservation Council v Minister (2004)*

Case Study I - Downstream Impacts of the Nathan Dam

- The proposed location for the dam is on the Dawson River, a tributary of the Fitzroy River in Queensland, Australia.
- The Fitzroy River flows into the Pacific Ocean immediately adjacent to the Great Barrier Reef Marine Park Area.
- The primary purpose of the proposed dam is to provide water for irrigated agriculture, in particular cotton.





The Great Barrier Reef and Water Quality

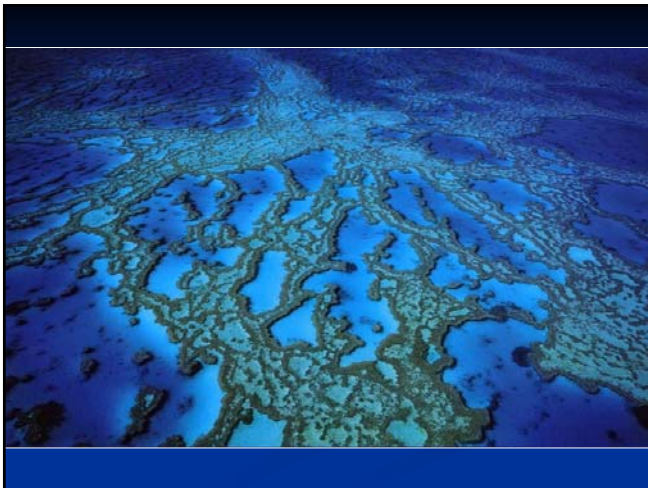
The Great Barrier Reef is one of the world's most important natural assets.

It is the largest natural feature on earth, stretching more than 2,300 kilometers along the northeast coast of Australia.

Twenty-six major river catchments drain directly into the Great Barrier Reef MPA.

Run-off resulting from land based agriculture, urban development and aquaculture is the largest impact affecting the water quality of the Great Barrier Reef.

Pesticides, fertilizers and soil sediment may negatively affect reef-based ecosystems.



The Great Barrier Reef MPA is a listed World Heritage Area.

Under federal environmental legislation in Australia, an approval is required from the Federal Minister for the Environment and Heritage for actions that are 'likely to significantly effect' listed World Heritage Areas.

In September 2002, the Minister determined that the Nathan Dam proposal would not have a significant effect on the Great Barrier Reef World Heritage Area.

Queensland Conservation Council Inc v Minister for the Environment and Heritage [2003] FCA 1463 (19 December 2003)

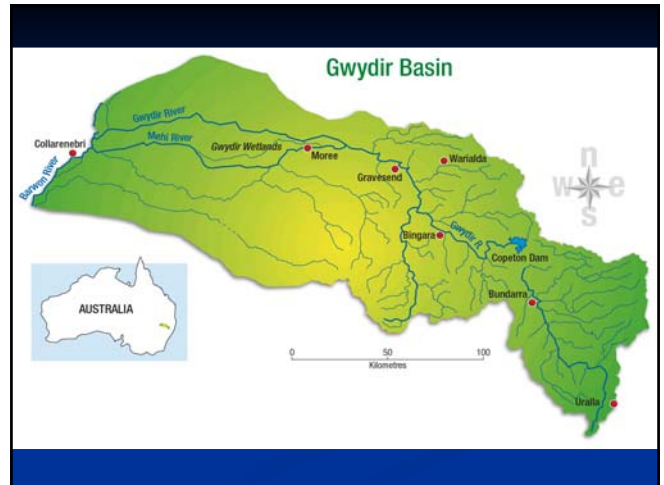
- The Environmental Defender's Office (Queensland), on behalf of the Queensland Conservation Council and WWF Australia, commenced legal action in the Federal Court to challenge the Minister's decision.
- □□ The Minister argued that he was only required to consider the effects of the construction and operation of the dam by the project proponent, not the impacts of decisions by third parties to undertake irrigated agriculture using agricultural chemicals.
- The Court found that the scope of enquiry required under the Act included the consideration of the 'whole, cumulated and continuing effect' of the proposal, including the reasonably foreseeable actions of third parties.

Minister for the Environment and Heritage v Queensland Conservation Council Inc [2004] FCAFC 190 (30 July 2004)

- The Minister appealed to the Full Court of the Federal Court of Australia.
- The court handed down its decision on 30 July 2004, rejecting the Minister's appeal.

Case Study II - Environmental Flows for the Gwydir River

- The New South Wales *Water Management Act 2000* provides for the preparation of water sharing plans for the allocation of water for consumptive uses (for example, irrigation) and environmental flows.
- In 2003, the Environmental Defender's Office (New South Wales), on behalf of the NSW Nature Conservation Council, commenced legal action to challenge the validity of the water sharing plan for the Gwydir River.
- The Gwydir River is within the Murray-Darling Basin, the largest river basin in Australia. The Gwydir River flows into the Gwydir and Lower Gingham Wetlands, which have been listed as wetlands of international significance under the Ramsar Convention.



Nature Conservation Council of New South Wales Inc v Minister for Sustainable Natural Resources [2004] NSWLEC 33 (6 February 2004)

- The *Water Management Act 2000* requires water sharing plans to provide for environmental flows before allocating consumptive uses and to establish environmental performance indicators.
- The Nature Conservation Council argued that the Gwydir River Water Sharing Plan was invalid due to failure to provide priority for environmental flows and to provide adequate performance indicators.
- On 6 February 2004, the court dismissed the appeal.

Nature Conservation Council of New South Wales Inc v Minister for Sustainable Natural Resources [2005] NSWCA 9 (9 February 2004)

- The Nature Conservation Council appealed to the NSW Court of Appeal.
- The Court of Appeal accepted the legal basis for the appeal, but dismissed the appeal on the basis that, in practice, the plan provided adequate environmental flows.
- The Nature Conservation Council is considering appealing to the High Court of Australia.

For more information, contact:

Pepe Clarke
Programs Manager
Environmental Defender's Office (NSW)
Sydney, Australia

Email: pepe.clarke@edo.org.au

Website: www.edo.org.au/edonsw