

Office of the Chief Executive

Senator Susan McDonald
Chair
Senate Regional Affairs and Transport Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Senator McDonald

On 29 October 2021 I appeared as a witness before the Senate Rural and Regional Affairs and Transport Legislation Committee Estimates hearing.

During the hearing Senator Roberts asked a question relating to the target flow to sea in the Murray-Darling Basin Plan:

“I’d like to know not only the number, please, Mr Reynolds, but how it’s calculated—the process that you use to calculate that number?”

In response I said:

“It is defined in the plan. The exact numbers I don’t have, but I’ll get them before the end of this session for sure. But there are plans for flows in consecutive years as well as over a longer period for continuous flow.”

I wish to correct this answer as noted below:

The *Basin Plan 2012* (Cth) (Basin Plan) does not set a target flow to the sea. The Basin Plan establishes a series of objectives and targets in relation to openness of the Murray Mouth, levels of the Lower Lakes, and improvements in the condition of the Coorong, Lower Lakes and Murray Mouth from 1 July 2019. These objectives are set out in section 8.06 and Schedule 7 of the Basin Plan.

The Basin Plan requires the development of a Basin-wide Environmental Watering Strategy. It includes a series of anticipated flow outcomes for the Coorong, Lower Lakes and Murray Mouth. Importantly, these are not targets or objectives – instead, they are the outcomes anticipated to be achieved based on hydrological modelling of the Basin Plan.

Later during the hearing Senator Patrick asked a question relating to *Doyle’s Farm Produce Pty Ltd as trustee for Clarendale Family Trust v Murray Darling Basin Authority*:

“... it sounds like there’s a bit of interlocutory action going on here. Have you had any costs awarded against you at this point—for example, on the appeal?”

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In response I said:

“No.”

I wish to correct this answer as noted below:

There have been 3 interlocutory decisions in the matter: *Doyle’s Farm Produce Pty Ltd as trustee for Clarendale Family Trust v Murray Darling Basin Authority* [2021] NSWSC 369, *Murray Darling Basin Authority v Doyle’s Farm Produce Pty Ltd* [2021] NSWCA 191 and *Doyle’s Farm Produce Pty Ltd v Murray Darling Basin Authority (No 2)* [2021] NSWCA 246.

- On 13 April 2021 the Supreme Court handed down a decision in connection with a strike out application. This is accessible at:

https://www.supremecourt.justice.nsw.gov.au/Documents/Class%20Actions/Murray%20Darling%20Basin%20Authority%20-%20Doyle%27s%20Farm/06_Judgment_20210413.pdf.

- On 27 August 2021 the Court of Appeal handed down a decision accessible at:

<https://www.caselaw.nsw.gov.au/decision/17b85cd1a7ef57cb0e13195a>.

- On 12 October 2021 the Court of Appeal handed down a decision accessible at:

<https://www.caselaw.nsw.gov.au/decision/17c6d0283c310b7e9494cfd8>.

These decisions make orders as to costs at paragraphs 68(2), 9(2) and 90 respectively.

I apologise for the error in my answer and trust this further information will be of assistance to the Committee.

Yours sincerely

Andrew Reynolds
Acting Chief Executive
Murray-Darling Basin Authority

29 November 2021