

# I'll have what they're having

## A step-by-step guide to valuing compensation in the Lower-Darling

---

*Major changes to the management of the Lower Darling will affect the whole community. To date only one stakeholder, major agribusiness Webster Ltd, has been compensated by the Commonwealth. The region's other businesses and property owners should assess how Webster's compensation was calculated in beginning their own negotiations.*

Maryanne Slattery  
Rod Campbell  
October 2018

## ABOUT THE AUSTRALIA INSTITUTE

The Australia Institute is an independent public policy think tank based in Canberra. It is funded by donations from philanthropic trusts and individuals and commissioned research. We barrack for ideas, not political parties or candidates. Since its launch in 1994, the Institute has carried out highly influential research on a broad range of economic, social and environmental issues.

## OUR PHILOSOPHY

As we begin the 21st century, new dilemmas confront our society and our planet. Unprecedented levels of consumption co-exist with extreme poverty. Through new technology we are more connected than we have ever been, yet civic engagement is declining. Environmental neglect continues despite heightened ecological awareness. A better balance is urgently needed.

The Australia Institute's directors, staff and supporters represent a broad range of views and priorities. What unites us is a belief that through a combination of research and creativity we can promote new solutions and ways of thinking.

## OUR PURPOSE - 'RESEARCH THAT MATTERS'

The Institute publishes research that contributes to a more just, sustainable and peaceful society. Our goal is to gather, interpret and communicate evidence in order to both diagnose the problems we face and propose new solutions to tackle them.

The Institute is wholly independent and not affiliated with any other organisation. Donations to its Research Fund are tax deductible for the donor. Anyone wishing to donate can do so via the website at <https://www.tai.org.au> or by calling the Institute on 02 6130 0530. Our secure and user-friendly website allows donors to make either one-off or regular monthly donations and we encourage everyone who can to donate in this way as it assists our research in the most significant manner.

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

Major changes are being made to the management of the Lower Darling River and Menindee Lakes. These changes will negatively affect all businesses, property owners and the wider community in the Lower Darling Valley.

Despite official knowledge of these impacts, the Commonwealth has only negotiated a buy-out and compensation with one stakeholder – the major agribusiness Webster Ltd. Webster negotiated a package worth over \$78m in June 2017 that included:

- \$38m sale of 21,901ML of water licences comprised of:
  - 2,540 ML of High Security water licences (\$3,253/ML);
  - 19,361 ML of General Security water licences (\$1,536/ML);
- \$40m compensation for loss of business and surrender of works approvals.
- An extra year's water that enabled Webster Ltd to produce a \$35m cotton crop.

This report details how Webster Ltd and the Commonwealth arrived at these figures and shows other Lower Darling stakeholders how they can, with echoes of the famous scene in *When Harry met Sally*, turn to the government and say "I'll have what they're having." Here's how to get what Webster has:

- Step 1: Value your business at 'Highest and Best Use' and assume 100% of water in 100% of years.
- Step 2: Demand compensation of 117% of the market value of your business (including water), in addition to payment for water and keep your land.
- Step 3: Value your water at Murrumbidgee prices: \$3,253/ML for High Security and \$1,526/ML for General Security
- Step 4: Have an extra year's water for free, with no reduction in the value of your water or your compensation.
- Step 5: Get the Commonwealth to pay for an alternate delivery mechanism if you want to keep your water.

Arguably, remaining irrigation businesses should receive a proportionately larger pay out than Webster. Converting them to dryland businesses will be difficult due to the small sizes of the properties and the cost of removing trees, vines and drip irrigation.

Unless all stakeholders in the Lower Darling are treated fairly it will appear that Basin decision makers have one rule for big business and another rule for everyone else.

Note: The Australia Institute does not suggest any illegality by Webster Ltd.

# Introduction

In the romantic comedy *When Harry met Sally*, the two main characters discuss over lunch whether men can recognize when a woman is faking an orgasm. Sally claims that men cannot tell the difference and, to prove her point, she convincingly demonstrates, as other diners watch. She then casually returns to her meal. A woman at the next table says to the waiter: "*I'll have what she's having.*"<sup>1</sup>

A new proposal to reconfigure the Menindee Lakes system in the Lower-Darling Valley intends to save water by reducing evaporation in the Lakes. The proposal will also end permanent irrigation in the Lower-Darling and change the source of Broken Hill's water supply from Menindee Lakes to the Murray River.<sup>2</sup>

In 2017, the agribusiness Webster Ltd negotiated with the Commonwealth to sell its water licences at Tandou Station on the Lower-Darling River near Menindee Lakes. The main driver for the Government was to remove Tandou Station's irrigation demand from Menindee Lakes. Like Harry, the Government claimed it "satisfied all requirements".<sup>3</sup> It claims it got value for money by paying \$78m for the water and compensation for loss of business by Webster. This is the first and only compensation paid under the Basin Plan.

Like Sally, Webster was convincing. It negotiated with the Commonwealth a price for water and compensation, which resulted in a \$36m profit on the sale.

This paper is the second in a series that explains the special deal given to Webster Ltd for the water at Tandou Station. The first paper *Trickle Out Effect* outlines why the compensation to Webster Ltd has created a precedent for compensation payments in the Lower Darling.<sup>4</sup>

This paper describes how the compensation payment made to Webster Ltd was determined by the Department of Agriculture and Water Resources (DAWR). Its aim is

---

<sup>1</sup> <https://www.youtube.com/watch?v=b0OeM6UUAoI>

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

<sup>3</sup> DAWR (2017) *minute to Minister: Approval for the Commonwealth to enter into an agreement with Tandou Limited and Webster Limited*, 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>4</sup> Slattery and Campbell (2018) *Trickle Out Effect*, <http://www.tai.org.au/content/trickle-out-effect>

to help compensation negotiations between Lower Darling business and property owners argue and the Commonwealth Government.

Even before paying Webster compensation, the Government has a duty of care to the people of the Lower Darling. With the precedent of compensation to Webster, that duty of care is inescapable. The Menindee Water Savings Project will have a fundamental impact on the lives and livelihoods of the people in the Lower Darling Valley. Its businesses and property owners should be compensated. Like the other customers in the diner, they should say to the government, "I'll have what they're having."

Note: The Australia Institute does not suggest any illegality by Webster Ltd.

# Tandou deal

DAWR paid Webster Ltd \$78m in June 2017 in exchange for:

- 21,901ML of Tandou Station's water licences (\$38,001,118), 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>5</sup>

The sale of 21.9GL of water licences for \$38m was above market prices. The purchase was controversial at the time and has since been referred to the Australian National Audit Office.<sup>6</sup> As if this deal was not generous enough, DAWR went further and gifted the Commonwealth's Lower Darling 21.9GL water allocation in July 2017 for the 2017/18 cotton crop.

While Webster Ltd received almost \$40m for the loss of future business and the surrender of works approvals, there was no requirement for the company to actually decommission any irrigation infrastructure in the contract. The Menindee Project 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>7</sup>

---

<sup>5</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>6</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>

<sup>7</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>,

Webster Ltd also received the following year's water allocation (21.9GL) and produced an estimated \$35m cotton crop.<sup>8</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 the purchase. It is highly unusual, if not 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.

Webster had close communication with DAWR on the price they would accept for the sale of their water entitlements, as is clear from released correspondence:

Webster has indicated that it may be seeking between \$75 and \$90 million for the entitlements.<sup>9</sup>

In May 2017, Webster wrote to DAWR regarding the deal proposing how the \$78m payment should be split between a water valuation and compensation:

[We] 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.<sup>10</sup>

---

<sup>8</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>

<sup>9</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>10</sup> 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>

# How to get what they're having

## BUSINESS VALUATION

---

**Step 1:** Value your business at 'Highest and Best Use' and assume 100% of water in 100% of years.

The total business valuation of Tandou Station was undertaken by Herron Todd White, a property valuation firm, who were engaged by the NSW Government. The valuation was based on a 'Highest and Best Use', which is explained by the valuer as:

The use of an asset that maximises its potential and that is physically possible, legally permissible and financially feasible and which results in the highest value of the property being valued.<sup>11</sup>

'Highest and best use' included receiving 100% of water allocations in 100% of years. It also seems to assume the maximum production of a cotton crop, every year, which is an annual water requirement of between 50 and 70GL.<sup>12</sup> Webster Ltd only holds approximately 20GL in water licences.<sup>13</sup> To achieve Tandou's maximum cotton production would require Webster to purchase 30 to 50GL of water from the Murray, Murrumbidgee or the Goulburn every year. It is unclear whether the cost of buying water in was included in the 'highest and best use' valuation.

---

<sup>11</sup> Herron, Todd White (2016) *Valuation Report: part Tandou Station, Old Poongarie Road, Menindee, NSW 2879*, 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>12</sup> Herron Todd White (2017) *Email from Scott Fuller: Greater details on Tandou*, 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>13</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%2F2508f17-13bd-49a9-85eb-6f0436b70763%22>



The following table shows the values assigned to Tandou Station's assets valued by Herron Todd White using a highest and best use valuation:

|  | Highest and best use -<br>100% water allocation | Highest and best use<br>- No water allocation |
|--|---|---|
| <b>Land Value</b>  | 35,652,500                                      | 2,522,650                                     |
| <b>Added value of buildings</b>  | 9,310,000                                       | 1,560,000                                     |
| <b>Water licences priced to reflect ability to carryover and store water</b> | 37,931,500                                      | -   |
| <b>Value of storing water</b>  | 3,558,000                                       | -   |
| <b>Total before rounding</b>   | <b>86,452,000</b>                               | <b>4,082,650</b>                              |
| <b>Rounded Up to nearest \$100,000</b>                                       | 48,000  | 17,350  |
| <b>Total</b>   | <b>86,500,000</b>                               | <b>4,100,000</b>                              |

The Australian Bureau of Agriculture and Resource Economics and Sciences (ABARES) reviewed the HTW valuation and explained:

The HTW valuation report attempts to value the market value of Tandou station including land, labour and related capital under various water availability scenarios, ranging from 'Full Water (100 percent allocations) to 'No Water' (No allocations).

These two scenarios are somewhat artificial. Ideally, the report would instead compare the two scenarios:

- Tandou station as it is currently (given best current expectations about future water availability, commodity prices etc.)
- Tandou station with no water rights and no connection to the irrigation network. (i.e., as a dry land farm only)

In what follows we take the reports 'Full Water' and 'No Water' cases as proxies for these scenarios.

The report provides the following final valuations:

- Full Water: \$86.5m (including a \$41.5m value for water rights)
- No Water: \$4.1m

This implies that in addition to the value of water rights sold by Tandou (\$41.5m) the property (land/buildings/equipment etc.) would decrease in value

by around \$41m if it were disconnected from the network (converted to a dryland only operation).<sup>14</sup>

The Commonwealth has paid \$78m - \$4.4m less than the difference between Full water (\$86.5M) and No Water (\$4.1M), which is \$82.4m.

## CALCULATING COMPENSATION

---

**Step 2: Demand compensation of 117% of the market value of the total business (including water), in addition to payment for water and of course keep your land.**

Herron Todd White's valuation of Tandou Station is higher than the value that the stock market placed on it. Webster Ltd acquired Tandou Limited in June 2015. Tandou Limited owned Tandou Station and another irrigation property at Hay, NSW. Based on Webster Ltd disclosures to the Australian Stock Exchange, the share market valued Tandou Station, including water, land and buildings, at approximately \$34m at the time of purchase, estimated as follows.

Webster Ltd obtained an independent valuation of Tandou Limited before its purchase and paid more than that valuation:

The Webster Limited offer for.....Tandou Limited was based upon independent valuation of assets and liabilities. Based upon these valuations Webster Limited's bid for these companies was announced to the market on 27 February 2015.....The value of the consideration was greater than the provisional fair value of assets and liabilities acquired.<sup>15</sup>

Webster paid a 22% premium on the share price on purchase:

The details of the bid by Webster for 100% of Tandou see the company offering 1 Webster share for every 2.25 Tandou shares. Based on the closing prices on Friday (pre-announcement) this offer equates to 58 cents per Tandou share,

---

<sup>14</sup> ABARES (2017) *Valuing water entitlements for environmental use: Benefits to the Commonwealth from acquiring Tandou Station entitlements*, 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>15</sup> Webster Ltd (2015) *Half-Year Report ended 31 December 2015*, <https://www.asx.com.au/asxpdf/20160229/pdf/435gy0gryhp2kz.pdf>

representing a total value of \$114 million and a premium of 22% to Tandou's closing price of 47.5 cents.<sup>16</sup>

Webster Limited made a \$36.4m profit on the sale of water licences and surrendering irrigation to the Commonwealth:

The reported profit includes a \$36.4 million on sale of water entitlements and decommissioning at Lake Tandou.<sup>17</sup>

Working backwards, the market valuation of the Tandou Station business at the time of Webster acquisition is \$34 million:

|  | \$                |
|--|-------------------|
| Price paid by the Commonwealth                       | 78,000,000        |
| Less Webster recorded profit on the sale             | 36,400,000        |
| <b>Price paid by Webster Ltd</b>                     | <b>41,600,000</b> |
| Less premium on purchase (22%)                       | 7,531,034         |
| <b>Market Value of Tandou at Webster acquisition</b> | <b>34,068,966</b> |

The \$78m final price paid by the Commonwealth included \$40m in compensation. This compensation alone is more than 117% of the value that the market valued the entire Tandou Station 18 months earlier.

## WATER VALUATION

**Step 3: Value your water at Murrumbidgee prices: \$3,253/ML for High Security and \$1,526/ML for General Security**

While the overall payment to Webster considered was between \$75m and \$90m, a specific value on the water was required to justify the water purchase and assign a value between water and compensation. The Commonwealth paid \$3,253/ML for the High Security licences and \$1,536/ML for the General Security licences.

<sup>16</sup> Tim McArthur (2015) *Tandou Limited rockets 20%: Here's what just happened*,

<https://www.fool.com.au/2015/03/02/tandou-limited-rockets-20-heres-what-just-happened/>

<sup>17</sup> Webster Limited (2017) *Preliminary Final Report: 15 month period ended 30 September 2017*,

<https://static1.squarespace.com/static/5770b8d4b8a79bc1087f2cfc/t/5a04aec5f9619a4a2c5dd948/1510256332533/Appendix+4E+15+Months+to+30+September+2017.pdf>

The Commonwealth typically values water based on market prices in the valley where the water is purchased. However, there is little trade of water licences in the Lower-Darling, so there is not a lot of market data for the Commonwealth to use as a guide.

The Commonwealth purchased Lower Darling licences in 2013 – 397ML of High Security at an average price of \$1,717/ML and 795ML of General Security at an average price of \$903/ML. Before this Tandou purchase, these were the highest prices ever paid for both high and general security licences in the Lower-Darling.

Tandou Station's water was valued at Murrumbidgee prices, rather than Lower-Darling or Murray prices.<sup>18</sup> Water licences in the Murrumbidgee are the most expensive in the Southern Basin after the upper NSW Murray. The table below shows the average price, and price range for High Security and General Security for the southern connected system.<sup>19</sup>

| Region                        | Market Value Nov 2017<br>High Security <sup>20</sup><br>\$ | Market Value Nov 2017<br>General Security <sup>21</sup><br>\$ |
|-------------------------------|--|---|
| SA Murray                     | 3,200 – 3,400  |   |
| Vic Murray above Barmah Choke | 2,650 – 2,800  | 300 - 350   |
| Vic Murray below Barmah Choke | 3,400 – 3,500  | 350 – 400   |
| Goulburn                      | 2,800 – 3,000  | 300 - 350   |
| NSW Murray above Barmah Choke |  | 1,300 - ,450  |
| NSW Murray below Barmah Choke | 4,000 – 4,200  | 1,450 – 1,550   |
| Murrumbidgee                  | 3,900 – 4,050  | 1,600 – 1,700   |

Source: Marsden Jacobs and Associates (2018) *MURRAY–DARLING BASIN WATER MARKETS 2018–19 OUTLOOK AND 2017–18 REVIEW*, <http://www.marsdenjacob.com.au/wp-content/uploads/2018/08/2018.08-MJA-Australian-Water-Market-Review.pdf>

Valuations of Tandou's water entitlements were undertaken by: Opteon Property Group, ABARES and Heron Todd White. Websters Ltd also supplied a valuation. The DAWR accepted the Websters Ltd valuation. The following table summarises those valuations:

<sup>18</sup> DAWR (2017) *Assessment of Webster's water valuation: May 2017*

<sup>19</sup> <http://agriculture.gov.au/water/markets/market-price-information#2017>,

<sup>20</sup> Class 3 in South Australia and High Reliability in Victoria

<sup>21</sup> Low Reliability in Victoria

| Valuer                       | Date          | High security<br>(\$/ML) | General<br>security<br>(\$/ML) | Total<br>Valuation<br>\$ |
|------------------------------|---------------|--------------------------|--------------------------------|--------------------------|
| <b>Opteon Property Group</b> | February 2016 | 1,800                    | 1,050                          | 24,901,050 <sup>22</sup> |
| <b>Heron Todd White</b>      | December 2016 | 3,500                    | 1,500                          | 37,991,500 <sup>23</sup> |
| <b>ABARES</b>                | February 2017 | 1,755                    | 1,050                          | 24,786,750 <sup>24</sup> |
| <b>ABARES</b>                | February 2017 | 3,606                    | 2,214                          | 52,024,494 <sup>25</sup> |
| <b>Webster Ltd</b>           | May 2017      | 3,253                    | 1,536                          | 38,001,116 <sup>26</sup> |

<sup>22</sup> Opteon Property Group (2016) *valuation Report: indicative Valuation of Lower Darling River General and High Security water Entitlements*, 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>23</sup> Herron, Todd White (2016) *Valuation Report: part Tandou Station, Old Pooncarie Road, Menindee, NSW 2879*, 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>24</sup> ABARES (2017) *Valuing water entitlements for environmental use: Benefits to the Commonwealth from acquiring Tandou Station entitlements*, 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>25</sup> ABARES (2017) *Valuing water entitlements for environmental use: Benefits to the Commonwealth from acquiring Tandou Station entitlements*, 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>26</sup> Websters Ltd (2017) *Email to Mary Colreavy and John Robertson: Tandou water value breakdown*, 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 table shows that the Webster Ltd valuation used by DAWR was the highest of all, aside from an ABARES scenario that assumed a change in trading rules. These valuations are discussed in more detail below.

### ***Opteon valuation***

Opteon based their valuation on historical market value, with a 40% increase. The increase was based in the growth in Murray prices since the last trade in the Lower Darling.

### ***Herron Todd White valuation***

Herron Todd White valued the Lower Darling entitlements based on Murrumbidgee prices. DAWR explains:

HTW concluded that Tandou Lower Darling entitlements are of equal value to Murrumbidgee entitlements on the basis of the benefit of the unique situation on Tandou that allows for the transfers from Murrumbidgee entitlements free of charge.<sup>27</sup>

DAWR justified using the prices from a different valley:

The practice of comparison to other water sources when there is limited evidence in the subject catchment is not new and is a widely adopted valuation practice. This methodology is conventional and considered to be fair and reasonable.<sup>28</sup>

Neither Herron Todd White nor DAWR explained why Murrumbidgee prices are used, rather than the Murray or Goulburn prices. The adoption of Murrumbidgee prices seem to contradict DAWR's own deliberations:

Marsden Jacobs in April 2017 report that they would normally expect Lower Darling entitlements prices to follow those in the NSW Murray and Murrumbidgee (albeit with subdued market activity). The comments from Marsden Jacobs's brokers are similar to those expressed in [REDACTED] that states "typically the water sale price in the Lower Darling reflects the Murray".<sup>29</sup>

---

<sup>27</sup> DAWR (2017) *Minute from Water Markets Policy Branch to Mary Colreavy: Assessment of Webster's Water Valuation – May 2017*, 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>28</sup> DAWR (2017) *Minute from Water Markets Policy Branch to Mary Colreavy: Assessment of Webster's Water Valuation – May 2017*, 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>29</sup> DAWR (2017) *Assessment of Webster's water valuation: May 2017*

### ***ABARES valuation***

ABARES provided an upper and lower range in their valuation. The lower valuation (\$24m) was based on the market valuation.

The management of Menindee Lakes is under the control of the Murray-Darling Basin Authority until the lake levels fall below 480GL and control reverts to NSW. Inter-valley trade between the Lower Darling and the Murray, Murrumbidgee and Goulburn valleys is permitted when the Lakes are under MDBA's control.

The upper valuation (\$52m) assumed that the trade rules would be changed to allow trade between the Lower Darling and Murray River valleys when the lakes fall below 480GL. However, the Menindee Water Savings Project business case is very ambiguous on proposed changes to the trade rules and it is unclear why ABARES have assumed this trade rule change would take place in this scenario.<sup>30</sup>

DAWR have been criticised in the media and parliamentary processes for the price paid for Webster's water entitlements. In response DAWR state:

The amount paid for the water entitlements was in the middle of the range of values provided by ABARES (between \$25 million and \$52 million).<sup>31</sup>

This is despite DAWR internally doubting whether the assumption to change the trade rules was reasonable:

The Australian Bureau of Agricultural and Resource Economics (ABARES) has valued the Lower-Darling water entitlements at between \$25 million, based on the current market prices, and \$52 million, based on the ABARES water trade model and assuming the removal of the trade constraint which prevents any trade in and out of the Lower Darling whenever the Menindee Lakes storage falls below 480GL. It is unclear if this assumption is realistic.<sup>32</sup>

---

<sup>30</sup> Blackwatch Consulting (2017) *Menindee Lakes Water Savings Project Phase 2 Business Case June 2017*, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2Fc2508f17-13bd-49a9-85eb-6f0436b70763%22>

<sup>31</sup> DAWR (2018) *Background information on significant Commonwealth strategic purchases in 2017*, <http://www.agriculture.gov.au/about/media-centre/on-the-record/background-significant-commonwealth-strategic-water-purchases-2017>

<sup>32</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>

### ***Webster valuation***

The actual price paid for the water was based on a request from Webster Ltd. DAWR explains:

The agreed price for the water entitlements (\$3,253/ML for High Security and \$1,536 for General Security) is based on the outcomes of negotiations with and an offer by Tandou.

The values that Tandou has assigned to its Lower Darling water entitlements are based on the price of Murrumbidgee water entitlement. The Department accepts this valuation approach on the basis of a unique agreement between Tandou and the NSW Government that enables Tandou to freely transfer water entitlements from the Tandou system.<sup>33</sup>

ABARES queried the validity of this assumption in the HTW valuation:

The HTW valuation of Tandou's entitlements uses prices of \$3,500 per ML for High Security and \$1,500 for General. These values are greatly inflated relative to current prices in the Lower Darling (and even those in the NSW Murray).

The argument behind these inflated prices – the unique connection of Tandou to the Murrumbidgee – doesn't make sense. The ability to transfer water into the Lower Darling from the Murrumbidgee conveys little benefit.<sup>34</sup>

### ***'Unique' transfer between Tandou and the Murrumbidgee***

DAWR refers to a condition on Tandou's licences that enables it to transfer water into and out of the Murrumbidgee. DAWR claims that this condition is unique to Tandou. This is not correct. This may have been the situation at the turn of the century before trade was allowable between valleys in the Southern Basin. However, for more than a decade all water licence holders in the Lower Darling have been able trade water with the Murrumbidgee, as well as the Murray and the Goulburn.

---

<sup>33</sup> DAWR (2017) *Minute to the Minister for Agriculture and Water Resources: Approval for the Commonwealth to enter into an agreement with Tandou Limited and Webster Limited*, 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>34</sup> ABARES (2017) *Valuing water entitlements for environmental use: Benefits to the Commonwealth from acquiring Tandou Station entitlements*, 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>



Officials within DAWR did interrogate that claim with Herron Todd White, who explained that transferring water between the Lower Darling and the Murrumbidgee was not unique to Tandou:

Following on from our conversation on Friday regarding the uniqueness of the water licences associated with Tandou...As indicated the ability to transfer water licences from the Murrumbidgee system for use in the Lower Darling system does exist for other water users however the uniqueness, that we describe in the report, refers to the ability of Tandou to be able to utilise and store significant quantities of water in the surrounding lakes.<sup>35</sup>

Tandou Station does have unique carryover provisions under the *Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources*, which allows them to carryover more water than other Lower Darling water holders.<sup>36</sup> This provision has allowed Tandou Station to trade water from the Murray, Murrumbidgee and the Goulburn at the end of the water year that would otherwise be lost to those irrigators because they couldn't carry it over. Tandou Station can then use it for cotton production, or sell it back in the new water year at inflated prices.

We understand that this provision is a major factor why Tandou Station's business model is to trade water before cotton production. An investor presentation by Tandou explains:

Tandou sells water when outlook for water sales outperforms cropping.<sup>37</sup>

The consideration for the water entitlements already includes the loss of future income generated from that water, including water trade.

---

<sup>35</sup> Scott Fuller (2017) *Email to DAWR: Tandou*, 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>36</sup> Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2016, <https://www.legislation.nsw.gov.au/regulations/2016-366.pdf>

<sup>37</sup> Tandou Ltd (2014) *Tandou Investor Presentation*, <https://www.asx.com.au/asxpdf/20140120/pdf/42m68mtd04hg62.pdf>

# But wait! There's more!

**Step 4:** Keep CEWH's water allocation for the next year for free, with no reduction in the value of your water or your compensation.

## GIFTED 2017-18 WATER ALLOCATION

---

When negotiating the transfer of a rural property, a decision must be made about whether the water allocation announced for the rest of the water year will become the property of the buyer or the seller. This is commonly termed as buying or selling an irrigation property either 'wet' or 'dry'. The negotiations often depend on who will have ownership of any crops still in the ground at the time of sale. If the vendor retains the crop, the current year's water allocation will typically stay with the vendor. If the purchaser acquires the crop with the property, the current year's water allocation will typically transfer to the purchaser.

Part of the Webster deal included Webster keeping the current year's water allocation and water accumulated in accounts, as well as the CEWH's water allocation for the following year. This water was gifted back to Webster to produce a cotton crop in 2017-18. This was questioned by Senator Hanson-Young in Senate Estimates:

**Senator HANSON-YOUNG:** But the \$40 million is because, from then on, they are not going to be able to farm with water; that's what we've been told.

**Mr Robertson:** That's right, yes.

**Senator HANSON-YOUNG:** But the compensation's already been spent, despite the fact they've got money to bank for the next crop.

**Mr Quinlivan:** .....It is quite common for rural property transactions to include an ability for the landowner to realise the current crop. That is a pretty normal feature of rural transactions because the owner's made an investment in the crop. That's an entirely normal part of a property transfer and is not really relevant to what you're describing as compensation but I think we would characterise more as purchasing a permanent decommissioning for the benefit of the basin.....<sup>38</sup>

---

<sup>38</sup> Senate Rural and Regional Affairs and Transport Legislation Committee Estimates (27 October 2017)

Cotton is planted in November and harvested between March and June.<sup>39</sup> So, it is unlikely that there was any cotton in the ground at Tandou Station the time of the sale (21 June 2017), or when the Commonwealth gifted the 2017-18 allocation back to Webster Ltd. It is not common for a water allocation to be gifted back to the vendor the year **after** the sale, to complete a crop that hasn't been planted. We believe this is unprecedented.

DAWR seemed to believe that Tandou Station did have a crop underway in June 2017. Mr Paul Morris (First Assistant Secretary, DAWR) explained to Senator Hanson-Young in Senate Estimates:

**Senator HANSON-YOUNG:** I just want to clarify: you just said prior to that that there is water available at the moment for the crop they're planting next year.

**Mr Morris:** As part of the negotiations, because they had already commenced arrangements for the forthcoming crop, we allowed them to proceed with that, and after this crop effectively we get the remaining parts of the deal delivered to us next year. So in terms of the requirements under the basin act, our deadline for the initial 2,750 water is June 2019, so we could allow them flexibility in terms of the crop they had already started preparing for and we enabled them to do that for this year.<sup>40</sup>

*The Australian* reported the estimated 2018 cotton crop at Tandou Station was valued at \$35m. This article was reproduced by Irrigation Australia, without correction.<sup>41</sup>

In Senate Estimates, Mr John Robertson (Assistant Secretary, DAWR) explained that the value of the gifted water was not included in the valuation of the consideration paid to Webster Ltd:

---

[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)

<sup>39</sup> Cotton Australia (2018) *Cotton Growing Cycle*, <http://cottonaustralia.com.au/cotton-library/fact-sheets/cotton-growing-cycle>

<sup>40</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)

<sup>41</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>

**Senator HANSON-YOUNG:** So they've been paid, effectively, the bulk of the compensation, despite the fact that they're about to make a big cash bonus with the crop this year?

**Mr Robertson:** Well, the crop itself has got nothing to do with the Commonwealth's determination around value for money. That was part of the terms that were negotiated at the time.<sup>42</sup>

## ALTERNATE SOURCE OF WATER

---

Part of DAWR's attempt to justify the \$78m payment was that it avoided the need to pay \$72m to upgrade Penellco Channel and provide an alternate water supply to Tandou after decommissioning Lake Cawndilla.<sup>43</sup> Lake Cawndilla was the source of Tandou Station's water supply.

Penellco channel goes from the Darling River into Tandou Station, and is fully contained on Tandou's property, so it does not service any other water users.

**Step 5: Get the Commonwealth to pay for an alternate delivery mechanism if you want to keep your water.**

## TRANSITIONING TO A DIFFERENT VIABLE BUSINESS

---

Tandou Station has transitioned from a water trading and irrigated cotton business to a dryland sheep operation after the sale of its water.<sup>44</sup> The business transition has been relatively straight forward:

---

<sup>42</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="COMMITTEES/ESTIMATE/728055AB-5F3E-4DB1-8615-BE0286224EAC/0000"](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=)

<sup>43</sup> DAWR (2017) *Minute to the Minister for Agriculture and Water Resources: Approval for the Commonwealth to enter into an agreement with Tandou Limited and Webster Limited*, 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>44</sup> Barry (2017) *Email to Mary Colreavy (Assistant Secretary, DAWR): Socio-economic impacts of Tandou reconfiguration*, 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>

- no infrastructure changes were required to decommission irrigation because the works approval licences (ie., the approvals to extract water through a pump) were surrendered. We understand that there has been no changes to the existing irrigation infrastructure, and therefore costs incurred, to switch from an irrigation to dryland operation.
- Tandou Station is large enough to be viable as a dryland operation.

Existing irrigation businesses that wish to remain farming in the area and transition to a dryland farm will have to incur significant additional cost that weren't applicable to Webster Ltd.

The remaining irrigation businesses are mostly citrus or grapes. The cost of removal of trees, grape vines and drip irrigation is significant, starting at \$2,000 per hectare for just removal to up to \$7,000 per hectare for removal and rehabilitation to EPA standards including all labour costs and machinery hire costed at normal commercial rates.<sup>45,46</sup>

In the Lower Darling, relatively small blocks have supported viable citrus and grape businesses. Dryland farming will not be viable on these blocks, because they will be too small.

---

<sup>45</sup> Hempel (2018) *Email to Maryanne Slattery: Menindee Stats*

<sup>46</sup> Whyte (2018) *Email to Maryanne Slattery: Citrus Budget Handbook*

# Conclusion

Changes to the management of the Lower Darling will affect all businesses, property owners and the whole community in the region. Despite this impact, no socioeconomic assessment has been done of these changes.

The generous prices paid for Tandou Station's water and its unprecedented compensation and other benefits have set a precedent for other businesses to be compensated in this way. Unless this compensation is paid there can be no other conclusion than that there is one rule for powerful businesses like Webster and a different rule for smaller farmers and other stakeholders. For other Lower Darling stakeholders to tell governments "I'll have what Webster's having", they should ask for:

- Step 1: Value your business at 'Highest and Best Use' and assume 100% of water in 100% of years.
- Step 2: Demand compensation of 117% of the market value of your business (including water), in addition to payment for water and keep your land.
- Step 3: Value your water at Murrumbidgee prices: \$3,253/ML for High Security and \$1,526/ML for General Security
- Step 4: Have an extra year's water for free, with no reduction in the value of your water or your compensation.
- Step 5: Get the Commonwealth to pay for an alternate delivery mechanism if you want to keep your water.

Arguably, the remaining irrigation businesses should receive a larger pay out than Webster. Converting them to viable dryland businesses will be difficult due to the smaller sizes of their properties and the significant cost of removing trees, grape vines and drip irrigation. The entire Lower Darling community will be affected by the proposed Menindee Lakes Water Saving Project and the entire community should be compensated for it.