

EDO BULLETIN

December 2008

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- Opportunities for public comment

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Burnett Water fails in attempt to delay Paradise Dam case

On Friday 5th and 12 December 2008, Dr Chris McGrath, with EDO Qld, represented applicant Wide Bay Burnett Conservation Council (“WBCC”) against Burnett Water in a pre-trial hearing in the Paradise Dam case. This involved detailed oral and written submissions to the Federal Court opposing Burnett Water’s application to delay the case. Dr McGrath relied on affidavit evidence prepared by EDO Qld, Mr. David Kreutz, WBCC President Dr Tim Thorton and lungfish expert Professor Jean Joss.

Burnett Water asked the Court to stay (i.e. put on hold) the civil action by WBCC. They argued that the Commonwealth was conducting compliance investigations against Burnett Water concerning the Paradise fishway and that findings in the WBCC case might prejudice the fairness of any later prosecution by the Commonwealth. Justice Logan dismissed this application by Burnett Water, stating that the prospect of either criminal or civil penalty proceedings by the Commonwealth is but “a bare contingency” at the moment.

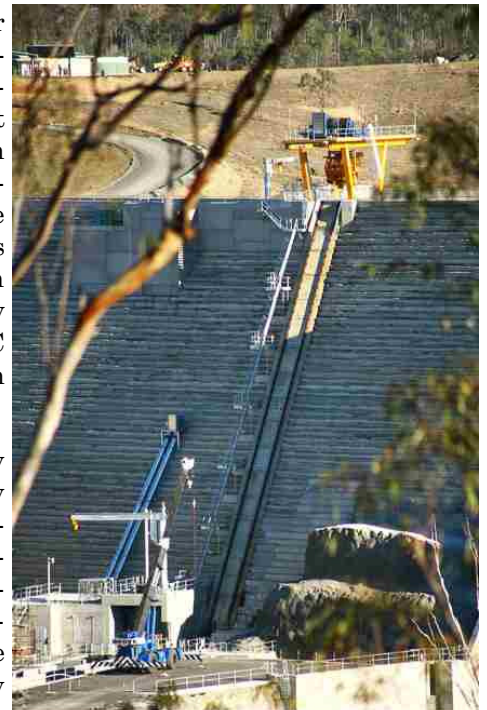
In a surprise move following the dismissal of the stay application, Burnett Water reversed its opposition to providing discovery of documents to WBCC. This means that EDO and its expert witnesses will now gain access to important documentation about the operation of the Paradise Dam fishway.

Justice Logan’s judgement showed a keen appreciation of the public interest elements of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. His Honour noted that Act’s objects include the protection of the environment and the promotion of biodiversity. In the introductory paragraphs of today’s judgement, Justice Logan noted that Lungfish can lay claim to be the oldest surviving vertebrate species.

The case is listed before the Court for 13 February 2009. We anticipate Justice Logan will set a hearing date then if discovery of documents is completed.

A copy of the judgement is on the Federal Court’s website: http://www.austlii.edu.au/au/cases/cth/federal_ct/2008/1900.html

Please support the case by making a tax-deductible donation to WBCC noting your donation is for the Paradise Dam case.



© Arkin Mackay

Fishway at Paradise Dam
Photo courtesy Arkin Mackay

EDO COURT CASES

Second lychee farmers fined for contempt of Court

The Planning and Environment Court recently fined a second lot of lychee farmers, Mr and Mrs Thomas of Mutarnee near Townsville, \$5000 for their failure to obey the Court's earlier order to dismantle their electric grid system which was harming protected flying foxes.

The Court gave the farmers two months to dismantle their grids and pay the fine or risk further contempt proceedings in which the Court may order imprisonment.

The dismantlement of electrified grids, rather than the punishment of farmers, has been the aim of this and other bat cases that EDO has run for client Dr Carol Booth with barrister Dr Chris McGrath.

Dr Booth and EDO continue to lobby the EPA to require all electric grids in Queensland to be dismantled, given their harm to native wildlife, their ineffectiveness at crop protection, and the existing ban on their use.

For more information about EDO-Qld cases contact us on (07) 3211 4466 or edoqld@edo.org.au.



Black Flying Fox

Garrett misses opportunity to refuse Chalco development near Bowen

Readers will recall Chalco Australia's proposal to develop an alumina refinery, port infrastructure and transport corridor at Abbot Point just north of Bowen, to process and export alumina refined from bauxite mined at Aurukun on Cape York Peninsula. The proposal has been opposed by EDO-NQ and many conservation groups on the basis of its impacts on climate change, protected species, groundwater, significant wetlands and the Great Barrier Reef.

Unfortunately, federal Environment Minister Peter Garrett has declined to use his special powers under the EPBC Act to reject these proposals without further assessment on the basis that they have "unacceptable impacts" on matters of national environmental significance. EDO-NQ is very disappointed that Minister Garrett has not formed the view that the impacts are not clearly unacceptable.

EDO-NQ and conservation groups are also concerned that the Qld government has released Terms of Reference for an Environmental Impact Statement on the proposals ahead of any decision by Minister Garrett on the proposals, and that such a move may be seen as pre-empting or unduly influencing Minister Garrett's role and decision in the process.

For more information about EDO-NQ cases contact us on (07) 4031 4766 or edong@edo.org.au.

OTHER CASES OF INTEREST

Traditional Owners win against Xstrata's McArthur mine expansion

The full Federal Court of Australia has found that a 2006 federal approval to allow Xstrata to convert its underground lead and zinc mine to an open cut mine - including diverting the McArthur River - was invalid. The expansion of the mine will now be re-assessed by the federal environment department, but sadly the McArthur River has already been diverted, with significant impacts on cultural and environmental values. In the course of the hearing, Xstrata had undertaken to restore and remediate the natural course of the McArthur River, which is likely to be considered as part of the re-assessment process. The judgement in *Lansen v Minister for Environment and Heritage* [2008] F C A F C 189 is available at www.austlii.edu.au/au/cases/cth/FCAFC/2008/189.html.

Gunns to pay \$91,000 toward activists' legal costs

Tasmanian logging company Gunns has been ordered to pay \$91,000 in legal fees to environmentalists, including Greens leader Bob Brown, former Tasmanian Greens leader Peg Putt and author Helen Gee. These parties were targeted by Gunns in an action for \$6.9 million in damages relating to anti-logging campaigns.

The Supreme Court has ordered Gunns to pay legal fees in these three cases, whilst proceedings against the 12 remaining environmentalists continue. The Court has ordered the parties to engage in mediation before the end of February 2009, and set the case down for a directions hearing on 6 March 2008.

Four years on, the case has yet to reach trial.

LAW REFORM

Draft revised SEQ Regional Plan open for comment

The draft revised SEQ Regional Plan 2009 – 2031 was released on 7 December 2008. Public comment is invited until 3 April 2009.

EDO will be facilitating a series of workshops in late January and early February 2009 to help the community understand the legal implications of the revised plan for their local areas.

As the most significant planning document for SEQ it is critical that community input into the plan is effective. EDO is concerned that the draft plan's narrow emphasis on population growth fails to provide adequate protection of the region's biodiversity or developing the region's resilience to climate change.

You can download the draft plan at: www.dip.qld.gov.au/regional-planning/draft-regional-plan-2009-2031.html.

EPBC Act 10 year review

The federal government has announced an independent review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The review will examine, among other things, the extent to which the Act has achieved its objectives, and the workability of the legislation. The Discussion Paper for the review can be viewed at www.environment.gov.au/epbc/review/index.html.

Submissions are due on **19 December 2008**. The Australian Network of Environmental Defender's Offices (ANEDO) will be preparing a response to the review and have an extension until 30 January 2009 for this submission. ANEDO recently made a submission to the Senate Inquiry into the EPBC Act. The submission covers much of the same ground as the current review and can be viewed at www.aph.gov.au/Senate/committee/eca_ctte/epbc_act/submissions/sub90_revised.pdf.

If you have any particular EPBC Act case studies, or want to raise your general concerns with EDO regarding the review, please contact **Robert Ghanem** of EDO NSW at robert.ghanem@edo.org.au.

LAW AND POLICY WATCH

Stay tuned for our January 2009 Bulletin which will examine Queensland and federal environmental law and policy changes from December 2008–January 2009.

OPPORTUNITIES TO COMMENT

- The Opposition to the Northern Link Tunnel E-Petitions is open for public signatures until **11 January 2009** at www.parliament.qld.gov.au/view/EPetitions_QLD/CurrentEPetitions.aspx?LIndex=1.
- The federal government's water efficiency and labelling standards scheme draft report into whitegoods efficiency is open for public comment until **23 January 2009** at www.waterrating.gov.au/publications/ris-whitegoods.html.
- The state government's discussion paper on exhibited animals (zoos, circuses etc) is open for comment until **30 January 2009** at www.dpi.qld.gov.au/cps/rde/dpi/hs.xsl/4790_12410_ENA_HTML.htm.
- The Draft Resource Operations Plans for the Burdekin Basin, the Gulf and the Mitchell water planning areas are open for public comment until **Friday 30 January 2009**. See www.nrw.qld.gov.au/wrp/catchments.html
- The EIS for the Wandoan Coal Project is open for public comment until **2 February 2009**. The project will produce 30 million tonnes of thermal coal per year for 30 years (a 25% increase in Australia's current coal exports) from an open cut mine near Roma. For more information see www.dip.qld.gov.au/projects/energy/coal/wandoan-coal-project.html.
- Public comment on the effectiveness of Queensland's Indigenous cultural heritage legislation is open until **28 February 2009**. See www.nrw.qld.gov.au/cultural_heritage/legislation/index.html.

OTHER NEWS

Reports released

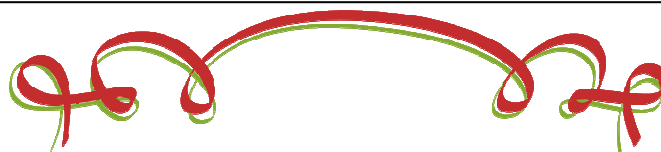
- Federal government's Carbon Pollution Reduction Scheme White Paper: www.climatechange.gov.au/whitepaper/foreword.html
- WWF UK report on the legal options for climate change compensation: http://assets.wwf.org.uk/downloads/beyond_adaptation_lowres.pdf
- CSIRO report on water availability in the Murray Darling basin: www.environment.gov.au/minister/wong/2008/pubs/mr20081124.pdf
- Greenpeace report "The True Cost of Coal" on the social and ecological costs of mining and burning coal: www.greenpeace.org/international/press/reports/cost-of-coal
- Re-vamped Qld Cabinet website containing ministerial media statements, Cabinet decisions and related papers, and Cabinet and ministerial handbooks outlining Cabinet processes: www.cabinet.qld.gov.au/.

Job opportunities

The Australian Marine Conservation Society is seeking a full time Director for its Manly (Brisbane) office. For the position description and selection criteria see www.marineconservation.org.au/default2.asp?active_page_id=581. Applications should be sent to katedavey@amcs.org.au by 16 January 2009.

EDO NSW is seeking one permanent and one locum solicitor to join their team. Applicants require at least two years post admission experience under a NSW practising certificate; understanding of and experience with NSW environmental law and policy; and a commitment to the protection of the environment and public participation in environmental decision-making. Part-time work will be considered. **Applications close 30 January 2009.**

EDO NT is still seeking applicants for principal solicitor – see our November 2008 Bulletin for details.



EDO Christmas office closure

EDO Qld will be closed from
5pm 22 December 2008
and will re-open on 5 January 2009.

EDO-NQ will be closed from
noon 24 December 2008
and will re-open on 5 January 2009.

**EDO wishes our members and
Bulletin readers a happy and**



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