

Summary of the Nathan Dam Case

The central issue in the Case is the question of whether the assessment of the impacts of a major dam that is built for the purpose of allowing downstream irrigated agriculture and other developments ignore the impacts of the associated developments?

The trial of the Queensland Conservation Council (QCC) and the World Wide Fund for Nature (Australia) versus the Minister for the Environment and Heritage (Q203 of 2002) addresses this question. QCC and WWF Australia are challenging the 2002 decision of the federal Minister, Dr David Kemp, not to consider up to 30,000 hectares of associated irrigated agriculture on the Dawson Floodplain and the resultant likely impacts on the Great Barrier Reef World Heritage Area. At risk are primarily the 750 inshore reefs, threatened by degradation from runoff due to poor land practices.

Background

The Nathan Dam, if built, would be the fourth largest dam in Queensland. It would hold 880,000 mega litres and the dam wall would stand 27 metres high. The Queensland Government has set construction to be complete in 2005. The site is in Central Queensland, near Taroom on the Dawson River. The Dawson flows north through Theodore into the Fitzroy River, and eventually into the Great Barrier Reef lagoon near Rockhampton – a total journey of 500km by river.

The Impacts

The Great Barrier Reef Marine Park Authority commented on the likely impacts of the dam in June 1999. They suggested that the dominating crop, cotton, requires aerially-applied pesticides, notably endosulfan which is toxic to many fauna, notably fish. In their view, the development will result in significant impacts to the riverine environments, the floodplains, estuarine habitats and may increase nutrient loading to the Great Barrier Reef.

Scientific peer review by Professor Peter Cullen and Dr Terry Hillman of the environmental impact assessment for the Nathan Dam conducted by the Department of Natural Resources and Mines. In a document in August 1999, they stated that in relation to the management of agricultural chemicals in the associated downstream development of irrigated agriculture that...

Management of endosulfan requires more than best practice. The practice is not at all good as is shown by frequent findings of endosulfan in waterways. Possible impacts on downstream biota, humans as well as estuary and coastal waters needs to be considered.

The Queensland Conservation Council stated...

The proposal to irrigate 30,000 hectares of land along a 5km strip of the Dawson floodplain is probably inherently incompatible with protecting the downstream environment [including the Great Barrier Reef World Heritage Area].

The Minister replied...

It is not possible to identify and likely significant impact on the Great Barrier Reef World Heritage Area that would be caused by modification of the water flow in the Dawson River as a result of the construction and operation of the dam. Irrigation is not an action of the proponents of the dam.

In December 2002, QCC and WWF (Australia) applied for a judicial review of the Minister's decision under the Commonwealth Environment Conservation and Biodiversity Protection (EPBC) Act 1999.

EPBC is the centrepiece of Commonwealth environmental laws. It represents an expansion of the direct Commonwealth involvement in environmental decision-making.

The Act deals with actions likely to have impacts on matters of national environmental significance. These are considered to be ...

- World heritage values of a declared world heritage property;
- The ecological character of a declared Ramsar wetland;
- Listed threatened species and ecological communities;
- Nuclear actions;
- Commonwealth marine areas.

Legal Issues in Dispute

The central issue is what is the scope of the impacts that are relevant for the Minister to consider? This is directly linked to the requirements for approval of actions that have, will have or are likely to have a significant impact on matters of national environmental importance.

The Case is not about whether the dam should proceed.

QCC and WWF (Australia) argue on the basis of a large body of case law that the Minister should consider the impacts of the associated agriculture and development. The arguments for this are...

- Causation (the meaning of) should be based on common sense;
- The acts of third parties may be relevant depending on the facts of the case and the application of common sense;
- The acts of third parties are relevant if they are intended to follow or occur in conjunction with an action, this is also true if the impacts are normal and ordinary.

The dam is essential for this development, the development is the purpose of the dam, and the development is intended to follow the dam. Therefore the adverse impacts of the development must be assessed while assessing the dam.

Conclusion

The Minister has adopted an approach that is too narrow when appraised in the context of every day common sense. The approach artificially isolates the proposed construction and operation of the Nathan dam from major downstream development.

The proponent and Minister directly contemplate the downstream development that is essential for the dam to proceed.