

# Trickle Out Effect

## Drying up money and water in the Lower Darling

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*The Menindee Water Savings Project will fundamentally change the lives and livelihoods of all of the people in the Lower Darling Valley. The Australian government has paid one large agribusiness \$40m in compensation. No other stakeholder has received any compensation, instead they have all been made more vulnerable.*

Maryanne Slattery  
Rod Campbell  
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Level 1, Endeavour House, 1 Franklin St  
Canberra, ACT 2601  
Tel: (02) 61300530  
Email: [mail@tai.org.au](mailto:mail@tai.org.au)  
Website: [www.tai.org.au](http://www.tai.org.au)

# Summary

This report is the first in a series that highlights how the Murray–Darling Basin Plan has increased the flow of money and water to big agribusinesses and has increased the vulnerability of everyone else in the Basin– Aboriginal people, floodplain graziers, downstream communities and small irrigators.

The Darling River originates in Queensland and runs the length of Western NSW into Menindee Lakes in south-western NSW, 110km south-east of Broken Hill. Menindee Lakes feed the Lower Darling River, which meets the Murray near the South Australian border at Wentworth.

The Barkandji people have continuously occupied the Darling area for more than 40,000 years and the river is central to their identity and culture. Graziers moved into the area in the 1830s and irrigation was facilitated by modifications to Menindee Lakes in the 1950s and 1960s.

The river and lakes play a vital role in the region, providing water for towns, stock and irrigation and they also support tourism and recreational water sports. The Lower Darling is important for the whole Murray–Darling Basin, as it connects the Northern and Southern Basins. This connectivity is important for the environment – for example, much of the Murray–Darling Basin’s native fish population comes from Menindee Lakes and the Lower Darling River.

Major changes are being made to the management of the Lower Darling and Menindee Lakes. The Menindee Lakes Water Savings Project aims to reconfigure the lakes to reduce evaporation, remove permanent irrigation from the Lower Darling and change Broken Hill’s water source from the lakes to the Murray River, via a 270km pipeline.

These changes bring benefits – the reduction in evaporation and other water demand in the Darling would allow irrigators in the Northern and Southern Basins to use more water. However, the changes are also having major impacts on the economy, community and environment of the Darling Region. Released documents state:

- “The Project is [likely to be] unable to meet all of the aspirations of Native Title Owners/local/wider aboriginal interests.”
- “The project can also expect community concern about the withdrawal of irrigation, particularly from Lake Tandou. Menindee Township is heavily reliant

on Tandou for employment and other economic activity so the residents may be understandably anxious about this issue.”

- “Property values in Menindee and other related townships [will] decrease due loss of amenity and/or economic activity from buy-back of Lower Darling licences and changes to operations.
- “Broken Hill and Lower Darling communities are expected to be concerned ... [due to] a loss of recreational amenity and a reduction in agricultural and tourism activity.”
- “[Permanent irrigation in the region] cannot be sustained with periodic access to water under the proposal.”
- “The lower Darling River and the Menindee Lakes have become a vital location for cod and perch spawning, and fish from these areas have been tracked as far as the Queensland border ... The science from the last few years is showing that the Darling River is contributing golden perch that dominate throughout the southern rivers of the Basin.”<sup>1</sup>

The changes are not being made in a transparent way with consultation and equitable compensation. 13,300 people signed a petition against the pipeline because of “negligible community consultation” and uncertainty around who will pay for its costs. The Barkandji consider consultation to be “fake consultation, they only do it to tick a box”, while other stakeholders have been turned away from meetings and some have been required to sign confidentiality agreements.

One stakeholder has not had these problems. Major agribusiness Webster purchased Tandou Station, an irrigation property near Menindee, in June 2015. By June 2017 it had secured sale to the Commonwealth of its water licences for \$38 million, plus \$40 million in compensation for loss of future business as well as a gift of 21 gigalitres of water from the Commonwealth for Tandou Station to grow a cotton crop in 2017–18 – the financial year after the purchase. Webster booked a \$36 million on the transaction.

The Webster deal raises some major questions about accountability, transparency and the implementation of the Basin Plan.

### **1. Why was Webster compensated?**

The underlying philosophy of the Basin Plan implementation is to balance environmental requirements with socio-economic interests. This approach aims to minimise socio-economic dislocation and sees governments only buying water from willing sellers who require no compensation other than a fair price for their water. Because of this, no other irrigator, property or business owner

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<sup>1</sup> Sources provided throughout this report where these quotes appear.

has ever received compensation to date under the Basin Plan. \$32.6m of grants have been made to the whole NSW Basin as structural adjustments under the Basin Plan – less than was paid to Webster – but no compensation has been paid to other agricultural businesses.

**2. When did the Webster deal begin?**

Just three months after Webster's purchase of Tandou Station, the Commonwealth Department of Agriculture and Water Resources (DAWR) had already commissioned a consultant who had completed an initial valuation report on Lower Darling water purchases. Given the usual cautious pace of public service report commissioning processes, it seems likely that these discussions began months before, possibly even before Webster's purchase of Tandou. If this is the case, it raises serious issues around DAWR's interaction with private companies, property and water markets.

**3. How was the deal worked out?**

Unlike many other stakeholders, Webster managers were on first name terms with senior DAWR officers, insisted on confidentiality and were able to negotiate their compensation package.

**4. Is the Webster deal within government rules?**

The Commonwealth Procurement Rules state that the Commonwealth cannot discriminate between suppliers based on size. Unless other water holders are given the same level of compensation, the Commonwealth Procurement Rules may have been breached. The Basin Plan also requires that water savings projects must ensure no detrimental impacts on the reliability of supply to water holders. The Menindee Project and the Webster deal will reduce the reliability of supply to Lower Darling water holders.

While Webster was the largest water holder in the Lower Darling, it was not the only one with significant entitlements. There is no doubt that everyone in the Lower Darling will be affected by the Menindee Project, including through economic loss. The Webster deal has set a precedent for compensation to be paid to all stakeholders: Barkandji, graziers, Menindee businesses and property owners and irrigators.

The story of the Lower Darling and the Webster deal is not just about one large company getting a lot of money. It is about power and how decision makers are putting the interests of the powerful before the interests of the vulnerable. The experience of the Lower Darling shows that the Basin's decision makers have one way of dealing with a powerful agribusiness and a different way of dealing with native title owners, graziers, communities, small irrigators and the environment.

# Introduction

## LOWER DARLING PLACES AND PEOPLE

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The Barwon–Darling River originates in Queensland and runs the length of Western NSW into Menindee Lakes in south-western NSW, 110km south-east of Broken Hill. Menindee Lakes feed the Lower Darling River, which meets the Murray near the South Australian border at Wentworth.

Menindee Lakes are naturally occurring ephemeral lakes at the lower end of the Barwon–Darling River. Under natural conditions, lake levels rise and fall and the lakes grow and shrink as water flows out into the Lower Darling, recharges the aquifer or evaporates.

The distinction between the Darling (also known as the Barka) and the Lower Darling is an administrative one, as they are one river. The Darling connects the Northern and Southern basins. This connectivity is critical for the health of native fish populations of Golden Perch and Murray Cod:

The Lower Darling River and the Menindee Lakes have become a vital location for cod and perch spawning, and fish from these areas have been tracked as far as the Queensland border.

The science from the last few years is showing that the Darling River is contributing golden perch that dominate throughout the southern rivers of the Basin.<sup>2,3</sup>

The Barkandji people have continuously occupied the Darling area for more than 40,000 years and the river is central to their identity and culture.

Barkandji take their name from the Darling River, explained elder William “Badger” Bates. Barka was the original name of the river, and the ndji ending meant “belonging to”. The river was “the lifeline of our people” he said, and

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<sup>2</sup> Brown (2017) *Fish ecologists call for 'linked' river system as cod and perch population origins tracked to Menindee Lakes*, <http://www.abc.net.au/news/rural/2017-05-05/vch-murray-darling-managers-urged-to-consider-native-fish/8499496>

<sup>3</sup> See also [https://www.mdba.gov.au/sites/default/files/pubs/12\\_fish-assembly-structure-movement-recruitment-coorong-lower-lakes-2014-15-D16%2019477.pdf](https://www.mdba.gov.au/sites/default/files/pubs/12_fish-assembly-structure-movement-recruitment-coorong-lower-lakes-2014-15-D16%2019477.pdf)

there were stories attached to every stretch of it, explaining how it was formed and how their people lived.<sup>4</sup>

The Barkandji were granted native title in 2015 in:

the largest native title case in the history of New South Wales. It involves pockets of land spread across 128,000 square kilometres of Barkandji country, land that extends from the South Australian border to Tilpa in the east, Wentworth in the south, north almost to Wanaaring. Within it lie the towns of Broken Hill, Wilcannia and Menindee.<sup>5</sup>

The success of the native title claim relied heavily on evidence of the continuous occupation of the Barkandji around the Barka.<sup>6</sup>

“My aunties, uncles, elders and our ancestors before them, lived and fished and camped on the Darling River for over 40,000 years,” Bates said. Now 400km of it run through the native title claim area.<sup>7</sup>

Barkandji elder Badger Bates has written a compelling summary of the Barka’s importance to the Barkandji and the river’s decline in his lifetime.<sup>8</sup>

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<sup>4</sup> Tan (2015) ‘We’ve got to tell them all our secrets’ – how the Barkandji won a landmark battle for Indigenous Australians, <https://www.theguardian.com/australia-news/2015/jun/23/weve-got-to-tell-them-all-our-secrets-how-the-barkandji-won-a-landmark-battle-for-indigenous-australians>

<sup>5</sup> Tan (2015) ‘We’ve got to tell them all our secrets’ – how the Barkandji won a landmark battle for Indigenous Australians, <https://www.theguardian.com/australia-news/2015/jun/23/weve-got-to-tell-them-all-our-secrets-how-the-barkandji-won-a-landmark-battle-for-indigenous-australians>

<sup>6</sup> Federal Court of Australia (2017) *Commonwealth Court Portal*, <https://www.comcourts.gov.au/file/Federal/P/NSD6084/1998/actions>

<sup>7</sup> Tan (2015) ‘We’ve got to tell them all our secrets’ – how the Barkandji won a landmark battle for Indigenous Australians, <https://www.theguardian.com/australia-news/2015/jun/23/weve-got-to-tell-them-all-our-secrets-how-the-barkandji-won-a-landmark-battle-for-indigenous-australians>

<sup>8</sup> Bates (2018) *Statement for Murray-Darling Basin Royal Commission*, <https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/mdbrc-submission-william-badger-bates-nsw.pdf?v=1535332821>

Graziers started moving into the area in the 1830s and 40s and established iconic stations, such as Kincheha and Tolarno.<sup>9,10</sup> The lakes currently supply stock and domestic water for approximately 1,000 people and 250,000 sheep.<sup>11</sup>

Menindee Township was established in 1852, making it the oldest European settlement in western New South Wales. Pooncarie was gazetted in 1863 to service graziers who had started livestock runs in the 1840s.<sup>12</sup> Menindee Lakes currently supplies town water for Menindee and Pooncarie with a combined population of about 800 people.<sup>13</sup>

The lakes were modified to store water in the 1950s and 60s by connecting the natural lakes and Darling River with weirs, regulators, inter-connecting channels and levees.<sup>14</sup> The reconfiguration of the Lakes was in part to establish an irrigation industry in:

the high-class lands along the lower Darling which could be served by pumping.<sup>15</sup>

As of 2015 there was 4,725 ha of permanent plantings, mainly citrus, stone fruits, and grapes and 15,500 ha of annual crops, including cotton, cereals and vegetables.<sup>16</sup>

The lakes are important for the local government areas of the Central Darling, Broken Hill, Wentworth, and Mildura. At the time of writing, Menindee Lakes supply town water to Broken Hill. The lakes attract tourism into all four LGAs. Most of the tourism at Menindee is related to the lakes and river, such as bird watching, boat tours,

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<sup>9</sup> Traveller (2008) *Menindee: Culture and History*, <http://www.traveller.com.au/menindee--culture-and-history-6fyr>

<sup>10</sup> Tolarno (n.d.) *Tolarno Station: History*, <http://www.tolarnostation.com.au/history.html>

<sup>11</sup> ABS (2016) *Census QuickStats*, [http://quickstats.censusdata.abs.gov.au/census\\_services/getproduct/census/2016/quickstat/SSC10592?opendocument](http://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/SSC10592?opendocument)

<sup>12</sup> Country Corner Outback NSW (2018) *Pooncarie*, <http://outbacknsw.com.au/pooncarie.html>

<sup>13</sup> ABS (2016) *Census QuickStats*, [http://quickstats.censusdata.abs.gov.au/census\\_services/getproduct/census/2016/quickstat/SSC10592?opendocument](http://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/SSC10592?opendocument)

<sup>14</sup> NSW DPI (2012) *Menindee Lakes water savings opportunities – information paper*, <http://www.southwestnrm.org.au/sites/default/files/uploads/managed/news/120411%20Menindee%20water%20savings%20opportunities.pdf>

<sup>15</sup> NSW Parliament (1949) *2<sup>nd</sup> Reading Speech: Menindee Water Conservation Act*, <https://www.parliament.nsw.gov.au/hansard/pages/home.aspx?tab=Browse&s=1>

<sup>16</sup> SunRise (2015) *Irrigated crop area data for the Lower Murray-darling 2003–2015*, <https://www.mdba.gov.au/>



photographers and artists, Aboriginal cultural heritage tours, fishing, swimming, boating, water skiing, and camping.<sup>17</sup>

The latest arrival in the Lower Darling is Webster Limited, a publicly listed agribusiness, which purchased the large irrigation property Tandou Station in early 2015. Webster is one of the largest water holders in the Murray–Darling Basin.<sup>18</sup>

The Lower Darling is important not just for the local people and environment. It plays an important role in the wider Murray–Darling Basin, as it links the Northern and Southern Basins. Under the Murray–Darling Basin Agreement, the lakes make a significant contribution to flows to South Australia, which would otherwise need to be delivered out of the Murray, Murrumbidgee and Goulburn rivers:

Since development of the Menindee Lakes Scheme, the lakes have supplied 39% of the annual entitlement flows to South Australia (Thoms et al. 2000),<sup>19</sup> leading to a constant flow regime.<sup>20</sup>

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<sup>17</sup> Australian Regional Tourism (2018) *Submission to the Murray-Darling Basin Royal Commission*, <https://www.mdbrc.sa.gov.au/community-engagement/submissions>

<sup>18</sup> Boreham (2018) *The water dilemma for listed agriculture plays*, <https://www.livewiremarkets.com/wires/the-new-criterion-the-water-dilemma-for-listed-agriculture-plays>

<sup>19</sup> Thoms et al (2000) *Report of the River Murray Scientific Panel on Environmental Flows: River Murray - Dartmouth to Wellington and the Lower Darling River*, River Murray Scientific Panel on Environmental Flows

<sup>20</sup> Murray-Darling Basin Commission (2004) *The Living Murray Information Paper no. 10: Menindee lakes, the Lower Darling River and Darling Anabranch*, [https://www.mdba.gov.au/sites/default/files/archived/mdbc-tlm-reports/525\\_menindeelakesdarling.pdf](https://www.mdba.gov.au/sites/default/files/archived/mdbc-tlm-reports/525_menindeelakesdarling.pdf)

# Changes under the Basin Plan

Not everyone has loved Menindee Lakes since they were regulated. Reconfiguration of the lakes has been proposed for decades.<sup>21</sup> A new proposal to reconfigure the lakes has recently gained the support of Federal Parliament.<sup>22</sup>

Irrigators in both the Northern and Southern Basins support the reconfiguration of Menindee Lakes because this would allow them to use more water. The current NSW policy is that Northern irrigators are not permitted to extract water when the Lakes fall below 18 months' supply for Broken Hill's water.<sup>23</sup> This reduces their water extraction and therefore production for the sake of a town up to 2,000km away.<sup>24,25</sup> Southern irrigators also support changes to Menindee Lakes because the claimed water savings from the proposed reconfiguration have been reallocated under the Basin Plan to increase the Sustainable Diversion Limits (SDLs) in the Murrumbidgee and Goulburn Valleys, which allows southern irrigators to use more water.<sup>26</sup>

## WHAT THE MENINDEE LAKES WATER SAVINGS PROJECT DOES

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The Murray–Darling Basin Plan was amended in June 2018 to increase the SDLs – the legal limit of extractions for irrigation. 36 water savings projects have been proposed

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<sup>21</sup> NSW Irrigators Council (2013) *Menindee Lakes Policy*,

[http://www.nswic.org.au/pdf/policy\\_documents/130307%20-%20Menindee%20Lakes%20Policy.pdf](http://www.nswic.org.au/pdf/policy_documents/130307%20-%20Menindee%20Lakes%20Policy.pdf)

<sup>22</sup> MDBA (2018) *Basin Plan amendments secures environmental and community benefits*,

<https://www.mdba.gov.au/media/mr/basin-plan-amendment-secures-environmental-community-benefits>

<sup>23</sup> NSW Irrigators Council (2014) *Monthly Update September 2014*,

<http://www.nswic.org.au/pdf/newsletter/2014/1409.pdf>

<sup>24</sup> Cotton Australia (2015) *Removal of water embargo welcomed by NSW Cotton Industry*,

<https://cottonaustralia.com.au/news/article/removal-of-water-embargo-welcomed-by-nsw-cotton-industry>

<sup>25</sup> Gavin Coote (2015) *Objections to water embargoes in NSW and QLD 'grossly negligent', say lower*

*Darling irrigators*, <http://www.abc.net.au/news/2015-05-13/objections-to-water-embargoes-in-nsw-and-qld-grossly-neglige/6465854>

<sup>26</sup> MDBA (2017) *Sustainable Diversion Limit Adjustment Mechanism: Draft Determination Report*,

[https://www.mdba.gov.au/sites/default/files/pubs/SDLAM-draft-determination-report\\_2.pdf](https://www.mdba.gov.au/sites/default/files/pubs/SDLAM-draft-determination-report_2.pdf)

to justify a SDL increase of 605GL in the Southern Basin. The Menindee Lakes Water Savings Project alone is estimated to contribute 106GL to that total.<sup>27</sup>

The intended water savings come from reduced evaporation because less water would be stored in the lakes. As well as changes to the lakes, the savings require the removal of permanent irrigation in the Lower Darling and changing the source of Broken Hill's town water supply from Menindee Lakes to the Murray River. All of these aspects of the proposed project will have major impacts on the Lower Darling and beyond.

The business case explains that the removal of permanent irrigation will require a structural adjustment for high security water users.<sup>28</sup> DoI explained to stakeholders at Menindee that they are not offering a structural adjustment to high security water holders above Weir 32, at this stage.<sup>29</sup> The business case does not include any discussion about general security or stock and domestic water holders.

## Broken Hill Pipeline

With less water in Menindee Lakes, the 18,000 residents of Broken Hill would need a new water supply – a controversial pipeline announced in 2016.<sup>30</sup> The cost of the pipeline will be borne, at least in part, by Broken Hill residents. Yet the full business case has been kept confidential, despite the commencement of construction and requests made through NSW parliament and local governments.<sup>31, 32</sup>

Ongoing costs for operations and maintenance of the pipeline will also be passed on to Broken Hill residents. Exactly how much they will be forced to bear will be determined by the state regulator IPART in 2019 – after the pipeline is completed. IPART has just

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<sup>27</sup> MDBA (2017) *Sustainable Diversion Limit Adjustment Mechanism: Draft Determination Report*, [https://www.mdba.gov.au/sites/default/files/pubs/SDLAM-draft-determination-report\\_2.pdf](https://www.mdba.gov.au/sites/default/files/pubs/SDLAM-draft-determination-report_2.pdf)

<sup>28</sup> Blackwatch Consulting (2017) *Menindee Lakes: Interim Project Proposal*, obtained under OPD 420, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2Fc2508f17-13bd-49a9-85eb-6f0436b70763%22>

<sup>29</sup> Rachel Connell (Executive Director Water, Department of Industry) (2018) *Maryanne Slattery contemporaneous notes of stakeholder meeting at Maidens Menindee Hotel*

<sup>30</sup> NSW Government (2016) *Media Release: New pipeline to secure Broken Hill water supply*, <https://www.nsw.gov.au/your-government/the-premier/media-releases-from-the-premier/new-pipeline-to-secure-broken-hill-water-supply/>

<sup>31</sup> Broken Hill City Council (2018) *Murray-Darling Royal Commission*, <https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/mdbrc-submission-brokenhill-council.pdf?v=1527655334>

<sup>32</sup> NSW Labor (2017) *NSW Labor calls for a pipeline moratorium*, [http://www.lukefoley.com.au/nsw\\_labor\\_calls\\_for\\_a\\_pipeline\\_moratorium](http://www.lukefoley.com.au/nsw_labor_calls_for_a_pipeline_moratorium)

announced Essential Water's recommendation for an increase to water rates of \$465 per household per year by 2023. This is before the cost of the pipeline itself:

Essential Water's proposed prices do not include any costs associated with the construction and operation of the Murray River to Broken Hill Pipeline and consequential works that might be required as a result of the new pipeline.

There are concerns that residents and businesses will not be able to afford the costs.<sup>33,34</sup>

More than 13,300 people signed a petition to the NSW Premier, Gladys Berejiklian, which stated:

There has been negligible community consultation.<sup>35</sup>

While the community of the Lower Darling and Broken Hill say they have had little input into the pipeline plan, Cotton Australia claimed the pipeline plan as a policy win in their 2016–17 annual report:

... another win for NSW growers in December 2016, when the State Government announced that WaterNSW had been appointed to build, own and operate a 270km water pipeline from the Murray River to Broken Hill.

... The pipeline is a win for the community, the environment and irrigating farmers, and a solution Cotton Australia and its allies have long lobbied for.<sup>36</sup>

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<sup>33</sup> NSW Legislative Council: Portfolio Committee No. 5: Industry and Transport (2018) *Augmentation of Water Supply for Rural and Regional NSW*, <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2390/Augmentation%20of%20water%20supply%20for%20rural%20and%20regional%20New%20South%20Wales.pdf>

<sup>34</sup> Change.org (2018) *Petition: Call for moratorium on River Murray to Broken Hill pipeline*, <https://www.change.org/p/premier-of-new-south-wales-call-for-moratorium-on-river-murray-to-broken-hill-pipeline>

<sup>35</sup> Change.org (2018) *Petition: Call for moratorium on River Murray to Broken Hill pipeline*, <https://www.change.org/p/premier-of-new-south-wales-call-for-moratorium-on-river-murray-to-broken-hill-pipeline>

<sup>36</sup> Cotton Australia (2017) *Cotton Australia Annual Report 2016-17*, [http://cottonaustralia.com.au/uploads/publications/Cotton\\_Australia\\_Annual\\_Report\\_2016-17\\_WEB\\_final.pdf](http://cottonaustralia.com.au/uploads/publications/Cotton_Australia_Annual_Report_2016-17_WEB_final.pdf)

## Removing irrigation from the Lower Darling

Water licences in the Lower Darling include high and general security, stock and domestic and town water supply licences.

The NSW water entitlement framework provides a high security licence product to ensure that permanent plantings, such as citrus and grapes, can expect to receive a full allocation in all but severe droughts.<sup>37, 38</sup>

The Menindee Water Savings Project business case states that the removal of the high security water licences is required for the project:

removing high security irrigation and town water supply demands from the Lakes through a combination of infrastructure works and structural adjustment mechanisms.<sup>39</sup>

The business case also identifies that after the reconfiguration of the Lakes, the water supply will not support permanent plantings (high security water licences), which will no longer be viable under the project:

the key risk with allowing trade into the Lower Darling is that new water allocations could be used for permanent plantings which cannot be sustained with periodic access to water under the proposal.<sup>40</sup>

Irrigation in the Lower Darling is not just based on high security water, but also on general security water. General security licences in NSW are the lowest priority for

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<sup>37</sup> NSW Government (2001) *Advice to Water Management Committees. No. 4: Regulated Rivers (High Security) Access Licences*,  
[http://www.water.nsw.gov.au/data/assets/pdf\\_file/0006/547773/policy\\_advice\\_4-highsecurity.pdf](http://www.water.nsw.gov.au/data/assets/pdf_file/0006/547773/policy_advice_4-highsecurity.pdf)

<sup>38</sup> NSW Parliamentary Library Research Service, (2000), *New Water Management Legislation in NSW: A Review*, <https://www.parliament.nsw.gov.au/researchpapers/Documents/new-water-management-legislation-in-nsw-a-review/08-00.pdf>

<sup>39</sup> Blackwatch Consulting (2017) *Menindee Lakes Water Savings Project Phase 2 Business Case June 2017*, obtained under OPD 420,  
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2Fc2508f17-13bd-49a9-85eb-6f0436b70763%22>

<sup>40</sup> Blackwatch Consulting (2017) *Menindee Lakes: Interim Project Proposal*, obtained under OPD 420,  
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2Fc2508f17-13bd-49a9-85eb-6f0436b70763%22>

allocating water after stock and domestic, town water supply, and high security licences.<sup>41</sup>

In most of NSW, general security licences support opportunistic irrigation in the form of annual cropping. Crops are only planted if irrigators forecast that allocation will be available under a general security licence. General security licences are typically too unreliable to support permanent plantings.

Reliability is measured in terms of how much water has historically been allocated to a water licence holder. A recent publication by the Department of Industry shows that in the Lower Darling high security licences have a reliability of 98.2% and general security licences have a reliability of 96%.<sup>42</sup> This is the highest general security reliability in the NSW Basin.<sup>43</sup>

Because high and general security licences in the Lower Darling have practically the same reliability, both types are practically the same in terms of security of supply, value and use. This encourages general security licences to be used for permanent plantings:

Although not having the same security of supply to that of high security entitlements, 'general security' entitlements in the Lower Darling River also enjoyed a high level of reliability, receiving 100% of their entitlement in every year from when volumetric entitlements were introduced until 2003–2004. Not surprisingly, some permanent plantings in the Lower Darling were subsequently established using general security entitlements.<sup>44</sup>

Because high and general security licences are practically the same in the Lower Darling, it is unclear why they should be differentiated in respect of structural adjustment or compensation.

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<sup>41</sup> NSW Parliamentary Library Research Service, (2010), *Briefing Paper: Water Regulatory Frameworks in Rural NSW*, <https://www.parliament.nsw.gov.au/researchpapers/Documents/water-regulatory-frameworks-in-rural-nsw/Water%20Regulatory%20Frameworks%20Briefing%20Paper%204%202010.pdf>

<sup>42</sup> NSW Department of Industry (2018) *Water Reform Technical Report: Derivation of LTDLE factors in NSW*, [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0019/162181/technical-paper-derivation-technical-factors-nsw.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0019/162181/technical-paper-derivation-technical-factors-nsw.pdf)

<sup>43</sup> NSW Department of Industry (2018) *Water Reform Technical Report: Derivation of LTDLE factors in NSW*, [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0019/162181/technical-paper-derivation-technical-factors-nsw.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0019/162181/technical-paper-derivation-technical-factors-nsw.pdf)

<sup>44</sup> Lower Darling Horticultural Group (2018) *Submission to the Murray-Darling Basin Royal Commission*, [https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/mdbrc-submission-rachel\\_strachan-lower-darling-horticulture-group-nsw.pdf?v=1523508717](https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/mdbrc-submission-rachel_strachan-lower-darling-horticulture-group-nsw.pdf?v=1523508717)

# WHO IS IMPACTED BY THE MENINDEE WATER SAVINGS PROJECTS

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If the Menindee Water Savings Project goes ahead, there will be less water – for both irrigation and the environment – in Menindee Lakes and the Lower Darling. This will have a fundamental impact on the lives, livelihoods and assets for all stakeholders.

The Barkandji are aggrieved because, after an 18 year battle to achieve native title, water will be removed from the area – removing part of the justification for their claim in the first place:

To me, native title means nothing unless we are Barka ... Without the Barka, we're finished. So what's a bit of land without water?

It's no good what colour you are, hey, and that's what they done. They gave us our native title. And just before that, they was mucking around with the lakes. And as soon as we got our native title, they took the water. So I mean, it's worth nothing.<sup>45</sup>

The business case of the Project says it is 'likely' that the:

Project is unable to meet all of the aspirations of Native Title Owners / local / wider aboriginal interests.<sup>46</sup>

This is identified as a 'major' risk to the project delivery. The mitigation strategy to address that is to:

Engage with aboriginal interest groups early: seek input into possible heritage concerns.<sup>47</sup>

Reduced access to potable water has a two-fold effect on graziers:

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<sup>45</sup> Bates (2018) *Evidence to the Murray-Darling Basin Royal Commission*, [https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/28\\_august\\_2018\\_hearing\\_transcript\\_final\\_copy.pdf?v=1535609414](https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/28_august_2018_hearing_transcript_final_copy.pdf?v=1535609414)

<sup>46</sup> Blackwatch Consulting (2017) *Menindee Lakes Water Savings Project Phase 2 Business Case June 2017*, obtained under OPD 420, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2Fc2508f17-13bd-49a9-85eb-6f0436b70763%22>

<sup>47</sup> Blackwatch Consulting (2017) *Menindee Lakes Water Savings Project Phase 2 Business Case June 2017*, obtained under OPD 420, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2Fc2508f17-13bd-49a9-85eb-6f0436b70763%22>

So, fundamentally, there are two issues: one is that you lose your boundary fence ... because, obviously, all the properties have a boundary fence which is the river, and then the river runs dry, you have no fence line.

So we lose land through that. We also lost a significant amount of land because we had no potable water for one and a half of our stations.<sup>48</sup>

So ... in the next month or two, we're going to lose 200,000 acres straightaway because we just can't retain sheep in our area, and then it will grow to about half our property which is 250,000 acres which will be lost because we don't have water.<sup>49</sup>

Former Water Minister Barnaby Joyce was advised that the Menindee project is likely to have an impact on Menindee's economy:

Broken Hill and Lower Darling communities are expected to be concerned with the acquisition of high security water entitlements by the Commonwealth as this would allow greater changes to the Menindee Lakes causing a loss of recreational amenity and a reduction in agricultural and tourism activity.<sup>50</sup>

A report prepared by the Valuer General describes the direct relationship between water levels in Menindee Lakes and property values.<sup>51</sup> The Menindee Project business case also raised the issue of the project's impact on Menindee:

The project can also expect community concern about the withdrawal of irrigation, particularly from Lake Tandou. Menindee Township is heavily reliant

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<sup>48</sup> Kat McBride (2018) *Evidence to the Murray-Darling Basin Royal Commission*, [https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/16\\_august\\_2018\\_hearing\\_transcript\\_final.pdf?v=1534893886](https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/16_august_2018_hearing_transcript_final.pdf?v=1534893886)

<sup>49</sup> Rob McBride (2018) *Evidence to the Murray-Darling Basin Royal Commission*, [https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/16\\_august\\_2018\\_hearing\\_transcript\\_final.pdf?v=1534893886](https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/16_august_2018_hearing_transcript_final.pdf?v=1534893886)

<sup>50</sup> DAWR (2017) *Minute to Minister: Maximising outcomes from the Menindee lakes project*, Documents obtained under OPD 420, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2F588a4b32-df56-4a7f-98d4-688922e9c30a%22>

<sup>51</sup> Aspect Property Consultants (2016) *Final Report; Central darling LGA 2016*, [http://www.valuergeneral.nsw.gov.au/land\\_value\\_summaries/reports/2016/Central\\_Darling.pdf](http://www.valuergeneral.nsw.gov.au/land_value_summaries/reports/2016/Central_Darling.pdf)



on Tandou for employment and other economic activity so the residents may be understandably anxious about this issue.<sup>52</sup>

As discussed above, permanent irrigation will become unviable, with the 'almost certain' risk that:

Property values in Menindee and other related townships decrease due loss of amenity and/or economic activity from buy-back of Lower Darling licences and changes to operations.<sup>53</sup>

The NSW Government approached six irrigation families with permanent plantings in 2014 and flagged that the changes to Menindee Lakes would mean that irrigating permanent plantings would become unviable in the Lower Darling:

None of us actually want to leave but the reality is that we used to have the most reliable water supply in the system and now we haven't, and it is going to get worse. We can try to argue to defend our position, and we do not think we should have to be sacrificed, but we are only six families versus the northern irrigation industry.<sup>54</sup>

Those families formed the Lower Darling Horticulture Group and put a proposal for compensation to the NSW government in early 2015:<sup>55</sup>

The Lower Darling Horticulture Group (LDHG) have been working with the NSW and Commonwealth Governments for over three years in developing a structural adjustment package that would enable irrigators with high value

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<sup>52</sup> Blackwatch Consulting (2017) *Menindee Lakes: Interim Project Proposal*, obtained under OPD 420, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2Fc2508f17-13bd-49a9-85eb-6f0436b70763%22>

<sup>53</sup> Blackwatch Consulting (2017) *Menindee Lakes Water Savings Project Phase 2 Business Case June 2017*, obtained under OPD 420, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2Fc2508f17-13bd-49a9-85eb-6f0436b70763%22>

<sup>54</sup> Alan Whyte (2018) *Witness Statement to the Murray-Darling Basin Royal Commission*, <https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/mdbrc-witness-statement-alan-whyte.pdf?v=1531712308>

<sup>55</sup> Alan Whyte (2018) *Evidence to the Murray-Darling Basin Royal Commission*, [https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/17\\_july\\_2018\\_hearing\\_transcript\\_final.pdf?v=1532079651](https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/17_july_2018_hearing_transcript_final.pdf?v=1532079651)

permanent plantings on the Lower Darling River to remove these and to transition to agricultural enterprises requiring a less secure water supply.<sup>56</sup>

However, this group still has no offer from the Commonwealth or NSW governments for their water or compensation for their businesses. These irrigators are aware that their businesses will no longer be viable, but because valuations and pay outs are not made, they cannot plan for exit strategies or their businesses:

Our biggest issue is that since 2014 we have had a time line of decisions just continually pushed out. That is making – it does your head in, because you think you are getting to a point where there’s going to be a decision and you can proactively move your business and family into safer territory than we’re you’re at. ... that angst has really started to bubble up within the community too, that they feel completely ignored by government. It’s just – I think the Lower Darling has been really cruelly treated. Really cruelly. And it doesn’t matter whether you are growing permanent plantings or whether you’re a pastoralist or whether you are a community member or a fisherman who comes up camping or whether you are trying to bathe your children in water that’s just going to give them infection after infection. We have been horrendously treated.<sup>57</sup>

The project business case flagged the possibility of the government paying compensation for high security water holders:

Structural adjustment will require extensive consultation with entitlement holders involved. These negotiations will take time and potentially trigger Just Terms Acquisition if agreements cannot be reached.<sup>58</sup>

Just Terms Acquisition is NSW legislation to compensate on ‘just terms’ when the State has compulsorily acquired property. There is also provision for the Commonwealth to pay compensation for the compulsory acquisition of property on just terms under the Constitution.

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<sup>56</sup> Lower Darling Horticultural Group (2018) *Submission to the Murray-Darling Basin Royal Commission*, [https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/mdbrc-submission-rachel\\_strachan-lower-darling-horticulture-group-nsw.pdf?v=1523508717](https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/mdbrc-submission-rachel_strachan-lower-darling-horticulture-group-nsw.pdf?v=1523508717)

<sup>57</sup> Rachel Strachan (2018) *Evidence to the Murray-Darling Basin Royal Commission*, [https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/17\\_july\\_2018\\_hearing\\_transcript\\_final.pdf?v=1532079651](https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/17_july_2018_hearing_transcript_final.pdf?v=1532079651)

<sup>58</sup> Blackwatch Consulting (2017) *Menindee Lakes: Interim Project Proposal*, obtained under OPD 420, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2Fc2508f17-13bd-49a9-85eb-6f0436b70763%22>

The business case has not referred to any compensation or structural adjustment for any other stakeholder group other than high security water holders and Tandou station.

## TRANSPARENCY AND CONSULTATION

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There has been minimal transparency around the development of the Menindee Lakes Water Savings Project and serious doubts raised around the quality of consultation with stakeholders.

### Menindee Business Case

The Menindee Business Case Phase 2 was finalised in June 2017. This sets out the proposed changes to Menindee Lakes and associated regulating structures, a summary of the impacts, identification of project risks and mitigation strategies. This is an important document for the people that the project will affect.

The business case was not made public until 28 June 2018 and then only after:

- several requests to the Minister and the Murray–Darling Basin Authority (MDBA) by Senator Rex Patrick, including two requests for the Order for Production of Documents through the Australian Senate;
- the Australia Institute’s report *Desperate Measures* in April 2018, which referenced sighting a copy of the business case;<sup>59</sup>
- an agreement with the Federal Labor Party for more transparency in the supply measure process as part of their agreement to not to support the Basin Plan amendment of the SDLs.<sup>60</sup>

### Consultation

The Menindee Water Savings Project is complex. It will affect all people in the Lower Darling and impact many others in the surrounding local government areas. The

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<sup>59</sup> Slattery and Campbell (2018) *Desperate Measures*, <http://www.tai.org.au/content/desperate-measures-supply-measures-diversion-limits-and-murray-darling-basin-plan>

<sup>60</sup> Burke (2018) *Media Release: Murray-Darling Basin Plan back on track*, <https://www.tonyburke.com.au/media-releases/2018/5/8/media-release-murray-darling-basin-plan-back-on-track>

business case identifies consultation as a key strategy to manage project risks and impacts:

The reinvigoration of this project provides an opportunity to re-engage with the key stakeholders to ensure issues are brought to the table and appropriately addressed.<sup>61</sup>

The consultation on the proposed Menindee Water Sharing Plan has only started in late July 2018. The consultation to date has been targeted and by invitation only. There has been no public meetings or opportunity for public submissions.

The Barkandji have native title, which should afford them the highest priority as stakeholders, but they do not believe consultation has been satisfactory:

So about consultation, yes they consult but it is fake consultation, they only do it to tick a box and do as little consultation as possible and do exactly what they like no matter what we say.<sup>62</sup>

Consultation with the Barkandji has been around cultural values only, and they have not been recognised as stakeholders in their own right:

They hold separate colour coded meetings for whitefellas and blackfellas.<sup>63</sup>

You can see from the Menindee Lakes Business Plan stakeholder consultation table that the Aboriginal people are not rated as stakeholders that can “influence the decision making process”, unlike landholders, irrigators, and government departments, it is there in black and white.<sup>64</sup>

When the Barkandji have been consulted, they do not believe that the consultation is genuine or that they have been listened to:

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<sup>61</sup> Blackwatch Consulting (2017) *Menindee Lakes Water Savings Project Phase 2 Business Case June 2017*, obtained under OPD 420, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2Fc2508f17-13bd-49a9-85eb-6f0436b70763%22>

<sup>62</sup> Bates (2018) *Murray-Darling Basin Royal Commission Submission*, <https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/mdbrc-submission-william-badger-bates-nsw.pdf?v=1535332821>

<sup>63</sup> Bates (2018) *Murray-Darling Basin Royal Commission Submission*, <https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/mdbrc-submission-william-badger-bates-nsw.pdf?v=1535332821>

<sup>64</sup> Bates (2018) *Murray-Darling Basin Royal Commission Submission*, <https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/mdbrc-submission-william-badger-bates-nsw.pdf?v=1535332821>

So whatever consultation they did with Barkandji people they just ignored what we said anyway. For example in early August 2018 NSW DoI rang and said they wanted to meet with the Barkandji PBC in Broken Hill about the changes they want to do at the Menindee Lakes (this is one of the “water saving projects” that MDBA are using as an excuse for taking out extra water for irrigators). We had a Barkandji PBC directors meeting in Broken Hill on the Tuesday and Wednesday, so of course they wanted to meet us at short notice on the Thursday night at 7:30 pm after the other directors had left. There was only 2 of us and our CEO, we were the only ones invited anyway. We got the NT Corp solicitors to email then beforehand and ask for an agenda and what they wanted to meet about. They replied there was no agenda and it was only an information session. But when we got there they handed us maps of proposed new locations for regulators between Lake Menindee and Lake Cawndilla that we hadn’t seen before and asked us for comment. All the locations have burials, middens, scarred trees, artefacts and ovens that will be destroyed, and they wanted feedback on the spot. We rejected most of it but when I went home I couldn’t sleep because I was thinking what will they say we said, who knows, we never get any feedback or official minutes or anything. What I do know they will be destroying more of our sites including burials of our ancestors and we are powerless to do anything about it.<sup>65</sup>

People have had to invite themselves to meetings that they have heard about from others:

It is interesting to note Travis Casey and I as irrigators of fruit, food and fodder crops, were first notified of the first invitation meetings by the local fishing club, upon enquiry no Menindee irrigators had been invited.

Not that numbers should outweigh people, but the company I manage a property for has 550 ML of high security water shares, one would think that would qualify for an invitation as a stake holder, we are not water traders we grow food crops, both for the domestic market and export.<sup>66</sup>

Some stakeholders were actually turned away from meetings:

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<sup>65</sup> Bates (2018) *Murray-Darling Basin Royal Commission Submission*, <https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/mdbrc-submission-william-badger-bates-nsw.pdf?v=1535332821>

<sup>66</sup> Hempel (Manager, Thomas Foods Fresh Produce) in correspondence with Maryanne Slattery, 11 September 2018

MR BATES: Okay. And when we got there it was – I wouldn't call it a meeting because they had elders outside, and not just black people. They had other white people standing outside ...

MR O'FLAHERTY: So there was a group of local community members outside.

MR BATES: There was the local community people there, and there was landholders there, the graziers and that, and they was all standing outside, and they sort of handpicked us ... Anyway, and then they handpicked us and took us inside, and I said, "I don't want to go inside and meet with you", and walk away from these people. I said, "I won't turn my back on them. You can have your meeting there", and the people there, black and white, they said, "Go in there and meet with them".<sup>67</sup>

The Lower Darling Horticultural Group did take a proposal for a structural adjustment to NSW DPI and were required to sign confidentiality agreements, as Alan Whyte explained to the Murray–Darling Royal Commission:

**MR WHYTE:** The horticulture group proposal to remove permanent plantings. Every time we had discussions with anyone out of the New South Wales department – this was principally when Gavin Hanlon was there, which was up until August last year, September last year, about then. Every meeting, we signed confidentiality agreements, and obviously we couldn't breach them.

**THE COMMISSIONER:** Now, those dealings of course included the possibility of what I'm going to call price; is that right?

**MR WHYTE:** Yes.

**THE COMMISSIONER:** Was there ever any discussion of keeping the price confidential, but the proposal itself being published?

**MR WHYTE:** Our view from within the group was that we were perfectly happy for it to be open, on the basis that if we couldn't justify it, it shouldn't be happening. Now, the view from with government was the exact opposite, and the confidentiality agreements were a requirement of the New South Wales department and they were quite strict. Now, we were a little puzzled why were they were expected to be so strict, because as I said we were quite comfortable

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<sup>67</sup> Bates (2018) *Evidence to the Murray-Darling Basin Royal Commission*, [https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/28\\_august\\_2018\\_hearing\\_transcript\\_final\\_copy.pdf?v=1535609414](https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/28_august_2018_hearing_transcript_final_copy.pdf?v=1535609414)

for the details to be in the public domain. And literally, if we can't justify and explain them, well, the proposal shouldn't go ahead.<sup>68</sup>

While the Barkandji, local irrigators and other stakeholders will be seriously impacted by the Menindee Project, and have been offered little in the way of compensation, transparency or consultation, this was not the case for one stakeholder – Webster, the new owners of Tandou Station.

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<sup>68</sup> Whyte (2018) *Evidence to the Murray-Darling Basin Royal Commission*, [https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/17\\_july\\_2018\\_hearing\\_transcript\\_final.pdf?v=1532079651](https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/17_july_2018_hearing_transcript_final.pdf?v=1532079651)

# The Webster deal

In contrast to other Lower Darling stakeholders, and despite being a recent arrival in the region, agribusiness Webster was extensively consulted and well compensated. On 21 June 2017, DAWR agreed to pay Webster Ltd \$78m and provide 21.9GL of water allocation to grow its 2017/18 cotton crop in exchange for:

- 21,901ML of water licences (\$38,001,118). This comprised of:
  - 2,540 ML of High Security water licences (\$3,253/ML; \$8,262,620);
  - 19,361 ML of General Security water licences (\$1,536/ML; \$29,738,496);
- The surrender of works approvals relating to Tandou irrigation development and decommissioning of on-farm and off-farm irrigation infrastructure (\$39,998,884).<sup>69</sup>

The sale of 21.9GL of water licences for \$38m was well above market prices. The purchase was controversial at the time and has since been referred to the Australian National Audit Office.<sup>70</sup> The Commonwealth's rationale for the price it paid will be explored in forthcoming Australia Institute research.

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<sup>69</sup> DAWR (2017) *Minute to the Minister: Maximising outcomes from the Menindee Lakes Project*, Documents obtained under OPD 420, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2F588a4b32-df56-4a7f-98d4-688922e9c30a%22>.

<sup>70</sup> Davies (2018) *MPs call for urgent investigation into \$180m in water buybacks*, <https://www.theguardian.com/australia-news/2018/apr/26/mps-call-for-urgent-investigation-into-180m-in-water-buybacks>



Webster received an additional \$40m for the loss of future business and the surrender of works approvals. As far as we are aware, this is the first and only compensation payment made under the Murray–Darling Basin Plan. Furthermore, while works approvals were surrendered, there was no requirement for Webster to actually decommission any irrigation infrastructure in the contract. The business case identifies this as a risk and suggests that a caveat is placed on the land title to ensure irrigation cannot be resumed in the future. Papers released to the Senate under an Order for Production of Documents 420 do not refer to a caveat being placed on the title. A caveat on the title was in scope of that production request, and should have been produced if it exists.<sup>71</sup>

Webster also received the following year's water allocation (21.9GL) and produced an estimated \$35m cotton crop.<sup>72</sup> This was the Commonwealth of Environmental Water Holder's (CEWH) 2017–18 water allocation on these licences (21,901ML). That is, the water allocation in the financial/water year following after the purchase. It is highly unusual, and probably unprecedented in rural property transactions for a buyer to gift next year's allocation back to the seller.

The purchased water licences were transferred to the CEWH and counted toward the Commonwealth's water recovery target.

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<sup>71</sup> Documents obtained under OPD 420, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2F588a4b32-df56-4a7f-98d4-688922e9c30a%22>,

<sup>72</sup> Sue Neales (2018) *Barnaby Joyce's Darling deal on cotton crop irks locals*, <https://www.irrigationaustralia.com.au/news/barnaby-joyces-darling-deal-on-cotton-crop-irks-locals>

# Questions raised by the Webster deal

## WHY WAS WEBSTER COMPENSATED?

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While Webster received compensation for lost future business, no other entity in the Murray–Darling Basin has received such compensation. In fact, paying compensation is contrary to the government’s policy – which is to implement the Basin Plan through voluntary water buybacks only.

The government had two broad policy options to mitigate the impacts on rural economies when setting the Sustainable Diversion Limits (SDLs) of water extraction in the Basin Plan. These options were to either:

- Prioritise the environment above social and economic needs, with a corresponding larger water recovery target and lower SDL. This policy would require a structural adjustment package for the affected communities, and compensation businesses; or
- Adopt a ‘balance’ between social, economic and environmental needs and adopt a lower water recovery target and a higher SDL. Under this option, compensation is not required because the social and economic impacts have been assessed as neutral, having been taken into account in the SDL and water recovery target.

The Australian Government adopted the latter policy, recovering less water and putting relatively more weight on social and economic impacts. Water is not compulsorily acquired, but only purchased from willing sellers. No compensation is required for these willing sellers, other than a fair price for the water.

The Commonwealth has purchased approximately 2,000GL of water since 2009.<sup>73</sup> The payment to every other irrigator that sold water to the Commonwealth was the price of the water. While the price paid for other purchases has sometimes been controversially high, no other irrigator has received compensation beyond the selling price of the water. To date, no compensation has been offered or made available to

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<sup>73</sup> Wentworth Group (2018) *Review of progress on water recovery in the Murray-Darling Basin*, <http://wentworthgroup.org/wp-content/uploads/2017/11/Appendix-1-Progress-on-water-recovery.pdf>

any other water holder, land holder or business that will be affected by the Basin Plan, including the Menindee Water Savings project.

It is unclear why compensation was paid to Webster, contrary to the past practice and underpinning philosophy of Basin Plan implementation.

While no compensation has been paid to other businesses, the Commonwealth has made a modest contribution to assist communities impacted by the Basin Plan. In 2014, the Commonwealth funded \$32.6m of grants to help structural adjustments in rural NSW communities under the Murray–Darling Basin Regional Economic Diversification Program:

to assist Basin communities increase economic diversification and adjust to a water constrained environment.<sup>74</sup>

The \$40m compensation paid to Webster is more than the total amount of structural adjustment grants available for the entire NSW Basin. No funding from that grant program was allocated to the Lower Darling community, apart from a \$40,000 grant to the Broken Hill community.<sup>75,76,77</sup>

## WHEN DID THIS DEAL BEGIN?

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Unlike other Lower Darling stakeholders, Webster has been in constant consultation with government agencies on these payments from the time they purchased Tandou Limited, if not before.

The Commonwealth undertook a valuation of Webster’s water almost immediately after Webster purchased Tandou Station; and the workforce at Tandou station were offered redundancies after Webster’s acquisition of the property, which is detailed in the following timeline.

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<sup>74</sup> Department of Infrastructure, Regional Development and Cities (2017) *Murray-Darling Basin Regional Economic Diversification Program*, <http://regional.gov.au/regional/programs/murray-darling-basin-regional-economic-diversification.aspx>

<sup>75</sup> Foundation Broken Hill (2016) *2015-16 Year in Review*, <http://foundationbh.org.au/july-2014-june-2015-year-in-review-2/>

<sup>76</sup> Warren Truss (2015) *Media Release: \$18m for Murray-Riverina diversification projects*, [http://minister.infrastructure.gov.au/wt/releases/2015/May/wt151\\_2015.aspx](http://minister.infrastructure.gov.au/wt/releases/2015/May/wt151_2015.aspx)

<sup>77</sup> Australian and NSW Governments (2016) *Energise Enterprise Fund: Murray-Darling Basin regional economic diversification program*, [https://www.industry.nsw.gov.au/data/assets/pdf\\_file/0011/88445/successful-R1-and-R2-EEF-projects.pdf](https://www.industry.nsw.gov.au/data/assets/pdf_file/0011/88445/successful-R1-and-R2-EEF-projects.pdf)

## June 2015: Webster buys Tandou Limited

Webster finalises the acquisition of Tandou Limited.<sup>78</sup> Tandou Limited assets included Tandou Station and other properties at Hay in the Murrumbidgee Valley in NSW.

## September 2015: Commonwealth values Tandou's water

DAWR receive the first of at least four valuations of Webster's water entitlements at Tandou Station. Opteon Property Group delivered the first valuation in February 2016, based on a draft report finalised in September 2015:

I am pleased to advise that the Department accepts your quote of \$2,090 (including GST) for the full review of the Lower Darling General and High Security water entitlements report you completed in September 2015.<sup>79</sup>

By September 2015, Opteon had been commissioned and completed an initial valuation report, beyond the regular market reports the DAWR receives. This shows that DAWR and Webster were discussing sale of Tandou Station water licences before September 2015. Given the usual pace of public service report commissioning processes, it seems likely that these discussions began months before – possibly even before Webster's purchase of Tandou. If this is the case, it raises serious issues around DAWR's interaction with private companies, property and water markets.

Webster could not have been ignorant about the Government's proposals to reconfigure Menindee prior to its acquisition of Tandou Station. These proposals have been in the public domain for years. Joe Robinson, Webster's Director is also the Chair of Gwydir Valley Irrigators Association (GVIA). The northern irrigator industry groups have been advocating for the reconfiguration of Menindee Lakes for several years.

The Webster deal was completed by the Commonwealth in uncharacteristic haste for the public service. The proposal appears to have initiated before September 2015 and was finalised and paid by June 2017. In contrast the Lower Darling Horticultural Group have been waiting for over four years, without even seeing an offer.

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<sup>78</sup> Larry Schlesinger (2015) *Webster completes takeover of Tandou*, <https://www.afr.com/markets/commodities/agriculture/webster-completes-takeover-of-tandou-20150614-ghnler>

<sup>79</sup> DAWR (2016) *Email to Neil Bruce (Director, Opteon Property Group: 2016-002 Valuation of General, High and Supplementary entitlements in the Lower Darling*, Documents obtained under OPD 420, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2F588a4b32-df56-4a7f-98d4-688922e9c30a%22>

Curiously, the Webster deal was undertaken before the Menindee Water Savings Project business case was finalised in June 2017. It was also finalised before the MDBA had assessed the project's validity or even its eligibility under the Basin Plan, which was completed only by October 2017.<sup>80</sup> That is, the Commonwealth had no certainty that the project was viable or even if it would ever get started.

The NSW and Commonwealth Governments have further retreated from their endorsement of the project— in July 2018, the NSW Department of Industry and MDBA said that the project is only in its concept stage.<sup>81</sup> So, the final project could be very different to what has been proposed. Despite the uncertainty of the project, compensation has been paid to Webster regardless.

## HOW WAS THE DEAL WORKED OUT?

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Consultation with Webster seems to have started before September 2015, where DAWR sought its first valuation of the water at Tandou Station. The negotiations with Webster were undertaken in confidence, at their request:

The fact that this offer has been made and, we trust, accepted by the Commonwealth and its terms are confidential and commercial-in-confidence. We seek your confirmation that you will maintain the confidentiality of this information.<sup>82</sup>

While other stakeholders have struggled for meaningful access to decision makers, Webster had close communication with DAWR on the price they would accept for the sale of their water entitlements, as released correspondence reveals:

Webster has indicated that it may be seeking between \$75 and \$90 million for the entitlements.<sup>83</sup>

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<sup>80</sup> MDBA (2017) *Sustainable Diversion Limit Adjustment Mechanism Draft Determination Report*, [https://www.mdba.gov.au/sites/default/files/pubs/SDLAM-draft-determination-report\\_2.pdf](https://www.mdba.gov.au/sites/default/files/pubs/SDLAM-draft-determination-report_2.pdf)

<sup>81</sup> Rachel Connell (Deputy Director General, Department of Primary Industry) (2018) *Lower Darling Stakeholder meeting, Menindee 19 July 2018*

<sup>82</sup> Joe Robinson (Director, Webster Ltd) (2017) *Letter to John Robertson (Assistant Secretary) and Mary Colreavy (Assistant Secretary): Lake Tandou-offer to sell water entitlements and irrigation decommissioning*, Documents obtained under OPD 420, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2F588a4b32-df56-4a7f-98d4-688922e9c30a%22>

<sup>83</sup> DAWR (2017) *Minute to the Minister: Maximising outcomes from the Menindee Lakes Project*, Documents obtained under OPD 420,

In May 2017, Joe Robinson, Director of Webster, wrote to DAWR's lead officer on the deal, John Robertson. He proposed how the \$78m payment should be split between a water valuation and compensation:

Morning John, have spent a bit of time thinking about the apportionment and think for consistency we should use the \$38m for the water licences and we can roll land, buildings and works approval/storage into the balance of compensation of \$40m.

Joe<sup>84</sup>

Note the use of the word 'compensation' by Webster. The Department has since claimed the payment was not specifically compensation, although this word was used again by Paul Morris, Assistant Secretary in DAWR, in describing the Webster deal:

Compensation for loss of value of property. When Herron Todd White did their evaluation they looked at the full value of the property at \$86 million, and if it wasn't an irrigation property—if it was a dry-land property, which it will be in the future—it was valued at only \$4 million. So, it's a differential between that \$86 million and the \$4 million which is really important in terms of the impact of our purchase, because not only do we buy the water from them but also we bought the rights for them to not irrigate in the future. So, this was removing the servicing of irrigation water—removing some infrastructure that services that property—and also purchasing what they call works rights, which are their entitlements, I suppose, from the New South Wales government to undertake irrigation works on their properties. So we bought out those works rights, we bought out the water and effectively we removed infrastructure that would have serviced water into that property. So there will now be a dry-land property going forward.<sup>85</sup>

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<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2F588a4b32-df56-4a7f-98d4-688922e9c30a%22>

<sup>84</sup> Joe Robinson (Non-executive Director, Webster Limited) (2017) *Email to John Robertson (Assistant Secretary, DAWR): Valuation apportionment*, Documents obtained under OPD 420,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2F588a4b32-df56-4a7f-98d4-688922e9c30a%22>

<sup>85</sup> Senate Rural and Regional Affairs and Transport Legislation Committee Estimates (27 October 2017) [http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/728055ab-5f3e-4db1-8615-be0286224eac/toc\\_pdf/Rural%20and%20Regional%20Affairs%20and%20Transport%20Legislation%20Committee\\_2017\\_10\\_27\\_5689\\_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/728055ab-5f3e-4db1-8615-be0286224eac/0000%22](http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/728055ab-5f3e-4db1-8615-be0286224eac/toc_pdf/Rural%20and%20Regional%20Affairs%20and%20Transport%20Legislation%20Committee_2017_10_27_5689_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/728055ab-5f3e-4db1-8615-be0286224eac/0000%22)

DAWR's Water Project Board were advised that the total price comprised \$38m for water and \$40m for 'resulting loss of business value', which sounds a lot like compensation:

The in-principle agreed sum of \$78 million to be paid to Tandou by the department is comprised of \$38 million for the water entitlements and \$40 million for the measures required to permanently discontinue irrigation activities at Tandou station and for the resulting loss of business value and productive capacity.<sup>86</sup>

The Menindee Lakes Water Savings Project business case does identify a structural adjustment package that is available to high security water holders and Tandou Station only. However, as discussed above, no other water licence holder is yet to receive any offers of compensation.

## IS THE DEAL WITHIN THE RULES?

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The removal of irrigation at Tandou Station was cited as a key component of the whole Menindee water savings project because of the size of the water holdings:

Following decisions by the NSW government to source Broken Hill's water supply via a pipeline from the Murray river, the potential scale of any Menindee project and associated volume of potential offsets would increase significantly, if NSW was no longer required to service Lower Darling high security water entitlements currently held by Webster Limited and used at Tandou and those held by [redacted]. This would primarily arise from removing the need to store significantly higher volumes of water in the Lakes to service the entitlements.<sup>87</sup>

However, the rules to guide the expenditure of public funds (the Commonwealth Procurement Rules) include a non-discrimination rule that states that the Commonwealth cannot discriminate based on size:

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<sup>86</sup> DAWR (2017) *Water Project Board: Proposed acquisition by the Commonwealth of water entitlements owned by Tandou Limited (a subsidiary of Webster Limited) in the Lower Darling River*, Documents obtained under OPD 420,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2F588a4b32-df56-4a7f-98d4-688922e9c30a%22>

<sup>87</sup> DAWR (2017) *Minute to Minister: Maximising outcomes from the Menindee Lakes Project*, Documents obtained under OPD 420,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2F588a4b32-df56-4a7f-98d4-688922e9c30a%22>

The Australian Government's procurement framework is non-discriminatory. All potential suppliers to government must, subject to these CPRs, be treated equitably based on their commercial, legal, technical and financial abilities and not be discriminated against due to their size, degree of foreign affiliation or ownership, location, or the origin of their goods and services.<sup>88</sup>

Unless other water holders are given the same level of compensation, the Commonwealth Procurement Rules may have been breached.

A potential legal issue relates to the risk provisions in the Commonwealth *Water Act 2007*, which make the Commonwealth liable for decreases in the reliability of water licences.<sup>89</sup> The Basin Plan also requires that the water savings projects must ensure:

There are no detrimental impacts on reliability of supply of water to the holders of water access rights that are not offset or negated.<sup>90</sup>

Notwithstanding the risk provisions under the *Water Act*, Webster received compensation for their future business, despite most of their water (19.4GL) being general security licences. That has created a precedent to purchase and compensate all of the remaining 10.1GL of general security water licences in the Lower Darling.

## WEBSTER DEAL FOR ALL STAKEHOLDERS

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There is no doubt that everyone in the Lower Darling will be affected by the Menindee Project, including through economic loss. The Webster deal has set a precedent for compensation to be paid to all stakeholders: Barkandji, graziers, Menindee businesses and property owners and irrigators.

While Webster was the largest water holder in the Lower Darling, it was not the only one with significant entitlements. Before the Commonwealth purchased Webster's water, the company owned only a third of high security and one quarter of general security consumptive water in the Lower Darling, as shown in Figures 1 and 2 below:

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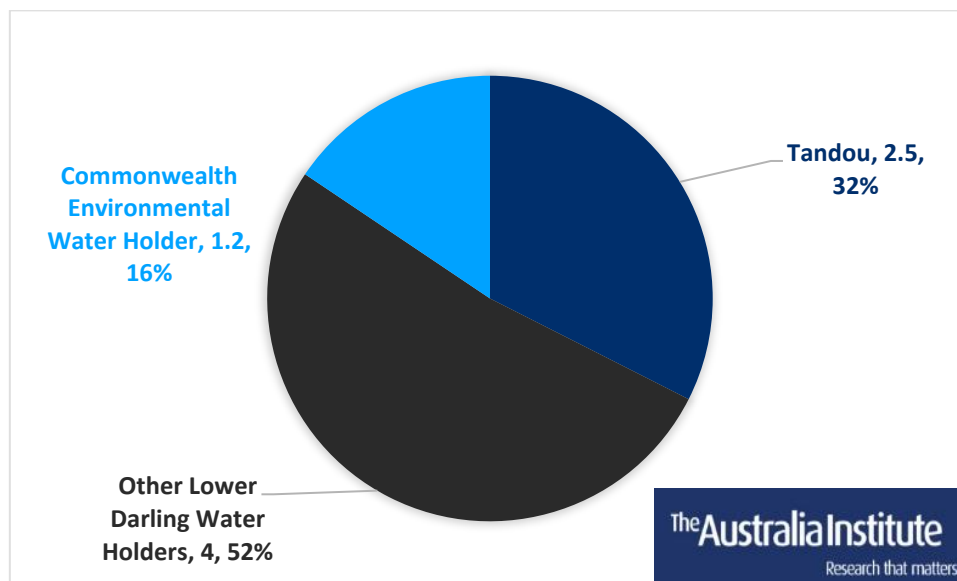
<sup>88</sup> Department of Finance (2018) *Commonwealth Procurement Rules: Achieving Value for Money*, <https://www.finance.gov.au/sites/default/files/commonwealth-procurement-rules-1-jan-18.pdf>

<sup>89</sup> *Water Act 2007* (Cth), Part 2, Division 4, Subdivision B, <https://www.legislation.gov.au/Details/C2007A00137>

<sup>90</sup> *Basin Plan 2012* (Cth), s 7.15, <https://www.legislation.gov.au/Details/F2012L02240>



**Figure 1: High Security water entitlements in the Lower Darling (in GL)**



Source: Blackwatch Consulting (2017) *Menindee Lakes Water Savings Project Phase 2 Business Case June 2017*, attachment A, obtained under OPD 420, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2Fc2508f17-13bd-49a9-85eb-6f0436b70763%22>

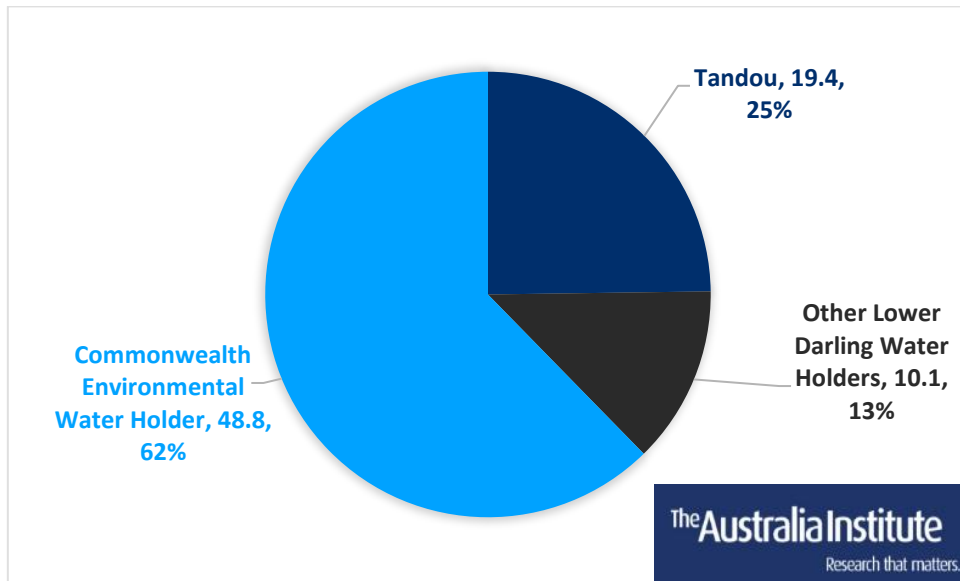
Figure 1 shows that Webster held only 2.5GL of High Security licences while 4GL is held by other licence holders. The Lower Darling Horticultural group hold high security licences and have had the opportunity to discuss compensation with the NSW Department of Industry (DoI). However, DoI has made a distinction between high security water holders above and below Weir 32 and, at this stage, are not consulting with those water holders about compensation.<sup>91</sup> DoI has not yet explained why a distinction has been made between high security licences above and below Weir 32.<sup>92</sup>

Figure 2 below shows that Tandou held just 25% of general security water entitlements:

<sup>91</sup> Rachel Connell (Executive Director Water, Department of Industry) (2018) *Maryanne Slattery contemporaneous notes of stakeholder meeting at Maidens Menindee Hotel*

<sup>92</sup> Rachel Connell (Deputy Director General, Department of Primary Industry) (2018) *Lower Darling Stakeholder meeting, Menindee 19 July 2018*

**Figure 2: General security water entitlements in the Lower Darling (in GL)**



Source: Blackwatch Consulting (2017) *Menindee Lakes Water Savings Project Phase 2 Business Case June 2017*, attachment A90, obtained under OPD 420, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2Fc2508f17-13bd-49a9-85eb-6f0436b70763%22>

It is unclear why, given the Webster deal, the Commonwealth should not buy all remaining high security water entitlements and pay those irrigators compensation for loss of future business.

# Conclusion

In the short term, this report shows that Lower Darling residents deserve compensation along the lines of Webster and that the Menindee Water Savings Project needs transparent review and assessment before progressing any further.

However, the story of the Webster deal and the Lower Darling is about more than a big company getting a lot of money. This is a story about power.

The \$13bn Murray–Darling Basin Plan has resulted in the interests of the powerful being enhanced at the expense of the vulnerable. The experience of the Lower Darling shows that the Basin’s decision makers have one way of dealing with a powerful agribusiness and a different way of dealing with native title owners, graziers, communities, small irrigators and the environment.

Similar stories of powerful interests reaping huge windfalls from the Basin Plan at the expense of the wider community can be found throughout the Murray–Darling Basin. The flow of money and water has made some more powerful and weakened others, such as floodplain graziers, downstream users and communities and made them vulnerable in ways they were not before the Basin Plan.

The conflict around the Basin Plan is typically presented as agriculture versus the environment, or upstream states versus downstream states. While such framing helps politicians and advocacy groups champion their respective constituents, it distracts from the more important point – that Aboriginal people, graziers, downstream water users, communities, small irrigators and the environment are being sacrificed for the profits of ever more powerful irrigation corporations.

Right now, these corporations produce cotton and nuts. But what they farm is not important – a change in commodity prices will change what they farm, or indeed if they farm anything at all. What is important is the concentration of power and water in the hands of few people, and their ability to influence decisions that affect their own financial interests, to the detriment of everyone else and the environment.

The problem is not that there are big agribusinesses flourishing under the Basin Plan, but the inability or unwillingness of governments and their bureaucrats to ensure that those with power are not prioritized at the expense of the wider community interest. The problem is that Webster’s management can talk directly to senior department staff at any time, while the native title owners are offered token consultation. The problem is that Webster is given compensation but every other property owner is not.

The problem is that Webster can get a deal done with lightning speed, while other irrigators have their lives and businesses on hold indefinitely. The problem is that Webster's financial health is paramount, but the town of Menindee is not.

Democratic governments and their agencies are supposed to govern in the interests for the wider community interest. This is not happening in the Lower Darling, or elsewhere in the Basin.