

Debugging the Watergate complex

Interpreting the responses to #Watergate by the Prime Minister and the Department of Agriculture and Water Resources

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Summary

The Department of Agriculture and Water Resources has issued a statement (Saturday April 20 2019 <http://www.agriculture.gov.au/about/media-centre/on-the-record/eastern-aus-ag-water-purchase>) responding to The Project's report on the Condamine Balonne strategic water purchase, now known online as #Watergate. The statement claims that the water purchased for \$79 million can "be used off the property" and that "Water entitlements are now held by the Commonwealth Environmental Water Holder, but does not disclose that the Commonwealth's water entitlements only exist at the property, which means that the Commonwealth has no legal right over the water outside the property. There is nothing in place to prevent that water from simply being extracted by other irrigators.

The Department's statement also fails to address:

- The relationship between EAA and its Cayman Islands-based parent company.
- The price paid for water in the strategic purchase.
- Justification for record price was paid.
- How supposed decommissioned works have been verified.
- The legal and technical problems associated with Commonwealth management of overland flows.
- Why the Commonwealth paid for a dam but has no rights or agreements to use that dam.
- Compliance with procurement guidelines.

Introduction

On 18 April 2019 Channel 10's high-rating current affairs show *The Project* aired a 10-minute investigation into strategic water purchases in the Murray Darling Basin. In particular, the report focused on a record \$79 million purchase in the Condamine Balonne catchment in Queensland, which had been signed off by then Water Minister Barnaby Joyce. This purchase had been the focus of a previous report by The Australia Institute in March 2018 *That's not how you haggle: Commonwealth water purchasing on the Condamine Balonne*.¹ The company that sold the water licence to the Commonwealth was Eastern Australia Agriculture (EAA), co-founded by Energy Minister Angus Taylor. The Project's report raised the following key issues:

- The relationship between EAA and its Cayman Islands-based parent company.
- The price paid for water in the strategic purchase.
- The utility of a type of water licence purchased – an overland flow licence – particularly whether the water can be reliably used for environmental purposes.

The Project's report features Maryanne Slattery, Senior Water Researcher at The Australia Institute. Maryanne has written extensively on Basin water policy, including the detailed report in March 2018. The key points of this report are:

- The price paid for the water in the strategic purchase.
- The role of water storage in the purchase and management of overland flows.
- The utility of the overland flow licence purchased.
- Whether the purchase complied with Commonwealth procurement guidelines.

The Department of Agriculture and Water Resources has issued press statements in relation to both The Australia Institute's March 2018 report and The Project's April 2019 report. This briefing note interprets the similarities and differences in the Department's two responses to reporting of the same purchase.

Prime Minister

The Prime Minister was questioned over the EAA water purchase by journalists:

¹ Slattery and Campbell (2018) *That's not how you haggle: Commonwealth water purchasing in the Condamine Balonne*,
<http://www.tai.org.au/sites/default/files/P502%20That%27s%20not%20how%20you%20haggle.pdf>

Mr Morrison said there has already been a Senate inquiry into the matter and the government had provided documents regarding those transactions.²

There has been no Senate inquiry into this water purchase. Documents relating to the purchase through an Order for the Production of Documents were requested and pursued by Senator Rex Patrick.³

The documents were heavily redacted with all information relating to the valuations being completely redacted, including information on the public record, such as past sales values, or contextual information, such as the valuation methodology.⁴

March 2018 statement

While *That's not how you haggle* raised four key points above, the Department's response addressed only the price paid and our claim that the price per megalitre had been bargained up rather than down by the Department:⁵

The Australia Institute report, *That's not how you haggle...Commonwealth water purchasing in the Condamine Balonne*, incorrectly asserts the government paid more than the vendor's asking price in a purchase from Eastern Australia Agriculture.

Both the *That's not how you haggle* report and the Department's response contain the same figures on the evolution of the negotiations. The difference is that the Department describes as "selective" the inclusion of the February 2016 asking price of \$2,200/ML, compared to the prices of over \$2,700/ML that were used in the final 2017 negotiations.

² Brisden (2019) *We're transparent on water purchases: PM*, <https://www.news.com.au/national/breaking-news/were-transparent-on-water-purchases-pm/news-story/bb3478d02c05be08cc601a95767493f8>

³ Canavan (2018) *Order for Production of Documents No. 579: Murray-Darling Basin Plan - Water Purchases*, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22publications/tables/papers/59682649-2fa2-43b1-955f-ae16caecef45%22>

⁴ Canavan (2018) *Order for Production of Documents No. 579: Murray-Darling Basin Plan - Water Purchases*, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22publications/tables/papers/59682649-2fa2-43b1-955f-ae16caecef45%22>

⁵ DAWR (2018) *Media statement: Response to Australia Institute report on Commonwealth water purchase in the Condamine Valley, Qld*, <http://www.agriculture.gov.au/about/media-centre/on-the-record/response-australia-institute-report-water-purchase>

More importantly, the Department's March 2018 statement does not contest key points:

- A record price was paid, far higher than unsupplementary flow licences, or the Commonwealth's earlier overland flow purchase.
- There is no agreement for the Commonwealth to use a dam, despite it being paid for.
- The legal and technical problems associated with Commonwealth management of overland flows.
- Compliance with procurement guidelines.

In the year following this statement, no update has been made or clarification provided.

April 2019 statement

In response to The Project's report, the Department has released another statement.⁶ The strongest refutation of The Project's report is:

Claims that the water cannot be used off the property are false. Water entitlements are now held by the Commonwealth Environmental Water Holder.

This is misleading. The Commonwealth Environmental Water Holder does now hold 28.7GL of overland flow water licence. As the name suggests, these flows only exist when rivers are in flood and flowing over land. Unlike licences for river water, an Overland Flow Licence is attached to property, so that water has no legal recognition outside the EAA properties, Kia Ora and Clyde. The Commonwealth has no right or agreement in place to use a storage to store its overland flows, despite that \$16m to own the storage was built into the water price.

DAWR claims that the levee banks on Kia Ora and Clyde were decommissioned prior to the sale, at EAA's expense. No evidence of the decommissioning has been provided in the OPD or through subsequent questions to the Senate. DAWR does not appear to have undertaken a site visit to verify the decommissioning and has instead relied upon an engineer's report provided by the Queensland Government.⁷ However, that engineer's report was not provided in the OPD requested by Senator Patrick.

⁶ DAWR (2019) *Media statement on Eastern Australian Agriculture water purchase*, <http://www.agriculture.gov.au/about/media-centre/on-the-record/eastern-aus-ag-water-purchase>

⁷ DAWR (2019) *Question on Notice No. 156, 2018–2019 Supplementary budget estimates, Rural and Regional Affairs and Transport*,

It is not apparent that the levee banks have been decommissioned by observing satellite images of the properties, which appear unaltered. The Kia Ora and Clyde properties were advertised for sale after this water sale. The marketing material cites extensive flood irrigation, which indicate that the levee banks may still be in place.⁸

So, while floodwater on EAA's properties are now the property of the Commonwealth, it is unclear whether the flows can physically leave the property. If they can, the Commonwealth has no legal recognition of that water, which can legally be diverted and used by EAA's neighbours, and in some circumstances even pumped from rivers further downstream. The Commonwealth cannot protect this water and ensure it flows down the Condamine Balonne and Darling River systems. The statement continues:

EAA has decommissioned structures that previously allowed it to capture the water. This water is no longer being used for irrigation or being obstructed by on farm infrastructure thus allowing the water to flow across the land into waterways. It has in-stream environmental values helping to improve the health of the river while being available for use to meet environmental targets downstream.

There is little transparency around exactly what EAA has and has not decommissioned. Regardless, the rest of this quote is also misleading. The water purchased by the commonwealth may no longer be used for irrigation or be obstructed **by EAA**, but there is no legal or technical impediment to EAA's neighbours, such as Cubbie Station, from diverting this water and using it for irrigation. This water would have in-stream environmental value, if it could be protected. Whether this water is 'available for use' is questionable, given the Commonwealth appears to have no legal power, or physical infrastructure to deliver and protect this water in the occasional years when it exists.

Perhaps the most important part of the Department's response is:

This acquisition also meant a large portion of the remaining water recovery required for the Condamine–Balonne under the Murray Darling Basin Plan was achieved with minimal impacts on local employment and production

By purchasing water that is unlikely to add to environmental water, the Commonwealth has avoided the need to buy more reliable water that reliably exists and that can reduce the amount of water extracted from the system. On paper, the

https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/rrat/2018-19_Supplementary_Budget_estimates

⁸ CBRE (2018) *Prized Kia Ora property listed for sale*, <https://www.cbre.com.au/about/media-center/prized-kia-ora-property-listed-for-sale>

Government has nearly achieved its target of water recovery, but in the real world, this water will not add to environmental flows without significant changes to existing water use rules. That is precisely why minimal impacts on local employment and production have been felt.

The Department's response claims to have been in line with Commonwealth procurement rules:

The water purchase was consistent with Commonwealth Procurement Rules and paid at a fair market rate, as informed by independent market valuation.

However, it does not address the points raised in *That's not how you haggle*, that the purchase needed to be "exceptionally advantageous". It also does not explain how a 'fair market rate' was paid, when there is no market for overland flow licences.

Importantly, the Department's response does not address:

- The relationship between EAA and its Cayman Islands-based parent company.
- The price paid for water in the strategic purchase
- Justification for record price was paid.
- The legal and technical problems associated with Commonwealth management of overland flows.
- Compliance with procurement guidelines.

Conclusion

Despite more than a year of scrutiny on the Condamine Balonne purchase, the Department of Agriculture and Water Resources have not addressed many serious concerns raised by researchers and journalists. In particular, the Department should:

- Publish all evidence of the decommissioned levee banks
- Release full and unredacted valuation reports
- Publish the due diligence of this purchase in full.