

# **#WaterMates**

## **The buyers and sellers of Australia's most controversial water**

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*Analysis of released documents shows that the licences bought by the Commonwealth didn't exist until the vendors estimated the volumes of the licences themselves, at the suggestion of the Department of Agriculture and Water Resources. Due diligence was problematic. At least half of the water purchased cannot count towards water recovery targets as it was not included in the baseline diversion limits.*

Discussion paper

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# Summary

Previously on #Watergate:

- the Department of Agriculture and Water Resources (DAWR) is buying water from irrigators to return to the environment under the Murray-Darling Basin Plan,
- Eastern Australia Agriculture (EAA) offered to sell water in the Condamine-Balonne valley to the DAWR on at least two occasions before 2015;
- DAWR rejected these offers, including an offer in 2015 to the former Deputy Prime Minister and Water Minister, Barnaby Joyce, on seemingly better terms;
- The Department of Agriculture and Water Resources (DAWR) approached EAA to purchase some of their water in early 2016;
- After 18 months of negotiations, DAWR purchased nearly 29 GL of overland flow licences for nearly \$80m in July 2017;
- Overland flow licences are attached to land and have no legal status outside the properties where they originate, so under legal frameworks and rules, the water can be legally extracted by other irrigators;
- The levee banks that retain the water on the property were not removed prior to the purchase and appear to be still in place;
- EAA originally offered to sell the water for \$2,200/ML. The final sales price was \$2,745/ML.
- The price increase was to compensate EAA for the transfer of a dam to give the Commonwealth the flexibility in managing its water. DAWR declined the dam and suggested its use could be subject to a future agreement.

All of the above was reported by the Australia Institute in *That's not how you haggle...* in March 2018. In April 2019, twitter picked up the story again and added that EAA was set up in the Cayman Islands by current Energy Minister Angus Taylor. Mr Taylor divested from EAA before he entered parliament in 2013.

In this next instalment: #WaterMates we explain that there are other issues with this deal.

Firstly, when DAWR approached EAA in 2016 to buy water, at least half the overland flow licences had not been created. The Queensland Department of Natural Resources and Mines (DNRM) is in the process of converting rules that allow a daily rate of overland flow extraction into a volumetric licence across the Queensland Basin.

However, EAA undertook the estimations and modelling for the new licences. Tony Reid prepared the estimates. Mr Reid is a close associate of Angus Taylor. While it is not unusual for landowners to provide information to DNRM, it should be highly unusual for a landowner to do the modelling on DNRM's behalf. DAWR did not express any concern that it was a potential conflict of interest for EAA to determine its own volume estimates. In fact, DAWR suggested and encouraged it. The licence volume changed nine times during negotiations, with the last licence amount changing just ten days before the sale was finalised.

EAA leading the determination of the licence volumes is not necessarily an issue if the due diligence process is enhanced to reflect this conflict of interest. That did not happen, and instead, the due diligence on this sale appears to be deficient in three key control checks. The certification of the volumes do not appear to have been carried out by a registered professional engineer of Queensland, as required. The modelling undertaken by the DNRM to verify the licence volume was not completed until after the sale. The Murray-Darling Basin Authority (MDBA) did not assess whether the new licences are consistent with the Baseline and Sustainable Diversion Limits.

More problematic is the justification of this \$80m water purchase was to meet the water recovery target. However, to count towards the water recovery target, the water purchased must have been counted in an estimate of how much water was used in 2009, known as the 'baseline diversion limit'. Documents obtained by Guardian Australia under Freedom of Information show that this was not the case for at least half (\$39,939,750) of the Watergate purchase, and possibly all of it.

Finally, little attention has been paid to DAWR's motives in this sale. The high price paid shows that cost was not a constraining factor. The Department needed to meet water recovery targets in each valley in the Basin and the Condamine Balonne target has been particularly challenging. The Department is also under pressure to meet these targets in ways that take the minimum possible amount of water away from production.

The need to recover a large amounts of water while under pressure not to take water from irrigation meant water will not reduce extractions. One consultant noted:

The transaction would marginally constrain production under higher-flow years, but have virtually no impact under low-flow years when the region is more vulnerable.<sup>1</sup>

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<sup>1</sup> NCEconomics (2017) Independent assessment of water purchase from Eastern Australia Agriculture, Documents released under OPD 579 correspondence dated 12 April 2017

# Introduction

The Murray-Darling Basin Plan is an ambitious \$13bn reform to reduce the amount of water extracted for irrigation and return that water to the environment. The Commonwealth has budgeted \$3 billion to acquire approximately 2,500GL from the irrigator pool, with specific targets in each valley since 2008.

The Australia Institute's released *That's not how you haggle* in March 2018, which explains the first episode of the controversy relating to a major water acquisition in Queensland's Condamine-Balonne Valley.<sup>2</sup> This controversial sale later become known as #Watergate and is currently enjoying renewed mainstream media attention.<sup>3</sup>

In brief, the former Deputy Prime Minister and Water Minister, Barnaby Joyce, approved nearly \$80 million for nearly 29 GL in the Condamine-Balonne Valley from a company called Eastern Australia Agriculture (EAA). EAA originally offered the water at \$2,200/ML, but the price increased during the negotiations to 2,745/ML.

Of particular concern was that the type of water right that the Commonwealth purchased is an 'overland flow licence'. This is the right to use water that flows over land during floods, which occur easily in the relatively flat country of the northern Basin. These licences are attached to the land that water flows over, meaning that the Commonwealth has no legal control over the water once it flows outside the EAA property – it can be extracted by other users. EAA proposed that the Commonwealth could use one of their dams to have more control over their water. The Commonwealth paid for the dam but has no rights or agreement in place to use it.

The original research was based on documents obtained by Centre Alliance Senator Rex Patrick. The Guardian obtained further documents through a Freedom of Information (FOI) request, which reveals more issues around the creation of the water licences and the due diligence around the sale.

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<sup>2</sup> Slattery and Campbell (2018) *That's not how you haggle: Commonwealth water purchasing in the Condamine Balonne*,  
<http://www.tai.org.au/sites/default/files/P502%20That%27s%20not%20how%20you%20haggle.pdf>

<sup>3</sup> West (2019) *Barnaby Joyce, Angus Taylor and the \$80 million question*,

<https://www.michaelwest.com.au/barnaby-joyce-angus-taylor-and-the-80-million-question/>

# Water Buybacks

Water 'buybacks' for the environment have been contentious and unpopular, in some circles, because they take water out of production and affect regional economies. Mr Joyce is on the public record many times criticizing these water purchases, and his first act as Water Minister was to introduce a limit to them. The total water recovery target was proposed to be achieved through water infrastructure projects, rather than buybacks. Below is an extract from Mr Joyce's speech to parliament when he introduced this amendment:

That better outcome is here tonight with a cap on buybacks being limited to 1,500 gigalitres. We want to make sure we change the objective so that we focus on the proper triple bottom line, which is economic, social and environmental. What we had before was environment, daylight, daylight, forget about everybody and then make excuses for the social and economic outcomes. That is not what we wanted. We wanted to make sure we maintained the fabric of the towns—the fabric of the Dirranbandis, the St Georges, the Milduras, the Berrys (sic), the Deniliquins and the Griffiths—because the people in these towns have a right to an economic future. Water is wealth. It is so fundamentally important that we get this right.<sup>4</sup>

Mr Joyce's concern to minimise the impact of water management on communities is understandable and widely shared. In some cases water savings can potentially be made without reducing water for agriculture by making equipment and infrastructure more efficient. In most cases, however, this has not been the case, with some observers suggesting this approach has yielded almost no water for the environment.<sup>5</sup> This has also made fertile ground for creative water accounting and boondoggle projects that have cost taxpayers dearly.

This tension between the need for governments to deliver water recovery and the temptation to claim it through accounting tricks and expensive projects is acute in the

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<sup>4</sup> Joyce (2015) *House of Representatives Official Hansard No. 13, 2015 Tuesday, 8 September 2015*, [https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/49f7fdf7-bb7d-492a-b6cb-7f7f527fbeaa/toc\\_pdf/House%20of%20Representatives\\_2015\\_09\\_08\\_3669\\_Official.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/49f7fdf7-bb7d-492a-b6cb-7f7f527fbeaa/toc_pdf/House%20of%20Representatives_2015_09_08_3669_Official.pdf;fileType=application%2Fpdf)

<sup>5</sup> See for example Williams and Grafton (2019) *Missing in action: possible effects of water recovery on stream and river flows in the Murray–Darling Basin, Australia*, <https://www.tandfonline.com/doi/full/10.1080/13241583.2019.1579965>

Condamine-Balonne region because its water recovery target has been particularly challenging for several reasons:

- The water recovery target in the Condamine-Balonne is relatively high. Under the original Basin Plan, the Condamine-Balonne's target was 142 GL; 83% of the total Queensland water recovery target of 176 GL.<sup>6</sup>
- The water in the Lower Balonne contributes most to the water recovery target because it has a higher 'yield' or 'Cap factor' and it is also closest to environmentally significant sites where the Commonwealth wants to use the water recovered.<sup>7</sup>
- The ownership of water in the Lower Balonne is concentrated in a small number of large holdings and several small holdings.<sup>8</sup> The large holders have not offered much water for sale to the Commonwealth to date, and the remaining water recovery is equivalent to all of the water licences held by the remaining small holders.
- The target has not been achievable through water efficiency programs.<sup>9</sup>

This is the context that created the 2019 Watergate controversy. Government departments were faced with difficult circumstances to recover water and political pressure not to affect industry. Documents obtained through the Senate show that Department of Agriculture and Water Resources (DAWR) staff were attempting to buy water to meet the water recovery target on paper, without actually removing any water from productive use as, EAA knew:

Our understanding is that the Department of Agriculture and Water Resources has a very strong objective to minimize the water being taken away from productive agriculture....<sup>10</sup>

DAWR managed to overcome this conundrum and advised the Water Minister that the water purchase would not reduce EAA's productive capacity:

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<sup>6</sup> MDBA, (2016), *Northern Basin Review Report*, <https://www.mdba.gov.au/publications/mdba-reports/northern-basin-review-report>

<sup>7</sup> For an explanation of Cap Factors, see Slattery and Campbell, (2018), *It's not the science, it's how you use it....* <http://www.tai.org.au/content/its-not-science-its-how-you-use-it>

<sup>8</sup> DAWR, (2017), *Unsolicited proposal to sell water: Qld Condamine Balonne*, Documents released under OPD 579 correspondence dated 28 March

<sup>9</sup> DAWR, (2017), *Progress towards bridging the gap*, <http://www.agriculture.gov.au/SiteCollectionDocuments/water/progress-towards-bridging-gap.pdf>

<sup>10</sup> Bickford-Smith (2016) *Correspondence to Mary Colreavy*, Obtained under OPD 579 [https://www.aph.gov.au/Parliamentary\\_Business/Chamber\\_documents/Senate\\_chamber\\_documents/Notice\\_Paper/OPDs](https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/Notice_Paper/OPDs)

Acquiring the entitlements would not affect the viability of the mixed-farming property. The property would retain a large percentage of its irrigation capacity...The company has advised that this purchase would have little impact on employment as they will use their unsupplementary and supplementary water entitlements to continue irrigation.<sup>11</sup>

The Department had willing helpers in EAA to help 'recover' water that would have minimal impact on production and the value of EAA's assets. EAA was closely involved in working out the details of the Watergate deal.

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<sup>11</sup> DAWR (2017) *Unsolicited proposal to sell water in the Condamine Balonne*, Obtained under OPD 579

# EAA and the licence volume

To date, use of overland flows has not been regulated or licenced and has been poorly measured. The Queensland Government is currently in the process of creating and issuing overland flow licences. They estimate this process will not be finished until 2022.<sup>12</sup> It is unknown how many, if any, such licences had been issued in 2017 when the Watergate purchase occurred.

Part of the process of determining the licence volumes is determining the volumes of the various water storages involved. Storage volumes are a proxy for historical take.

Documents obtained by Guardian Australia under Freedom of Information (FOI) show that DAWR and EAA had several discussions about how to calculate the volume of water associated with a storage on EAA's Clyde property called Storage 11 or S11.

On 16 January 2017, EAA Chief Executive Officer Matthew Bickford-Smith wrote to Mary Colreavy, the Assistant Secretary Water Acquisition and Markets Branch at DAWR:

Thinking on next steps that may impact on timing, as we mentioned on Tuesday, we think it is important to get your advisors to agree the quantum of ML [megalitres] associated with the S11 surge [overland flow] licence.<sup>13</sup>

Ms Colreavy was unsure how the volume should be determined:

Thanks for your email on Friday. In regard to the surge licences, we are working on this very question now. We have sought advice from the MDBA and the Queensland Government how nominal volumes for similar matters have been handled in the past. I will let you know as soon as we have an answer.<sup>14</sup>

By 9 February 2017, DAWR had suggested to EAA that the company should help the Queensland state Department of Natural Resources and Mines (DNRM) to determine the volume of S11. EAA had anticipated this would be the case, as shown in their email back to DAWR:

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<sup>12</sup> MDBA (2019) *Floodplain harvesting and overland flows*, <https://www.mdba.gov.au/basin-plan-roll-out/sustainable-diversion-limits/floodplain-harvesting-overland-flows>

<sup>13</sup> Bickford-Smith (2017) *Email to Mary Colreavy: EAA. Quick follow up....*, Obtained by The Guardian under Freedom Of Information 2017/18-86

<sup>14</sup> Colreavy (2017) *Email to Matthew Bickford-Smith: EAA. Quick follow up....*, Obtained by The Guardian under Freedom Of Information 2017/18-86

We have reviewed your request for further information, and it is very clear, and seems to make good sense to help Queensland's DNRM establish the Storage 11 nominal volume.

The request was anticipated, but not fully prepared for.<sup>15</sup>

EAA's anticipation of DAWR's request is likely to be because DNRM had not been proceeding with the licencing process in the timeframe preferred by EAA and DAWR. EAA took the lead on determining the volume of the licence:

As discussed at our meeting with [DAWR's] Paul Morris and Mary Colreavy in Sydney and in the various emails between us since, we have modelled the S11 water intake.....The work has been prepared by Tony Reid and critiqued independently by Owen Droop of OD Hydrology.<sup>16</sup>

Tony Reid is referred to as a consultant to EAA throughout correspondence obtained through the Senate and via Freedom of Information. He is currently the COO of Growth Farms where his profile describes his:

Flair for identifying the strengths and opportunities in the business through the analysis of financial information and statistics.<sup>17</sup>

Mr Reid has been a close associate of the Energy Minister, Angus Taylor over many years.<sup>18</sup> Angus Taylor was one of the founders of Growth Farms.<sup>19</sup>

DAWR raised no concerns in that correspondence that it was a conflict of interest for EAA to be determining their own licence volumes. Rather DAWR seemed to be encouraging the company's involvement and acted as a conduit between EAA and DNRM. On 8 February 2017, a DAWR officer wrote to the EAA CEO:

Hi Matthew,

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<sup>15</sup> Bickford-Smith (2017) *Email to Mary Colreavy: RE: S11 intake calculations for the purposes of establishing OLF NV*, Obtained by The Guardian under Freedom Of Information 2017/18-86

<sup>16</sup> Bickford-Smith (2017) *Email to Mary Colreavy: RE: S11 intake calculations for the purposes of establishing OLF NV*, Obtained by The Guardian under Freedom Of Information 2017/18-86

<sup>17</sup> Growth Farms (n.d.) *People*, <https://growthfarms.com.au/people/>

<sup>18</sup> Davies (2019) *Questions over companies chosen for \$200m of Murray-Darling water buybacks*, <https://www.theguardian.com/australia-news/2019/apr/17/questions-over-companies-chosen-for-200m-of-murray-darling-water-buybacks>

<sup>19</sup> Wagstaff (2015) *Prime Movers: Growth Farm founders Richard and Angus Taylor see positive future*, <https://www.weeklytimesnow.com.au/agribusiness/on-farm/prime-movers-growth-farm-founders-richard-and-angus-taylor-see-positive-future/news-story/68a9b90369170d4ae65e067fab2e2a5a>

We're reviewing your advice with Queensland's DNRM now to establish S11's nominal volume. Thanks for presenting the information in such a useable format, it's appreciated. Our Queensland colleagues are seeking four further pieces of information, if possible. Would you be able to share the following?.....

Happy to discuss over the phone with you or Tony if anything is unclear.<sup>20</sup>

EAA leading the determination of the licence volumes is not necessarily an issue if the due diligence process is enhanced to reflect this as a conflict of interest. However, this does not appear to have happened.

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<sup>20</sup> DAWR (2017) *Email to Matthew Bickford-Smith RE: S11 intake calculations for the purposes of establishing OLF NV*, Obtained by The Guardian under Freedom of Information 2017/18-86

# Changing numbers

EAA offered to sell its river water several times to the Commonwealth, including its land and property in 2015.<sup>21</sup> DAWR has not revealed what those offers were or why they were declined on the basis that the information is commercial in confidence. The Queensland Minister for Natural Resources and Mines claims that Queensland took a deal to DAWR which was rejected by former Minister Joyce, despite being more favourable than the final sales deal.<sup>22</sup>

DAWR appear to have approached EAA to purchase water in early 2016, as explained by EAA's Chief Executive Officer, Matthew Bickford-Smith:

Thank you for your communications regarding whether Eastern Australia Agriculture Pty Ltd (EAA) might be interested in offering some of its water entitlements for sale.<sup>23</sup>

DAWR senior officials have denied in Senate estimates and questions on notice that they approached EAA to purchase the water.<sup>24</sup>

As EAA was estimating the licence volume during the 18 month purchase negotiations, the volume changed nine times. It changed a tenth time when DNRM finalised their modelling after the purchase. The volumes and prices offered are shown in Appendix A. The final change was made just ten days before the transaction was finalised.

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<sup>21</sup> EAA (2010) *Inquiry into the impact of the Murray-Darling Basin Plan in Regional Australia: EAA Submission*, Obtained under OPD 579  
[https://www.aph.gov.au/Parliamentary\\_Business/Chamber\\_documents/Senate\\_chamber\\_documents/Notice\\_Paper/OPDs](https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/Notice_Paper/OPDs)

<sup>22</sup> Gunders and Ralph (2019) *Did Barnaby Joyce miss an opportunity to get a better deal on water buybacks?*, <https://www.abc.net.au/news/rural/2019-04-24/opportunity-missed-on-better-deal-for-water-buybacks/11039296>

<sup>23</sup> Bickford-Smith (2016) *Correspondence to Mary Colreavy*, Obtained under OPD 579  
[https://www.aph.gov.au/Parliamentary\\_Business/Chamber\\_documents/Senate\\_chamber\\_documents/Notice\\_Paper/OPDs](https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/Notice_Paper/OPDs)

<sup>24</sup> DAWR (2019) *Rural and Regional Affairs and Transport Committee, 2018-19 Supplementary budget estimates: Question on notice no.148*,  
[https://www.aph.gov.au/Parliamentary\\_Business/Senate\\_Estimates/rrat/2018-19\\_Supplementary\\_Budget\\_estimates](https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/rrat/2018-19_Supplementary_Budget_estimates)

The changes occurred because the licence volumes had not been finalised by the Queensland DNRM. There was clearly disagreement between EAA and DNRM relating to the volume of the licence. Mr Bickford-Smith wrote in March 2017:

We have enormous respect for the team at the DNRM, but even with the update in their modelling to better assess the mean annual diversion (MAD) of the Clyde surge works entitlement, we still believe they are underestimating it by 20% to 25%. We do recognise that they are running a catchment scale model and we are asking them to apply a microscope to a fraction of that and it isn't easy to do quickly. We believe that when Qld recalibrates the model (which they tell us they are in the process of doing) the MAD will increase.<sup>25</sup>

There is a history of disagreement between Kia Ora and the Queensland water agency. In 2010 the owners of Kia Ora unsuccessfully challenged the Queensland Department of Natural Resources and Water over Kia Ora's licence volumes and right to daily overland flow extraction.<sup>26</sup>

The difficulty in determining the licence volumes might explain why EAA itself at times changed its own numbers. Mr Bickford-Smith wrote to an officer at DAWR and said:

The Summary Tab proves that the S11 OLF take rate has an annual NV of 13,296 ML.<sup>27</sup>

However, that number was increased another three times before negotiations were finalised.

EAA and DAWR were negotiating the sale based on volumes and per megalitre prices. Increases in the water volumes had the mutual benefit of increasing the sales price for EAA and getting closer to the water recovery target for DAWR.

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<sup>25</sup> Redacted (2017) *Email to Matthew Bickford-Smith RE: S11 intake calculations for the purposes of establishing OLF NV*, Obtained under OPD 579  
[https://www.aph.gov.au/Parliamentary\\_Business/Chamber\\_documents/Senate\\_chamber\\_documents/Notice\\_Paper/OPDs](https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/Notice_Paper/OPDs)

<sup>26</sup> Queensland Supreme Court (2010) *Munya Lake Pty Ltd v The Chief Executive, The Department of Natural Resources and Water*, <https://www.queenslandjudgments.com.au/case/id/68339>

<sup>27</sup> Bickford-Smith (2017) *Email to Mary Colreavy: RE: S11 intake calculations for the purposes of establishing OLF NV*, Obtained by The Guardian under Freedom of Information 2017/18-86

# Watergate and water recovery

Under the Murray Darling Basin Plan, the Water Recovery Target is the difference between what could be extracted in 2009 (Baseline Diversion Limit - BDL) and an acceptable environmental level (Sustainable Diversion Limit - SDL).

Senator Rex Patrick asked the Murray Darling Basin Authority (MDBA) in 2018:

[Has] the Murray-Darling Basin Authority agreed that Over Land Flow (OLF) licences (or Floodplain Harvesting Licences) could count towards the water recovery targets in a valley?<sup>28</sup>

MDBA answered:

Yes. To the extent that the use is counted as part of the Baseline Diversion Limit.<sup>29</sup>

The BDL is determined by a hydrological model, which is also called the IQQM model. EAA's Bickford-Smith explains that the Clyde overland flow volume was not in the model, and therefore not in the Baseline Diversion Limit:

Owen Droop has suggested that to integrate this data [the S11 OLF take] into the IQQM model it may be necessary to also model in the relationship between flow at the DH gauge (which is in the model) and the height at the gauge.<sup>30</sup>

This quote shows that the volume on the Clyde licence is not in the Baseline Diversion Limit model. That is, the Clyde licences (14,550 ML at \$39,939,750) should not be counted towards the water recovery target. That was more than 50% of the total water transfer. It is unclear from the documents available whether the Kia Ora licence (14,190 ML) was in the Baseline Diversion Limit or not and therefore whether that licence should be counted towards the Water Recovery Target.

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<sup>28</sup> Patrick (2018) *Rural and Regional Affairs and Transport Legislation Committee Additional Estimates. March 2018, Question No. 166: Overland Flow Licences*, [https://www.aph.gov.au/Parliamentary\\_Business/Senate\\_Estimates/rrat/2017-18\\_Additional\\_estimates](https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/rrat/2017-18_Additional_estimates)

<sup>29</sup> Patrick (2018) *Rural and Regional Affairs and Transport Legislation Committee Additional Estimates. March 2018, Question No. 166: Overland Flow Licences*, [https://www.aph.gov.au/Parliamentary\\_Business/Senate\\_Estimates/rrat/2017-18\\_Additional\\_estimates](https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/rrat/2017-18_Additional_estimates)

<sup>30</sup> Bickford-Smith (2017) *Email to Mary Colreavy: RE: S11 intake calculations for the purposes of establishing OLF NV*, Obtained by The Guardian under Freedom of Information 2017/18-86

# Due Diligence

EAA leading the determination of the licence volumes is not necessarily an issue if the due diligence process is enhanced to reflect this conflict of interest. That did not happen, and instead, the due diligence on this sale appears to be deficient in three key control checks when the licences are being created:

1. Certification by a registered professional engineer of Queensland;
2. Modelling by the DNRM; and
3. MDBA assessment of the Baseline and Sustainable Diversion Limits.

## Certification by an engineer

DNRM describes on its website that the process to create an overland flow licence requires a registered professional engineer of Queensland to certify (verify and sign) a report on the overland flow works and volumes relating to the overland flow take.<sup>31</sup>

EAA engaged GL Irrigation throughout the negotiation. GL Irrigation appears to have the role of the registered professional engineer. There was no other engineer referred to in any of the correspondence.

On 20 February 2017, Mr Reid replied to an officer at DAWR:

Please find attached an excel summary of GL Irrigation Pty Ltd recordings of storage water height readings and water volume estimations for storages 11,10 and 9.

We haven't gone through the process of getting GL Irrigation Pty Ltd to independently verify these records, but that can definitely be arranged if considered appropriate.....

Perhaps what would be best, is once QLD DNRM have had a chance to look through this information, you let us know what further information is required.

If at some stage an on-site visit to ground truth these observations is considered useful, that would be welcomed. That would provide the opportunity for

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<sup>31</sup> DNRM (2018) *Overland flow works that require certification*, <https://www.business.qld.gov.au/industries/mining-energy-water/water/authorisations/overland-flow/works-certification>

discussion with the Operations Manager who took the photos and observed on site the more recent events of 2015 and 2016.<sup>32</sup>

The DAWR officer replied on 13 February 2017

Dear Tony,

Photos received with thanks. They may be able to answer some of DNRM's questions and our plan to ground-truth a recent flow event. If this is the case, we won't seek further evidence from the Operations Manager. I'll talk to DNRM and let you know if this is the case.

I think that leaves us with only one last item: the GL Irrigation summary of estimated storage levels. Happy to receive that one at your convenience, assuming that verification could take a little extra time.<sup>33</sup>

There is no evidence this verification happened, but assuming it did, then GL Irrigation 'independently' verified its own work and DAWR seemed to rely on that verification.

DNRM was asked by The Project whether Glen Lyons, the principal of GL Irrigation is a registered professional engineer. The response was:

I was able to confirm that Glenn Lyons isn't a current DNRM employee, but sorry mate, you'll need to contact the Board of Professional Engineers Queensland (BPEQ) to confirm if he is an engineer registered with them—I don't have access to their records.<sup>34</sup>

It is concerning that DNRM does not know if Mr Lyons is a registered professional engineer, as required as part of their own due diligence.

## Modelling by the DNRM

DNRM modelled the licence volume, although this was not finalised until after the water licence was transferred to DAWR. The modelling report on the volume is dated

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<sup>32</sup> Reid (2017) *Email to Assistant Director, Water Purchase and Conveyance Section, DAWR and Matthew Bickford-Smith RE: S11 intake calculations for the purposes of establishing OLF NV*, Obtained by The Guardian under FOI 2017/18-86

<sup>33</sup> DAWR (2017) *Email to Tony Reid: RE: S11 intake calculations for the purposes of establishing OLF NV*, Obtained by The Guardian under FOI 2017/18-86

<sup>34</sup> DNRM (2019) *Email from Principal Media Advisor to The Project RE: The Project questions re Kia Ora and Clyde*, provided by The Project

21 September 2017, two months after the transaction was finalised on 20 July 2017. That report records the volume at 14,561 ML, not the 14,550 ML that was sold to DAWR, and presumably the amount on the actual licence.

It does not inspire confidence in the due diligence process when the volume modelled differs from that on the licence and the modelling was not finalised until two months after the sale to the DAWR.

## **MDBA Assessment of the Baseline and Sustainable Diversion Limits**

The process to licence overland flows will result in an increase to the Baseline Diversion Limits. The MDBA is responsible for assessing whether the overland flow limits (and therefore total licence volumes) comply with the Sustainable Diversion Limits.<sup>35</sup>

It is concerning that the Clyde overland flow licence was issued and sold to DAWR prior to the Murray-Darling Basin Authority's assessment of the revised Baseline Diversion and Sustainable Diversion Limits.

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<sup>35</sup> MDBA (2019) *Floodplain harvesting and overland flows*, <https://www.mdba.gov.au/basin-plan-roll-out/sustainable-diversion-limits/floodplain-harvesting-overland-flows>

# Conclusion

Watergate has shown that the Commonwealth paid a high price for water that is almost impossible for it to use effectively for environmental purposes. The discovery that the vendors largely ran the process by which the volume and price of this purchase was determined will hardly bring solace to taxpayers.

Perhaps worse still, at least half the water purchased should not count towards meeting water recovery targets. Taxpayers may be forced to pay up all over again. Hopefully next time they will be buying water that can be used and at a fair price.

# Appendix A - Changing volumes and price

Date	Volume (megalitres)	Average price, (\$/ML)	Total price (\$)	Note
09.02.16	5,400 (Clyde)	2,200	27,880,000 <sup>36</sup>	Offer made in letter from EAA to DAWR. The sale of water was conditional on the sale of a storage for \$16,000,000
19.12.16	15,000 (Split between properties unknown)	Redacted	Unknown <sup>37</sup>	Approval by the Water Minister to proceed with the purchase. No correspondence from the vendor and DAWR made available relating to the revised increased volume.
06.02.17	13,296 Clyde			Email from Mr Bickford-Smith <i>'The summary tab proves that S!! OL has an annual NV of 13,296 ML</i>
22.03.17	26,839 (12,649 Clyde) (14,190 Kia Ora)	2,951	79,221,600 <sup>38</sup>	Offer made in letter from EAA to DAWR. The price paid per ML <i>'includes a free option for utilisation of the storages by DAWR at the time in the future when you can do so.'</i>
28.03.17	14,202 (Kia Ora)	2,775	39,410,550 <sup>39</sup>	Approval by the Water Minister to proceed with the purchase. No correspondence from the vendor and DAWR made available relating to the revised increased volume.

<sup>36</sup> EAA, (2016) *Letter to DAWR*, Documents released under OPD 579 correspondence dated 9 February

<sup>37</sup> DAWR, (2016), *Minute: Unsolicited proposals to sell water: various northern basin catchments*, Documents released under OPD 579 correspondence dated 19 December

<sup>38</sup> EAA, (2017), *Letter to DAWR*, Documents released under OPD 579 correspondence dated 22 March

<sup>39</sup> DAWR, (2017), *Minute: Unsolicited proposals to sell water: Qld Condamine-Balonne*, Documents released under OPD 579 correspondence dated 28 March

<b>07.04.17</b>	27,960 (13,770 Clyde) (14,202 Kia Ora)	2,745	76,783,140 <sup>40</sup>	Offer made in letter from EAA to DAWR. <i>EAA undertakes to decommission the storages relevant to these licences to the satisfaction of DNRM at our cost.</i> <i>The offer includes the option for the Commonwealth to acquire S10 (storage) for nil cost.</i>
<b>12.05.17</b>	29,159 (14,969 Clyde) (14,190 Kia Ora)	2,745	80,041,455 <sup>41</sup>	Approval by the Water Minister to purchase 14,969 ML from Clyde and 14,190 from Kia Ora. No correspondence from vendor made available for the change in volume
<b>07.06.17</b>	30,527 (16,337 Clyde) (14,190 Kia Ora)	2,745	83,796,615 <sup>42</sup>	Invitation to Tender from DAWR to EAA. No correspondence from vendor made available for the increase in volume
<b>17.06.17</b>	28,740 (14,550 Clyde) (14,190 Kia Ora)	2,745	78,891,300 <sup>43</sup>	Amount reduced after DAWR Due Diligence
<b>21.09.17</b>	28,751 (14,561 Clyde) (14,190)			Modelling by DNRM

<sup>40</sup> EAA, (2017), *Email: Follow up information*, Documents released under OPD 579 correspondence dated 7 April 2017

<sup>41</sup> DAWR, (2017), *Minute too Minister: Update on proposal in Queensland Condamine Balonne*, Documents released under OPD 579 correspondence dated 12 May

<sup>42</sup> DAWR, (2017), *Limited tender evaluation (Condamine-Balonne – PIN 24666)*, Documents released under OPD 579 correspondence dated 7 June

<sup>43</sup> DAWR, (2017), *Seeking delegate signature on two purchase agreements under a limited tender offer*, Documents released under OPD 579 correspondence dated 20 July

