

File No: RC18/0160
Document No: RC18D01747

10 September 2018

Hon David Speirs MP
Minister for Environment and Water
GPO Box 1047
ADELAIDE SA 5047

Email: minister.speirs@sa.gov.au

Dear Mr Speirs

Re: Request for clarification of SA Government submission & invitation to attend hearings

I refer to my letter of 24 August 2018, seeking clarification on questions arising from the South Australian Government's submission to the Murray-Darling Basin Royal Commission dated 18 June 2018.

Thank you for your considered and detailed response, provided on Friday, 7 September 2018. I appreciate your prompt response in that regard.

In addition to the questions to which you have responded, I would be assisted in reporting on my terms of reference if the SA Government would also provide me with answers to the attached, further questions. Some of these arise as a result of the recent publication by the Productivity Commission of its draft report into the implementation of the Basin Plan.

As you are aware, the public hearings for the Commission commenced on 18 June 2018. A great deal of evidence is now before the Commission in the form of sworn testimony, expert reports, written submissions and other documents. Much of the evidence has been called or provided by eminent scientists.

As you know, I am required to report on 1 February 2019 (which, with printing time, effectively means my report must largely be finished by early December this year).

As with my earlier questions, I expect that the State Government will have a ready answer to the attached, further questions and that thereby, you will be in a position to provide a timely response. Further, they are all matters of importance to this Commission, and are likely to be the subject of comment in my final report.

Accordingly, and given the press of time, I invite a person or persons of your choosing to provide any further responses to me in person at a public hearing. I envisage that that hearing will proceed by your appointed person or persons producing any written response to me, and then answering any further questions I or Senior Counsel may have concerning those matters, or more generally.

An opportunity to appear before me for that purpose will be afforded to the SA Government in the week commencing 24 September 2018. Simultaneously at that time, I will facilitate any desire of the SA Government to be heard on these matters. The person or persons who attend to do so may, if an Australian lawyer, do so from the bar table, or otherwise under oath or affirmation.

I would be grateful if your office could confirm, through my Senior Instructing Solicitor, Ms Masters, by close of business on **Friday, 14 September 2018**, the names of the person or persons who will attend, in order that arrangements can be made to that end.

Given the public nature of this Royal Commission, I note that this letter, my list of questions and any response by you will be published on the Commission website. That approach is also consistent with the public nature of the State Government's submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bret Walker', written in a cursive style.

Bret Walker
Commissioner

Additional questions for South Australia

1. In its recently published draft report concerning a five-year assessment of the Basin Plan, the Productivity Commission made the following findings and recommended the following matters upon which I seek your view:
 - a. “The 2024 deadline for supply projects is highly ambitious, if not unrealistic”. Does the SA Government agree? If not, why not?
 - b. In relation to efficiency measures, “The proposed constraints projects are unlikely to be fully operational by 2024 and may not achieve the required flow rates at key sites to deliver the enhanced environmental outcomes”. Does the SA Government agree? If not, why not?
 - c. Still on efficiency measures, “there is a material risk that recovering the additional 450GL could be significantly more expensive than anticipated...the benefits and costs of the program as a whole have not been assessed”. Does the SA Government agree? If not, why not?
 - d. Draft recommendation 5.2 states “the Department of Agriculture and Water Resources should release a new strategy for recovering the additional 450GL in a no-regrets fashion in early 2019”. Does the SA Government agree that a new strategy is required for recovering the additional 450GL? If not, why not?
 - e. At page 113 of the draft report, “the hydro-cues” supply measure is mentioned. As stated by the Productivity Commission: “realising the full benefit of hydro-cues is critically dependent on implementing constraints projects...which are highly unlikely to be completed by 2024”.
 - i. What level of confidence does the SA Government have that constraints projects will be completed by 2024?
 - ii. If that level of confidence is low, why did the SA Government support the supply measure at the Basin Officials Committee?
 - f. Commencing at page 289, the Commission addresses the issue of “Have institutional and governance arrangements been effective?”
 - i. Does the SA Government agree with the draft findings at 14.1 (page 300) concerning key deficiencies in institutional and governance arrangements?
 - ii. Does the SA Government agree with draft recommendation 14.2 recommending a restructure of the Murray-Darling Basin Authority?

SDL Adjustment Mechanism

Menindee Lakes Water Saving Project

2. How did the SA Government, as a member of the Basin Officials Committee (**BOC**), satisfy itself that the Menindee Lakes Water Saving Project business case met the following criteria required by the *Phase 2 Assessment Guidelines for Supply and Constraint Business Case Measures*:
 - a. 3.1.1 – It will “achieve equivalent environmental outcomes with a lower volume of held environmental water than would otherwise be required”;
 - b. 4.4.1 – It “includes an ecological assessment that is detailed enough to provide a clear picture of the likely ecological benefits of the project, including some quantitative assessment where this is possible”;
 - c. 4.4.2 – “There is a demonstration that any adverse [ecological] impacts can will (sic) be managed, mitigated or are managed to acceptable levels”; and
 - d. 4.7.7 – “All significant operating risks and impacts have been identified and analysed, and robust treatments and mitigations proposed”.
3. Does the SA Government have a view as to whether the Menindee Lakes Water Saving Project is capable of achieving “equivalent environmental outcomes”, as required by Basin Plan ss 7.09(b), 7.15(1)(c) and 7.17(2)(a), in light of the fact that “the Menindee Lakes falls outside of the SDLAM framework for testing environmental equivalence.... Any trade-off of environmental outcomes associated with generating water savings at Menindee Lakes will not contribute to lower environmental outcome scores using the Ecological Elements method and therefore is not taken into account in determining the adjustment volume”? See *MDBA Analysis: Menindee Lakes Water Saving Project Phase 2 Business Case*, page 5.
4. The MDBA noted that it “would expect that a qualitative assessment be undertaken to confirm that the net environmental outcomes of the final proposal are environmentally equivalent”: see *MDBA Analysis: Menindee Lakes Water Saving Project Phase 2 Business Case*, page 5. Is the Government aware of any such assessment having been commenced, completed, or made available to the BOC or the MDBA?
5. Why did the BOC decide to include the Menindee Lakes Water Saving Project in its notification of the supply measures package to the MDBA, in light of:
 - a. The large number of issues identified as needing to be resolved or about which “further detail [is] required” as listed at pages 10-11 of *MDBA Analysis: Menindee Lakes Water Saving Project Phase 2 Business Case*; and
 - b. The fact that a Phase 3 Confirmation Statement, which might address these issues, was not approved by the BOC before the notification was made?

Enhanced Environmental Water Delivery Project

6. The Royal Commission has received evidence that the Enhanced Environmental Water Delivery project should not be considered as a supply measure, because it represents an “unimplemented policy measure” in that it implements policies to credit return flows for downstream environmental use and allows the call of held environmental water from storage during unregulated flow events: see Basin Plan s 7.15(2). What is the SA Government’s response to this?

MDBA Analyses of business cases

7. In relation to the MDBA analyses of business cases:
 - a. When were these made available to the BOC?
 - b. How did the BOC take these into account when assessing the proposals and finalising the package of proposals to be notified to the MDBA?

Implementation of supply measures

8. The Ministerial Council noted in its *Communique: Murray-Darling Basin Ministers meet in Albury* on 19 December 2017 that: “In relation to the implementation of SDL adjustment outcomes, Ministers requested officials finalise negotiations on a new Schedule to the 2013 Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin on agreed implementation arrangements”.
 - a. What is the status of these negotiations, and when does the SA Government anticipate that the new Schedule will be agreed to?
 - b. What does the SA Government understand will be included in that new Schedule?

SDL Adjustment Mechanism Process Review

9. The MDBA has published a slide show of a presentation delivered by Brett Tucker, Peter Davies and Graeme Turner titled ‘SDL Adjustment Mechanism Process Review’, delivered at the SDL Adjustment Technical Workshop on 28 June 2018.
 - a. Has the SA Government received any documents related to the findings of this review, other than this slide show, that it can provide to the Royal Commission?
 - b. Slide 14 states that “the SDLAM processes have been followed for all notified projects, however adaptations have been necessary for several complex supply measures where the required activities have thus far prevented resolution of some elements of the evaluation process.” What does the Government understand these “adaptations” to the process to have been?
 - c. Slide 5 states that “final funding for implementation of all projects is contingent upon satisfactory resolution of outstanding issues.” What are the specific arrangements that provide for this linking of funding to the resolution of outstanding issues?

Water recovery

10. Does the Government have a position in relation to whether the 1500GL ‘cap’ on buybacks should remain in place?
11. In relation to [87a] of the Government’s submission, why is 2.9GL of water purchased by the Australian Government exempt from the 1,500GL limit?

Monitoring and evaluation

12. On page 9 of its report titled ‘*Environmental Assets – 2017 Evaluation*’, the MDBA stated:

“Currently, there is no suitable framework outlining how asset-scale information will be consistently reported by the states; nor how the MDBA will aggregate and evaluate asset-scale information to inform future Basin Plan Evaluations. This work

should be developed as a matter of urgency in order to optimise consistency of reporting from states...”

And:

“Many of the current monitoring programs at the asset scale were established for a range of purposes and predominantly established prior to the Basin Plan. Therefore, there are not yet explicit linkages to the Basin-wide Environmental Watering Strategy, nor the priority assets and functions to be described in the Long Term Watering Plans.

[It is recommended that the MDBA and states] review alignment of existing asset-scale monitoring programs within the Basin-wide Watering Strategy and Long-Term Watering Plans’ objectives and targets as they are finalised.”

In relation to this statement:

- a. Is the SA Government aware of any work being undertaken to develop a framework outlining how asset-scale information will be reported by the states and evaluated by the MDBA?
- b. Is the SA Government confident that its own current monitoring arrangements are sufficient to enable the Government to report on “the achievement of environmental outcomes at an asset scale” from July 2019, as required by Basin Plan Schedule 12 s 8?
- c. Does the SA Government have any other comments to make regarding whether the current monitoring and evaluation programs and arrangements are sufficient to enable the states and the MDBA to measure the ecological impact of the Basin Plan?

Socio-economic outcomes

13. In June 2018, the Ministerial Council announced that “in relation to the potential for on-farm infrastructure efficiency measures, state and territory governments and the Commonwealth government will work to develop agreed additional program criteria to ensure neutral or beneficial socio-economic outcomes. Additional program criteria could take into account wider regional impacts and the impact of cumulative implementation of programs”: see *Communique: Murray-Darling Basin Ministers meet in Canberra*, 8 June 2018. In relation to this issue:

- a. What is the SA Government’s position as to whether the definition of “socio-economic outcomes” should “take into account wider regional impacts and the impact of cumulative implementation of programs”?
- b. What progress has been made by the Ministerial Council in relation to this work to refine this definition or develop additional program criteria?

Water resource plans

14. Please provide an update as to the status of the SA Government’s Water Resource Plan development since its submission? What progress has been made since that time?

15. In the context of developing its Water Resource Plans, what steps is the SA Government taking in relation to:

- a. The connectivity of Water Resource Plans across valleys, and between states; and

- b. The protection of environmental flows?

South East Flows Restoration Project

16. Further to evidence that was given to me in a public hearing on 5 September 2018, can you please advise:
 - a. The basis for the assertion by Justine Keuning of DEWNR in an email dated 19 October 2017 to Ms Fiona Paton that the South East Flows Restoration Project business case was not publicly available by reason of it being 'commercial in confidence';
 - b. The outcome of the workshop hosted by the SA Government on 5 June 2018 involving experts from the science community and water resource managers, regarding the South East Flows Restoration Project.
17. Can you please provide a response to the evidence from Professor David Paton (provided to the Commission through his submission, and in evidence on 5 September 2018), that history shows that the salinity fluctuates across the system over time such that the assertion that there is an excessive salinity problem in the Coorong is a fallacy, and attempts through this project to address it are misplaced. Secondly, that the SE flows project creates a risk of increasing blue-green algae in the Coorong.