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Form 3A/B
Rule 6.2

AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of NSW
Division	Common Law
List	Common Law General
Registry	Supreme Court Sydney
Case number	2019/00150651

FILING DETAILS

Filed for	Plaintiff[s]
Legal representative	Amanda Banton
Legal representative reference	
Telephone	8076 8090

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Amended Statement of Claim (e-Services), along with any other documents listed below, were filed by the Court.

Amended Statement of Claim (ASOC Final - signed.pdf)

[attach.]

Form 3A (version 7)
UCPR 6.2

AMENDED STATEMENT OF CLAIM

COURT DETAILS	
Court	Supreme Court of New South Wales
Division	Common Law
Registry	Sydney
Case number	2019/00150651

TITLE OF PROCEEDINGS	
First Plaintiff	**Doyle's Farm Produce Pty Ltd (ACN 119 734 539) as trustee for Claredale Family Trust**
Second Plaintiff	**John Gerard Doyle**
Number of Plaintiffs	**5**
Defendant	**Murray Darling Basin Authority**

FILING DETAILS	
Filed for	Plaintiffs
Legal representative	Amanda Banton, Banton Group
Legal representative reference	2453
Contact name and telephone	Amanda Banton, 02 8076 8090
Contact email	amanda.banton@bantongroup.com

TYPE OF CLAIM

Tort - Negligence

RELIEF CLAIMED

1 Damages.

2 Interest.

3 Costs.

4 Such further or other relief as the Court sees fit.

PLEADINGS AND PARTICULARS

Paragraphs 1 to 93 of the Statement of Claim filed on 14 May 2019 have been deleted.

A PARTIES

(1) The Plaintiffs

1 At all material times, the First Plaintiff, Doyle's Farm Produce Pty Ltd (ACN 119 734 539):

a. was a duly incorporated company, capable of suing;

b. carried on a business of irrigated agricultural production in the NSW Central Murray region, primarily growing potatoes:

i. (inter alia) on land (identified at [2d] below) owned by the Second Plaintiff; and

ii. using irrigated water obtained under entitlements (identified at [2e] below) owned by the Second Plaintiff.

2 At all material times, the Second Plaintiff, John Gerard Doyle:

a. was an individual able to sue;

b. was a director of the First Plaintiff;

c. by or through the First Plaintiff, carried on a business of irrigated agricultural production in the NSW Central Murray region, primarily growing potatoes;

d. was the registered owner of real property identified as Lots 1 and 2 DP 861125 in Parish Nanguina, located at Mardenoora Road, Tocumwal NSW 2714 in the NSW Central Murray region; and

e. was the registered holder of 686 Class C Water Supply Entitlements issued by Murray Irrigation Limited (**MIL**) (**Doyle Water Entitlements**).

3 At all material times, the Third Plaintiff, Coobool Downs Pastoral Co Pty Ltd (ACN 002 806 617):

a. was a duly incorporated company, capable of suing;

b. was the registered holder of 249 NSW Murray Regulated River (General Security) water entitlements issued under the *Water Management Act 2000* (NSW);

c. carried on a business of irrigated agricultural production in the NSW Central Murray region growing cereal crops:

i. (inter alia) on land (identified at [4e], [4f] and [5e] below) owned by the Fourth Plaintiff and the Fifth Plaintiff; and

ii. (inter alia) using irrigated water obtained under water entitlements:

A> held by the Third Plaintiff, as pleaded at [3b] above;

B> held jointly by the Fourth Plaintiff and the Fifth Plaintiff, as pleaded at [4g] and [5f] below,

(together, the **Coobool Water Entitlements**).

4 At all material times, the Fourth Plaintiff, Rodney James Dunn:

a. was an individual able to sue;

b. was a director of the Third Plaintiff;

c. was married to the Fifth Plaintiff;

d. by or through the Third Plaintiff, carried on a business, inter alia, of irrigated agricultural production in the NSW Central Murray region, growing cereal crops;

e. was joint registered owner (together with the Fifth Plaintiff, Valerie Jeanette Dunn) of real property in the NSW Central Murray region, identified as:

i. Lot 37 DP 16554 at Murray Downs, in Parish Coobool;

ii. Lot 2 DP 222874 at Murray Downs, in Parish Willakool;

iii. Lots 2 and 4 DP 203806 at Swan Hill, in Parish Coobool;

f. was the registered owner of real property identified as Lot 34 DP 16554 at Murray Downs, in Parish Coobool in the NSW Central Murray region;

g. was the registered holder, jointly with the Fifth Plaintiff, of 1375 NSW Murray Regulated River (General Security) water entitlements issued under the *Water Management Act 2000* (NSW).

5 At all material times, the Fifth Plaintiff, Valerie Jeanette Dunn:

a. was an individual able to sue;

b. was a director of the Third Plaintiff;

c. was married to the Fourth Plaintiff;

d. by or through the Third Plaintiff, carried on a business of irrigated agricultural production in the NSW Central Murray region, growing cereal crops;

e. was the registered owner, jointly with the Fourth Plaintiff, Rodney James Dunn, of real property in the NSW Central Murray region pleaded at [5d] above;

f. was the registered holder, jointly with the Fourth Plaintiff, of water entitlements pleaded at [4g] above.

(2) The Defendant

6 The Defendant, the Murray-Darling Basin Authority (**MDBA**), is established under ss 171 and 176 of the *Water Act 2007* (Cth) (**Act**) as a body corporate with perpetual succession, and is capable of being sued.

B GROUP MEMBERS AND COMMON QUESTIONS

7 The NSW Central Murray region is located within southern New South Wales, covering the irrigated area west of Corowa, extending west to Kyalite, north of the River Murray and south of the Billabong Creek and Edward River.

Particulars

The Plaintiffs rely upon the definition of the NSW Central Murray region in the MDBA's Guide to the Proposed Basin Plan (2010), Appendix C, p.966.

8 The Group Members for the purposes of this proceeding are all persons or entities who, for all or part of the period between 30 June 2016 and 30 June 2019:

a. held NSW Murray Regulated River general security water entitlements under the *Water Management Act 2000* (NSW);

b. held water supply entitlements under contractual arrangement with the holder of a NSW Murray Regulated River general security bulk water access licence under the *Water Management Act 2000* (NSW);

(the persons or entities described in subparagraphs 8(a)-8(b) are together described **Water Entitlement Holders**);

or, not being Water Entitlement Holders

c. conducted irrigated agriculture operations in the NSW Central Murray region using water entitlements owned by Water Entitlement Holders (**Related Parties**);

d. in the case of the Water Entitlement Holders and Related Parties, or both, received and/or utilised an allocation of water in:

i. the 2016/2017 year;

ii. the 2017/2018 year; and/or

iii. the 2018/2019 year

which was lower than the allocation which they would have received and/or utilised had the conduct the subject of complaint in this Amended Statement of Claim not occurred; and

e. suffered loss or damage by reason of the conduct of MDBA set out in this Amended Statement of Claim.

9 The following persons are not Group Members for the purposes of this proceeding:

a. the Commonwealth, or any agency or instrumentality thereof;

b. the States or Territories, or any agency or instrumentality thereof;

c. a Minister of the Commonwealth, a State or Territory; or

d. any judicial officer of the Commonwealth, a State or Territory.

10 As of the date of the commencement of this proceeding, there are seven or more persons who are Group Members having claims against the MDBA as pleaded in this Amended Statement of Claim.

11 The questions of law or fact common to the claims of Group Members in this proceeding are:

a. whether the MDBA owed the MDBA Duty of Care (as defined below) to Group Members?

b. whether the MDBA breached its MDBA Duty of Care in respect of:

i. the 2016/2017 Breaches (as defined below); further or alternatively

ii. the 2017/2018 Breaches (as defined below); further or alternatively

iii. the 2018/2019 Breaches (as defined below)?

c. whether the Group Members suffered loss and damage?

C LEGISLATIVE FRAMEWORK

12 In this Amended Statement of Claim, the term "Murray-Darling Basin" (**Basin**) has the meaning given in s 18A of the Act, and has the boundaries delineated in the map which is set out in Schedule 1A to the Act:

13 The MDBA operates the River Murray pursuant to the Murray-Darling Basin Agreement, which is Schedule 1 to the Act (**Agreement**).

14 In this Amended Statement of Claim, the term "upper River Murray storages" has the meaning given in cl 2 of the Agreement, and includes:

a. Lake Victoria;

b. the Menindee Lakes;

c. Dartmouth Dam;

d. Hume Dam; and

e. the weirs, and weirs and locks, described in Schedule A to the Agreement, which are upstream of the eastern boundary of South Australia.

(1) Powers and Functions of the MDBA

15 The term "River Operations Functions" in this Amended Statement of Claim describes the functions of the MDBA under the Agreement and s 18E(1) of the Act

which relate to the operation and maintenance of works connected to the upper River Murray storages (**River Operations Functions**).[1]

16 The River Operations Functions include a power to give directions for the release of water from upper River Murray storages (cl 98(1) of the Agreement and s 18E(1) of the Act) (**Release Power**).

17 By cl 30(2) of the Agreement and s 18E(2) of the Act, the MDBA is required to carry out its River Operations Functions in accordance with objectives and outcomes specified in a document approved by the Basin Officials Committee under cl 31 of the Agreement, as in force from time to time (**O&O Document**), unless specifically authorised by the Basin Officials Committee to depart from that document.

18 In the premises, when performing the River Operations Functions, the MDBA is required to:

a. operate the River Murray system efficiently and effectively in order to deliver State water entitlements (cl 4(2)(a)(i) of the O&O Document);

b. maximise the water available to Southern Basin States (including New South Wales), after providing for operating commitments in the River Murray System (cl 4(2)(a)(ii) of the O&O Document);

c. conserve water and minimise losses (cl 4(2)(b)(i) of the O&O Document); and

d. deliver authorised water orders to Southern Basin States (including water traded under Schedule D of the Agreement), unless physical constraints of the River Murray System prevent this from occurring (cl 4(2)(b)(iii) of the O&O Document),

(together, the **General Objectives**).

19 By cl 6 of the O&O Document, the MDBA is required to achieve the General Objectives whilst at all times:

a. acting in accordance with the Agreement and the O&O Document;

b. doing only what is reasonably practicable in all the circumstances, after taking into consideration (inter alia):

i. the high variability and uncertainty of the River Murray System relating to:

[1] Clause 2 of the Agreement defines "river operations" as including the operation and maintenance of works connected to the "upper River Murray", which is defined by cl 2 as meaning the aggregate of (inter alia) the "upper River Murray storages".

A> weather conditions and associated factors (such as precipitation and evaporation rates);

B> inflows to rivers;

C> use of water pursuant to water allocations and by other users;

D> the difficulty of accurately predicting inflows to rivers;

E> the time that water takes to travel and other physical constraints of the River Murray System;

F> rainfall and stream flow forecasts by the Bureau of Meteorology (**BOM**) for the River Murray System; and

G> the social and/or economic consequences of particular activities;

ii. limits to the accuracy of hydrological models and of rainfall and streamflow forecasts; and

iii. uncertainty about the environmental consequences of particular activities (for example, because of uncertainty about ecosystem, natural biological or biophysical processes).

20 By cl 10 of the O&O Document, the MDBA is required to prepare and adopt an Annual Operating Plan for the River Murray System for the following twelve months (cl 10(1)(a)), and:

a. the Annual Operating Plan is to be consistent with (inter alia) the Agreement and the O&O Document;

b. the MDBA is required to carry out its functions under Part XII (including the Release Power) and Part XIV of the Agreement in accordance with the Annual Operating Plan adopted for the relevant water year, unless the O&O Document, the Agreement or the Act requires the MDBA to do otherwise (cl 10(1)(d));

c. the MDBA may from time to time amend an Annual Operating Plan but only after seeking advice from:

i. the Water Liaison Working Group, and if it so recommends, the River Murray Operations Committee; and subsequently

ii. if the River Murray Operations Committee so recommends, advice will be sought from the Basin Officials Committee.

(2) State Water Entitlements

21 In this Amended Statement of Claim:

a. the term "**State water entitlement**" means the entitlement of a State to water, determined in accordance with Part XII of the Agreement;

b. the term "**South Australia's monthly entitlement**" means the monthly entitlement of South Australia to the quantities of River Murray water stipulated in cl 88 of the Agreement, namely:

i. for the month of July, 108,500 ML;

ii. for the month of August, 124,000 ML;

iii. for the month of September, 135,000 ML;

iv. for the month of October, 170,000 ML;

v. for the month of November, 180,000 ML;

vi. for the month of December, 217,000 ML;

vii. for the month of January, 217,000 ML;

viii. for the month of February, 194,000 ML;

ix. for the month of March, 186,000 ML;

x. for the month of April, 135,000 ML;

xi. for the month of May, 93,000 ML; and

xii. for the month of June, 90,000 ML,

unless varied for any specified sequence of months under cl 90 of the Agreement, in order to store or deliver deferred water to South Australia.

22 By cl 88 or 90 of the Agreement, South Australia is entitled to receive South Australia's monthly entitlement.

23 New South Wales and Victoria's entitlements as set out in cl 94 of the Agreement are "subject to" South Australia's monthly entitlement (cl 94(1)).

24 By cl 89 of the Agreement, New South Wales and Victoria are entitled to use:

a. all the water in tributaries of the upper River Murray downstream of Doctors Point within their respective territories, before such water reaches the River Murray;

b. half the natural flow at Doctors Point;

c. half the water entering the Menindee Lakes from the Darling River, subject to cl 95 of the Agreement;

d. an amount of water from the upper River Murray:

   i. equivalent to waters contributed by any tributary or outfall approved by the Ministerial Council; and

   ii. which entered the upper River Murray from their respective territories downstream of Doctors Point; and

e. half the volume of water calculated in accordance with cl 8 of Schedule F to the Agreement.

25 By reason of cl 98(3), the Authority must have regard in the exercise of its Release Power to:

a. maintaining supply of water to South Australia in the quantities to which that State is entitled under the Act and Agreement;

b. facilitating the exercise by South Australia of its right under cl 91 of the Agreement to store part of its entitlement in the upper River Murray storages;

c. maintaining a minimum reserve of water as provided in cl 103 of the Agreement; and

d. facilitating the exercise by New South Wales and Victoria of their respective rights to use water from the upper River Murray storages as they require.

26 By reason of cl 98(4), in exercising its Release Power the Authority may also have regard to:

a. the improvement and maintenance of water quality in the River Murray; and

b. other water management and environmental objectives consistent with the Agreement.

27 By reason of s 18E(2) of the Act and cl 30(1) of the Agreement, the MDBA must not exercise the River Operations Functions in a manner that has the potential to have a material effect on State water entitlements unless it does so in accordance with a decision of the Basin Officials Committee made under this Agreement, or a provision of the O&O Document.

28 By reason of s 18E(2) of the Act, cl 30(3) and 33(3) of the Agreement and cl 13(1) of the O&O Document, the MDBA must refer to the Basin Officials Committee any decision the Authority proposes to make in relation to its River Operations Functions that has the potential to have a material effect on State water entitlements, unless

the decision is authorised by the O&O Document or a previous determination made by the Basin Officials Committee under cl 33.

29 By cl 15(1)(a) of the O&O Document, the MDBA must refer to the Basin Officials Committee any matter relating to the River Operations Functions that is not dealt with in, or is inconsistent with, a specific objective, a specific outcome or any other provision of the O&O Document.

30 Under the Agreement:

a. any water that is lost by evaporation or other means from the upper River Murray is taken to have been used by New South Wales or Victoria (cl 110(1));

b. any release made from Hume Reservoir for the deliberate purpose of transferring water to Lake Victoria for use at a later date will be attributable to the allocation of water to New South Wales or Victoria (cl 119);

c. quantities of water supplied to South Australia in excess of or surplus to South Australia's monthly entitlement:

i. do not operate to reduce South Australia's monthly entitlement in future months; and

ii. do not constitute water estimated to be under the control of the MDBA, within the meaning of cl 101 of the Agreement.

(3) Operational Requirements for Upper River Murray Storages

31 The location of the upper River Murray Storages is relevantly depicted in the map which is Appendix A to this Amended Statement of Claim.

32 The MDBA has detailed procedures and manuals to guide staff on the exercise of River Operations Functions on or with respect to the upper River Murray Storages.

Particulars

The MDBA has declined to provide the Plaintiffs with copies of the said procedures and manuals. Further and better particulars will be provided following disclosure.

(i) Yarrawonga Weir and the Barmah Choke

33 Yarrawonga Weir is located on the Murray River near the towns of Yarrawonga in Victoria and Mulwala in NSW, approximately 230 km downstream of Lake Hume.

34 By exercise of the Release Power in relation to Yarrawonga Weir, the MDBA controls:

a. water level for gravity diversions to the Mulwala Canal and the Yarrawonga Main Channel, which are used inter alia to deliver irrigated water to some Water Entitlement Holders;

b. releases for meeting demands in the River Murray downstream of the Yarrawonga Weir; and

c. directed releases of environmental water for the Barmah-Millewa Forest.

35 The Barmah-Millewa Forest is a large river red gum forest on the River Murray floodplain, downstream of the Yarrawonga Weir.

36 The Barmah Choke:

a. is located where the River Murray passes through the Barmah-Millewa Forest;

b. has at all material times had the lowest channel capacity of any stretch of the River Murray;

c. has a channel capacity which, to the knowledge of the MDBA, has been progressively eroding or deterioriating.

Particulars

The channel capacity through the Barmah Choke (measured downstream of Yarrawonga Weir):

A> in the 1980s, was approximately 11,500 ML per day;

B> in 2003, was approximately 10,300 ML per day;

C> in 2014-2016, was approximately 10,000 ML per day;

D> as at May 2018, was approximately 9,500 ML per day; and

E> as at March 2019, was approximately 9,000 ML per day.

It is to be inferred that the MDBA, which is responsible for measuring and recording flow rates, was aware of this deterioration at all material times. Further, the MDBA's knowledge of deteriorating channel capacity, and the rates of flow through the channel, is expressed in or to be inferred from:

A> the MDBA's River Murray System SO&O Quarterly Report, 2017/2018 Quarter 4, p.7;

B> the MDBA's Annual Operating Plan for the 2018-2019 water year (**2018-2019 AOP**), p.6 and p.44;

C> a PowerPoint presentation authored by Dr Joseph Davis of the MDBA dated 30 July 2019 entitled “Challenges for meeting water demand in the River Murray System”, p.10; and

D> the MDBA’s Report titled ‘Losses in the River Murray System 2018-19’ dated March 2019 (**Losses Report**), p.2 (4th bullet point).

Further and better particulars may be provided following disclosure.

37 It was at all material times possible for the MDBA to transfer water downstream of the Barmah Choke by purchasing access to the canal network and infrastructure owned and operated by MIL.

Particulars

MIL operates 2,778 km of gravity-fed earthen channels (together, **MIL Infrastructure**), which:

i. can be used to divert water from Lake Mulwala, via the Mulwala Canal;

ii. include escapes which can be used to release diverted water downstream of the Barmah Choke into:

A> the Edward River (via the Edward Escape);

B> the Wakool River (via the Wakool Escape);

C> Billabong Creek (via the Finley Escape); or

D> the River Murray (via the Pericoota Escape);

By use of the said escapes, water can be transferred around the Barmah Choke.

38 On the River Murray where it passes through the Barmah-Millewa Forest there are flow control structures (**Forest Regulators**), which can be operated by or at the direction of the MDBA, to attempt to control when and where water enters and exits the Barmah-Millewa Forest.

39 By reason of the matter pleaded at [17] above, the MDBA is required when operating or directing the operation of the Forest Regulators to:

a. minimise undesirable transmission losses when delivering water downstream of the Barmah-Millewa Forest (cl 4.2(c) of the O&O Document); and

b. facilitate desirable watering of the Forest, and to minimise as far as possible undesirable watering of the Barmah-Millewa Forest (cl 4.2(d) of the O&O Document).

40 By reason of the matter pleaded at [17] above, the MDBA is required:

a. to take advice from forest managers and the Southern Connected Basin Environment Watering Committee (**SCBWEC**) in determining whether it is "desirable" or "undesirable" to inundate the Barmah-Millewa Forest (O&O Document, 3.1a(d) and 3.1b(d));

b. when it is "undesirable" to inundate the Barmah-Millewa Forest:

i. to seek to minimise water losses through the Barmah-Millewa Forest (cl 3.1.b(b));

ii. to plan regulated release operations (including by exercise of the Release Power) which do not exceed a maximum regulated release from Yarrawonga Weir of 10,600 ML per day; and

iii. not to plan to exceed the said maximum regulated release for the purpose of providing South Australia with water orders or entitlement flow, unless:

A> it has consulted with the Water Liaison Working Group; and

B> it has taken into account advice from forest managers and the SCBEWC (O&O Document, 3.1b(d));

c. when it is "desirable" to inundate the Barmah-Millewa Forest:

i. to seek to limit impacts to downstream communities (3.1.a(b)); and

ii. to plan regulated release operations (including by exercise of the Release Power) which do not exceed a maximum regulated release from Yarrawonga Weir of 18,000 ML per day.

41 By reason of the matter pleaded at [17] above and Specific Objective 12.9 in the O&O Document, if water is required downstream of the Barmah Choke that could potentially exceed the maximum regulated flow through the Barmah-Millewa Forest, the MDBA is required to:

a. direct a controlled flow through MIL Infrastructure, the Edward/Wakool River system, or the Gulf Regulator;

b. seek to minimise the impact upon, and avoid undesirable flooding of, the Barmah-Millewa Forest; and

c. discuss the use of these systems, and to agree on how to account for additional losses, with the appropriate system managers, including MIL and Forest managers.

42 The Barmah Choke is a "physical constraint of the River Murray System", within the meaning of cl 4(2)(b)(iii) of the O&O Document (as pleaded at [18d] above).

43 At all material times, the MDBA knew or ought to have known that:

a. the channel capacity of the Barmah Choke constrains the rate at which water can be delivered from upstream storages (including the Hume Reservoir and Dartmouth Dam) to Lake Victoria;

Particulars

The MDBA's knowledge is expressed in or to be inferred from a document published by the MDBA in February 2008 entitled "The Barmah Choke", and a document published by the MDBA in August 2019 entitled "The Barmah Choke".

b. there was a risk of a decline in the health of forest ecosystems arising from undesirable flooding of the Barmah-Millewa Forest, including during summer and autumn;

Particulars

The particlars to subparagraph (a) above are repeated.

c. there were risks associated with long periods of high sustained flows through the Barmah Choke, at or above channel capacity, including:

i. notch erosion and bank instability, which in turn would cause a further reduction in channel capacity through the Barmah Choke and an increase in losses;

ii. rainfall rejections, where a combination of rainfall and reduced irrigation demand due to rain leads to increased inflows into the River Murray, causing the river to flow over its banks;

iii. hypoxic blackwater events, whereby organic matter from the floodplain is mobilised by floodwaters and enters the river, and the breakdown of that organic matter consumes dissolved oxygen in the water leading to discolouration and low oxygen levels; and

iv. adverse environmental outcomes caused by undesirable (ie Summer and Autumn) flooding of the Barmah-Millewa Forest;

Particulars

The particlars to subparagraph (a) above are repeated.

d. by reason of its location downstream of the Hume Reservoir and the Dartmouth Reservoir, it is important to avoid excessive demands on the channel capacity of the Barmah Choke including by reason of water trades;

Particulars

The MDBA's knowledge is to be inferred from a media release dated 27 June 2017, in which the MDBA stated that the Barmah Choke trade restriction was necessary to ensure effective operation of the river and delivery of water to entitlement holders through the Choke, and that: "We need to prevent water trades from placing excessive demands on the channel capacity at the Choke in the coming year, given primary storages that supply water to the system, Hume and Dartmouth, are upstream of the Choke".

e. transferring water downstream through the Barmah-Millewa Forest would result in elevated system losses compared to:

   i. in-channel flows; or

   ii. flows through MIL Infrastructure.

Particulars

The MDBA's knowledge at all material times is expressed in or to be inferred from:

1. the 2018-2019 AOP which stated (p.35) that "Targeting flow rates above channel capacity to deliver more water through the Choke results in higher losses compared with flows confined to the main channel";

2. the Losses Report, which stated (p.38) that "the specific delivery of water to floodplains is known to result in an elevation of system losses".

f. in conserving water and minimising losses (as required by cl 4(2)(b)(i) of the O&O Document), the MDBA should:

   i. minimise undesireable overbank flows in the Barmah-Millewa Forest;

   ii. minimise unnecessary overbank transfers from Hume to Lake Victoria;

   iii. use tributary inflows to fill Lake Victoria where possible;

iv. comply with the Lake Victoria Operating Strategy (as pleaded below); and

v. undertake bulk transfers to Lake Victoria prior to summer, when temperatures and losses would be higher;

vi. utilise MIL Infrastructure in preference to other methods for bypassing the Barmah Choke.

Particulars

In relation to subparagraphs (i)-(iv), the MDBA's knowledge at all material times is expressed in or to be inferred from the 2017/2018 Summary, p.30-31.

In relation to subparagraphs (i)-(vi), the MDBA's knowledge at all material times is expressed in or to be inferred from the 2018/2019 Summary, p.28-29.

(ii) Lake Victoria

44 Lake Victoria:

a. is a regulated off-river storage in south-western New South Wales, immediately upstream of the South Australian border, with a capacity of 677 GL;

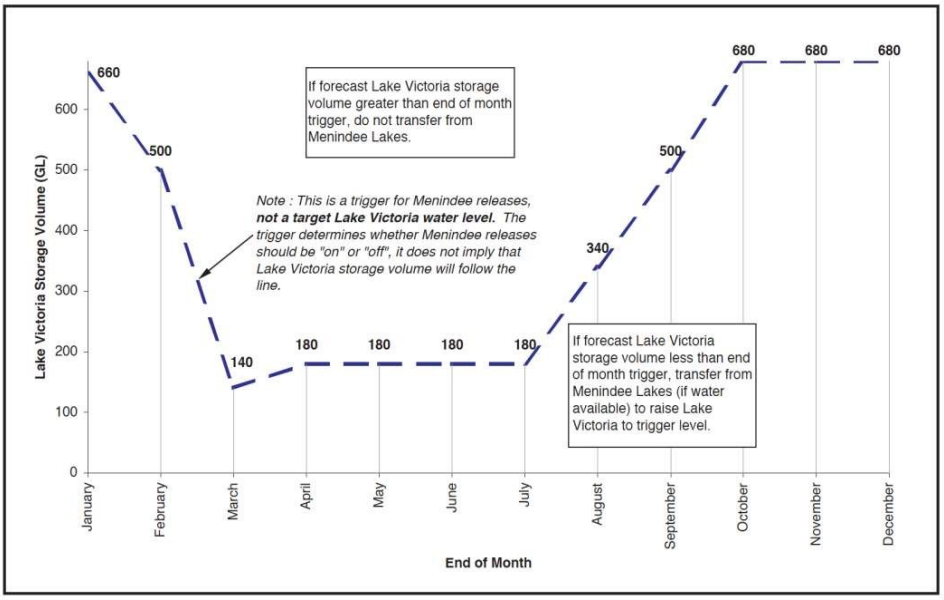
b. because of its location near the end of the system, strongly influences the conduct of the MDBA's River Operations Functions, including the management and level of flows along the entire River Murray.

45 By reason of the matter pleaded at [17] above and Specific Objective 9.1 of the O&O Document, the MDBA is required to operate Lake Victoria in accordance with the Lake Victoria Operating Strategy dated 27 May 2002 (**Lake Victoria Operating Strategy**).

46 Pursuant to the Lake Victoria Operating Strategy, the MDBA is required to operate Lake Victoria in harmony with the Menindee Lakes (**Harmony Operation**), such that, if water is available to the MDBA in the Menindee Lakes and:

a. the storage volume in Lake Victoria falls below the triggers depicted in Figure 1 below, the MDBA should exercise the Release Power to transfer water from the Menindee Lakes to Lake Victoria;

Figure 1: Lake Victoria Storage Triggers for Harmony Operation with Menindee Lakes[2]



b. should the storage volume in Lake Victoria be above the triggers depicted in Figure 1 above, transfers from the Menindee Lakes to Lake Victoria should not be made.

47 It is a “fundamental principle” of the Lake Victoria Operating Strategy (p.15) that the MDBA should:

a. use a suitable risk management strategy to refill Lake Victoria as late as possible in winter and spring; and

b. give priority to refilling Lake Victoria in winter/spring, unless surplus flows are predicted using the Water Resources Assessment Model minimum inflow case.

48 It is a “Basic Rule” of the Lake Victoria Operating Strategy (p.21) that the MDBA is required to commence refilling Lake Victoria using surplus flows from 1 June, unless surplus is more than sufficient to fully refill the Lake.

49 It is a “Conditional Rule” of the Lake Victoria Operating Strategy that, if:

a. forecast NSW Reserve (all storages) at the end of May is less than 1,000 GL; or

b. the Menindee Lakes are in NSW control;

[2] Source: Lake Victoria Operating Strategy, p.8.

the MDBA must not drawdown Lake Victoria surplus to regulated requirement in the period February-May.

50 Pursuant to the Lake Victoria Operating Strategy, the MDBA is required to consider, in the implementation of the Lake Victoria Operating Strategy, the water availability status of the whole of the River Murray system, and:

a. (p.15) in times when upstream resources are scarce, in order to minimise the impacts on water availability during dry periods, the MDBA should:

   i. manage water levels in Lake Victoria with greater conservatism;

   ii. store water in Lake Victoria during autumn above normal maximum levels; and

b. (p.23) if large algal bloom occurs in the River Murray / Lower Darling, the MDBA should store water in Lake Victoria above the maximum autumn water level targets or refilling rate determined by the General Operating Rules.

51 At all material times, the MDBA knew or ought to have known that:

a. without sufficient water in Lake Victoria, there is a very high risk that water demands during summer and autumn will not be able to be met;

Particulars

The MDBA's knowledge is expressed in or to be inferred from its statement in these terms in the Losses Report, p.11.

b. it is important in bulk system operations to ensure that Lake Victoria fills to a relatively high level during spring, because it becomes increasingly difficult to move sufficient water to the lower system during late spring and early summer as irrigation demands between Lake Victoria and the major headworks storages approach channel capacity.

Particulars

The MDBA's knowledge is expressed in or to be inferred from the statement in these terms in the Losses Report, p.10.

52 Pursuant to Specific Objective 9.2(d)(i) of the O&O Document, the minimum release rate from Lake Victoria (into the Rufus River) is 700 ML per day.

(iii) Menindee Lakes

53 The Menindee Lakes:

a. are naturally occurring ephemeral lakes located in South-West New South Wales; and

b. have a capacity at full supply levels of 1,731 GL, and at surcharge volume of 2,050 GL.

54 By cl 95 of the Agreement, water stored in Menindee Lakes may be used by New South Wales, whenever the water storage falls below 480,000 ML, until the volume next exceeds 640,000 ML.

55 By cl 99(1) of the Agreement, the Authority must not exercise the Release Power to direct that water be released from Menindee Lakes Storage after its volume falls below 480,000 ML and before it next exceeds 640,000 ML.

56 Pursuant to Specific Objective 10.3(d) of the O&O Document, the minimum planned regulated release from the Menindee Lakes, measured by the flow rate at Weir 32, is:

a. 350 ML per day from January to March;

b. 300 ML per day in April, November and December;

c. 300 ML per day from May to October; and

d. 500 ML per day whenever the Menindee Lakes storage is above the Full Supply Level.

57 At all material times, the MDBA knew or ought to have known that:

a. where reserves in Menindee Lakes were low, added strain may be placed on the Barmah Choke and water users between Barmah and the South Australian Border if Lake Victoria is drawn down surplus to South Australian requirements; and

Particulars

The MDBA's knowledge is expressed in or to be inferred from the statement to this effect in the Lake Victoria Operating Strategy, p.22.

b. it is difficult to meet large demands downstream of the Barmah Choke without access to water for release from the Menindee Lakes.

Particulars

The MDBA's knowledge is expressed in or to be inferred from the statement to this effect in the 2017/2018 Summary, p.19.

(4) Environmental Water

58 The term "Environmental Water Functions" in this Amended Statement of Claim describes the functions of the MDBA under ss 18E(1) and 172(1)(a)(i), (e) and (f) of the Act relating to the coordination and delivery of environmental water (including by exercise of the Release Power) to achieve environmental outcomes, including ecosystem function, biodiversity, water quality and water resource health (**Environmental Water Functions**).

59 The Environmental Water Functions include (inter alia):

a. to develop and implement measures for the equitable, efficient and sustainable use of Basin water resources, including for the delivery of environmental water (s 172(1)(e) and (f) of the Act);

b. to prepare a Basin-wide environmental watering strategy for the Basin, inter alia to help coordinate the management of environmental water (cl 8.13(c) of the Basin Plan);

c. to develop a strategy which identifies and describes the physical, operational and management constraints that are affecting environmental water delivery (cl 7.08 of the Basin Plan);

d. to implement or assess the implementation of measures (**Prerequisite Policy Measures**), to:

   i. credit environmental return flows for downstream environmental use; and

   ii. allow the call of held environmental water from storage during unregulated flow events,

   (cl 7.15(2) of the Basin Plan, definition of "unimplemented policy measure");

e. to identify and account for held environmental water in the Basin for each financial year (s 32 of the Act, Sch 12 matter 9 of the Basin Plan); and

f. a discretion or ability to adjust the timing, location and volume of proposed deliveries of held environmental water when exercising the Release Power for the purpose of Environmental Water Functions (**Environmental Water Release Discretion**).

60 The MDBA, in:

a. considering and implementing strategies for maximising environmental outcomes; and/or

b. pursuing environmental outcomes through the relaxation or removal of constraints; and/or

c. implementing the Prerequisite Policy Measures; and/or

d. exercising Environmental Water Release Discretion;

is required not to, alternatively has determined not to, create additional risks to the reliability of other water entitlements.

Particulars

The Basin Wide Environmental Watering Strategy dated 24 November 2014, p.48.

Constraints Management Strategy 2013 to 2024, p.ix.

Prerequisite Policy Measures position statement dated July 2019, p.3.

61 In the exercise of the Environmental Water Release Discretion, the MDBA is required to adhere to the O&O Document, and in particular must not:

a. deliver held environmental water in a manner or to an extent not contemplated in its Annual Operating Plan (cl 10(1)(a) of the O&O Document);

b. deliver held environmental water which cannot be delivered within the physical constraints of the River Murray system (cl 4(2)(b)(iii) of the O&O Document); and

c. deliver and account for the delivery of held environmental water in a manner which is transparent and promotes the accountability of the MDBA (cl 6(a)(iii)-(iv) of the O&O Document).

62 In the exercise of the Environmental Water Functions, from at least January 2017, the MDBA has applied an accounting approach according to which the volume of environmental water reported to have been delivered across the South Australian border is taken to be equivalent to the actual flow across the border, less South Australia's monthly entitlement and any inter-State trade adjustments (the **Environmental Water Accounting Approach**).

63 The Environmental Water Accounting Approach:

a. does not provide transparency around the achievement of environmental watering priorities; and

b. does not provide transparency about the extent to which the River Operations Functions are being conducted efficiently.

(5) Water Trading and Transmission Losses

64 The functions of the MDBA under ss 22(1) (item 12) and 26 of the Act include the development and implementation of rules for trading and/or transfer of tradeable water rights in relation to Basin water resources (**Water Market Rule Functions**).

65 The Water Market Rule Functions include the making, amending and implementing of protocols:

a. prohibiting, restricting or regulating the transfer of entitlements (Agreement, Sch D, cl 13(2)(c)); and

b. defining trading zones, and determining one or more conversion factors and exchange rates (including to account for losses incurred in delivery of traded water), to be applied in trading water from one area of the Basin to another (Agreement, Sch D, cl 6(1)(d)).

66 In its conduct of the Water Market Rule Functions, including in developing and implementing the said protocols, the MDBA must:

a. have regard to the fact that the inefficient and/or inappropriate use of Basin water resources would have (inter alia):

i. a significant detrimental impact on the availability of Basin water resources (s 10(1)(f)(i) of the Act); and

ii. a significant detrimental economic and social impact on the wellbeing of the communities in the Basin (s 10(1)(g) of the Act);

b. have regard to the amount of transmission loss that may be incurred through evaporation, seepage, or other means (Basin Plan, cl 12.16(1)(d), 12.18(1)(b) and 12.18(2)(a)); and

c. not hinder the ability of the MDBA to regulate and manage the flow of water within the upper River Murray and the River Murray in South Australia, in accordance with the Agreement (Agreement, Sch D, cl 6(1)(e) and cl 13(2)(c)).

67 At all material times, the MDBA knew or ought to have known that:

a. trade in water entitlements and allocations has resulted and is resulting in significant shifts in demand for delivery of water, including:

i. shifts in system demand from above to below the Barmah Choke;

ii. shifts in system demand from irrigation areas proximate to the Hume and Dartmouth Dams to areas more distant from the Hume and Dartmouth Dams;

Particulars

The MDBA's knowledge of the above matters is expressed in or to be inferred from: Department of Agriculture, Water and the Environment, ABARES, Australian Water Markets Report 2016-17, noting inter alia that "In recent years….the expansion of areas planted to almonds has led to increased demand for water in the Victorian Murray region"; (b) Department of Agriculture, Water and the Environment, ABARES, Murray Darling Basin Water Markets: trends and drivers 2002-3 to 2018-19, noting inter alia that "the increase in demand for water for almonds has occurred mainly in the Victorian Murray below the Barmah choke, with this expansion facilitated by interregional trade, mainly from regions above the Barmah choke". Further particulars may be provided after disclosure.

b. the shifts in system demand described in subparagraph (a) above are liable to:

i. placed increased strain on the Barmah Choke;

ii. result in increased transmission and distribution losses; and

Particulars

The MDBA's knowledge of the above matters is expressed in or to be inferred from (a) Constraints Management Strategy, 2013-2024, p. 48; (b) a powerpoint presentation given by Dr Joseph Davis, MDBA Senior Director Operations Improvement, 'Challenges for Meeting Water Demand in the River Murray System', 30 July 2019;. Further particulars may be provided after disclosure.

c. traditional river system planning and river operations methods, to the extent that they do not accommodate the matters described at subparagraphs (a)-(b) above, are:

i. liable to result in increased transmission and distribution losses being incurred through delivery of water under traded entitlements and allocations; and

ii. liable to affect the reliability of third-party entitlements.

Particulars

The The MDBA's knowledge of the above matters is expressed in or to be inferred from chapter 12 of the Basin Plan, which was developed by the MDBA pursuant to s 22 of the Act, and which contemplates that the impacts of the displacement of entitlements through trade may include increased transmission losses (cl 12.18(2)(a)) and adverse impacts upon the reliability of third-party entitlements (cl 12.18(2)(b)). Further particulars may be provided after disclosure.

D WATER ENTITLEMENTS

(1) The Doyle Water Entitlements

68 At all material times, the Doyle Water Entitlements were held by the Second Plaintiff pursuant to contracts in writing between Second Plaintiff and MIL (**Doyle Entitlement Contract**).

Particulars

Further and better particulars will be provided with the Plaintiffs' evidence.

69 MIL:

a. is a private supplier of irrigation and environmental water, and is the largest bulk water access licence holder in the Murray Valley;

b. has at all material times been the holder of regulated river (general security) bulk water access licence number 9426, issued under Chapter 3, Part 2 of the *Water Management Act 2000* (NSW) (**MIL Access Licence**); and

c. by use of the MIL Infrastructure, delivers irrigated water to Water Entitlement Holders.

70 At all material times there were express terms of the Doyle Entitlement Contract, inter alia that the Second Plaintiff was entitled:

a. to the volume of water recorded from time to time in water allocation account number E176 maintained by MIL for the Second Plaintiff (**Doyle Water Allocation Account**); and

b. to have the Doyle Water Allocation Account credited with the same volume of water allocation for each of the Doyle Water Entitlements as is specified in any determination (**Availability Announcement**) made from time to time by the "relevant Government Agency" with respect to the water available to MIL

in any Water Year under the MIL Access Lience for diversion from the Murray River.

(2) The Coobool Water Entitlements

71 At all material times the Coobool Water Entitlements entitled:

a. the Third Plaintiff to the volume of water recorded from time to time in water allocation account number 5764;

b. the Fourth Plaintiff and the Fifth Plaintiff to the volume of water recorded from time to time in water allocation account numbers 5764 and 14934,

(subparagraphs (a)-(b) are together described as the **Coobool Water Allocation Accounts**);

c. the Third Plaintiff and the Fourth and Fifth Plaintiffs to have the Coobool Water Allocation Accounts credited with the same volume of water allocation for each of the Coobool Water Entitlements as is specified in any Availability Announcement with respect to the water available from the River Murray.

72 For the purpose of the Doyle Entitlement Contract and Coobool Water Entitlements:

a. the "relevant Government Agency" is the Minister administering the *Water Management Act 2000* (NSW); and

b. the Availability Announcement is, or corresponds to, available water determinations made by the Minister pursuant to s 59(1) of the *Water Management Act 2000* (NSW) (**Available Water Determination**).

73 Available Water Determinations are required to be made in accordance with the provisions of the Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2016 (**NSW Murray-Lower Darling Water Sharing Plan**).

Particulars

Water Management Act 2000 (NSW), s 60(1)(c).

74 The volume of water available for allocation by the Minister pursuant to s 59(1) of the *Water Management Act 2000* (NSW) to licence holders under the NSW Murray-Lower Darling Water Sharing Plan depends upon a determination by the MDBA, pursuant to cl 102 of the Agreement, of:

a. the minimum amount of water estimated to be under the control of the MDBA;

b. the allowance to be made until the end of the following May for:

i. losses by evaporation and other means in the upper River Murray; and

ii. South Australia's monthly entitlement;

c. the allowance to be made for deferred water;

d. having regard to the matters in subparagraphs (a)-(c) above, the water available:

i. for distribution (inter alia) to New South Wales before the end of the following May; and

ii. for holding in reserve at the end of the following May.

75 Pursuant to the NSW Murray-Lower Darling Water Sharing Plan, water allocations to NSW Murray Valley general security water entitlement holders are made where there is sufficient water available after making provision for the matters set out in cl 48(2) of the NSW Murray-Lower Darling Water Sharing Plan, including to NSW Murray Valley high security water entitlement holders.

(3) Reliability of the Water Access Entitlements

76 NSW Murray Valley general security water entitlement holders received:

a. in water year 2004-05, an allocation of 49%

b. in water year 2005-06, an allocation of 63%;

c. in water year 2006-07, an allocation of 0%;

d. in water year 2007-08, an allocation of 0%;

e. in water year 2008-09, an allocation of 9.6%;

f. in water year 2009-2010, an allocation of 28.3%;

g. in water year 2010-2011, an allocation of 71.5%;

h. in water year 2011-2012, an allocation of 41.9%

i. in water year 2012-2013, an allocation of 64.6%;

j. in water year 2013-2014, an allocation of 95.7%;

k. in water year 2014-2015, an allocation of 60.9%;

l. in water year 2015-2016, an allocation of 100.8%;

m. in water year 2016-2017, an allocation of 83.6%;

n. in water year 2017-2018, an allocation of 51%;

o. in water year 2018-2019, an allocation of 0%; and

p. in water year 2019-2020, an allocation of 0%.

E THE MDBA'S DUTY OF CARE

77 At all material times, there were risks during regulated and dry years that:

a. the conduct of River Operations Functions; further or alternatively

b. the conduct of Environmental Functions; further or alternatively

c. the exercise of the Release Power;

would:

d. reduce or eliminate the amount of water that would otherwise have been available for allocation to the Plaintiffs and Group Members, and thereby cause economic loss or damage; and/or

e. cause a loss of water of such magnitude as to reduce or eliminate the supply of water available to the Plaintiffs and Group Members and thereby cause economic loss or damage to the Plaintiffs and Group Members; and/or

f. cause:

i. greater losses of water;

ii. greater reductions in active storage;

iii. greater reductions in available water determinations;

iv. greater reductions in the volume of entitlements available to states for allocation to entitlement holders;

v. greater reductions in allocations and/or diminished reliability of allocations for general security access entitlement holders;

than would occur if the MBDA properly discharged its role and functions.

78 The risks referred to at [77] above are referred to below as the **Risks of Harm**.

79 The Risks of Harm were not remote or insignificant.

80 The Plaintiffs and other Group Members had no ability, or alternatively no practical ability, to protect themselves from the Risks of Harm, in the event:

a. the MDBA failed properly to discharge the River Operations Functions;

b. the MDBA failed properly to exercise the Environmental Water Functions; and

c. the MDBA failed properly to exercise the Release Power.

81 MDBA had exclusive authority to:

a. exercise the River Operations Functions;

b. exercise the Environmental Water Functions; and

c. exercise the Release Power.

82 The MDBA had actual knowledge of the Risks of Harm.

Particulars

The MDBA's knowledge is expressed in or to be inferred inter alia from:

A> the MDBA's Guide to the Proposed Basin Plan (2010), Appendix C p.964-965;

B> a statement by David Dreverman, formerly Executive Director of the MDBA, in the MDBA's Weekly Report for the week ending Wednesday, 30 August 2017 p.4, that: "the River Management team … [strive] to not waste a drop of water on which communities throughout the Murray and beyond are so reliant";

C> the matters pleaded at paragraph 85 below.

Further particulars may be provided following disclosure.

83 The location and identity of the persons and businesses likely to be directly impacted by a failure by MDBA to properly discharge:

a. the River Operations Functions;

b. the Environmental Water Functions; and

c. the Release Power;

was reasonably ascertainable.

84 The Plaintiffs and other Group Members could not direct, control or influence the manner in which the MDBA exercised:

a. the River Operations Functions;

b. the Environmental Water Functions; and

c. the Release Power;

85 The Plaintiffs and other Group Members were vulnerable to harm, in that, to the knowledge of the MDBA:

a. irrigated agriculture is the major economic driver within the NSW Central Murray community;

Particulars

The MDBA's knowledge is expressed in or to be inferred inter alia from the statement in the MDBA's Guide to the Proposed Basin Plan (2010), Appendix C p.964.

b. the Plaintiffs and Group Members are highly dependent on irrigation for business viability;

Particulars

The MDBA's knowledge is expressed in or to be inferred inter alia from the statement in the MDBA's Guide to the Proposed Basin Plan (2010), Appendix C p.964 and p.990.

c. reduction in water availability has a major economic and social impact on NSW Central Murray farming communities;

Particulars

The MDBA's knowledge is expressed in or to be inferred inter alia from the statement in the MDBA's Guide to the Proposed Basin Plan (2010), Appendix C p.964-965.

d. the Plaintiffs and Group Members were and are heavily reliant upon the River Murray;

Particulars

The MDBA's knowledge is to be inferred inter alia from a statement by David Dreverman, formerly Executive Director of the MDBA, in the MDBA's Weekly Report for the week ending Wednesday, 30 August 2017 p.4, that: "the River Management team … [strive] to not waste a drop of water on which communities throughout the Murray and beyond are so reliant."

e. inefficient or inappropriate use of water resources would have a significant detrimental economic and social impact on the wellbeing of the communities in the Murray-Darling Basin, including the Plaintiffs and Group Members; and

Particulars

The MDBA's knowledge of this matter at all material times is to be inferred from s 10(2)(g) of the Act.

f. the Plaintiffs and Group Members are unable to protect themselves against the consequences (including detrimental impact to water availability and reliability) of waste of water in the conduct of:

i. the River Operations Functions;

ii. the Environmental Water Functions; and

iii. the exercise of the Release Power.

Particulars

The MDBA's knowledge of this matter at all material times is to be inferred from the matters and particulars given in the preceding subparagraphs.

86 In light of the facts and matters in [77]-[85] above, the MDBA owed a duty to the Plaintiffs and Group Members to take reasonable care in:

a. exercising the River Operations Functions; further or alternatively

b. exercising the Environmental Water Functions; further or alternatively

c. exercising the Release Power,

to avoid the risk that a failure to take care would cause loss to persons in the position of the Plaintiffs and other Group Members (**MDBA Duty of Care**).

F EVENTS OF 2016-17 WATER YEAR

(1) Rainfall, Inflows, Storage Levels and System Demand 2016-2017

87 By around June 2016:

a. Murray System monthly inflows were trending above the 10-year and long-term averages;

b. repeated rainfall events across south-east Australia throughout May and June saturated soils and led to increasing volumes of runoff into the River Murray system; and

c. BOM outlooks were biased towards above-average rainfall, such that further flows were predicted in coming months.

88 From the week ending 13 July 2016 until 31 December 2016, unregulated flows were available in the Murray and Edward River systems downstream from Hume Reservoir.

89 In the week ending 7 September 2016, the storage volume at Hume Reservoir increased to 97% capacity.

90 By around 21 October 2016:

a. the storage level at the Menindee Lakes exceeded 640,000 ML; and

b. the Menindee Lakes became available to the MDBA to meet River Murray system demands.

91 From October 2016:

a. unregulated flow was available in South Australia, and South Australia was receiving flows in excess of its entitlements, comprising:

i. in October 2016, totalling 1,189 GL (above entitlement flow of 170.5 GL);

ii. in November 2016, totalling 1,959 GL (above entitlement flow of 180 GL); and

iii. in December 2016, totalling 1,445 GL (above entitlement flow of 217 GL);

b. State Emergency Services were distributing sandbags to South Australian residents, businesses and shack owners because of the risk of flooding; and

c. minor inundation was occurring on some properties on the River Murray floodplain in South Australia.

92 Between November 2016 – June 2017, the MDBA knew or ought to have known that prevailing wet conditions would likely trend hotter and drier.

Particulars

The MDBA's knowledge is expressed in or to be inferred from the references in MDBA weekly reports to BOM forecasts, including but not limited to the following:

i. in the month of November 2016, BOM's climate outlook for December indicated that drier than average conditions were more likely across the Basin (Weekly Report dated week ending 23 November 2016, p.2);

ii. the climactic outlook for January to March was warm and dry, with BOM forecasting below average rainfall in parts of headwater catchments of the Basin, coupled with warmer days across eastern Australia (Weekly Report dated weeks ending 28 December 2016 and 4 January 2017, p.6);

iii. as at 28 December 2016, the latest BOM outlook (based upon a negative Southern Annular Mode) for January to March 2017 indicated

drier than average rainfall with warmer than average temperatures across the Basin (Weekly Report dated weeks ending 28 December 2016 and 4 January 2017, p.6);

iv. in the month of February 2017, BOM reported that the latest outlook for February to April 2017 suggested that rainfall was likely to be below average and temperatures likely warmer than average (Weekly Report dated week ending 22 February 2017, p.2); and

v. from 22 March 2017, current BOM outlooks suggested warm and dry conditions were more likely during the autumn period (Weekly Report dated week ending 22 March 2017, p.3).

Further particulars may be provided following expert evidence and disclosure.

93 In the month of December 2016:

a. average rainfall was recorded across the Basin, and South Australia recorded very much above average rainfall;

b. total River Murray system inflow was approximately 630 GL; and

c. flow to South Australia was approximately 1,919 GL, including 1,445GL of unregulated flow.

94 In the month of January 2017, system demands and losses were lower than planned for, meaning that more water arrived at Lake Victoria than expected.

(2) River Operations 2016-2017

95 In July 2016, the MDBA published the Annual Operating Plan for the 2016-2017 water year (**2016-2017 AOP**), which:

a. included amongst its assumed inflow scenarios a **wet** scenario, which assumed River Murray system inflows of about 14,500 GL;

b. assumed losses of 1,050 GL for the wet scenario;

c. stated (p.47) that, until commercial issues were resolved with MIL:

i. the Mulwala Canal would not be used by the MDBA; and

ii. this may result in periods through summer and autumn of regulated flows in excess of channel capacity but at rates that can be passed through various watercourses in the Barmah-Millewa Forest, without extensive overbank inundation;

d. stated that the MDBA would aim to fulfil the intent of the Lake Victoria Operating Strategy, and that Lake Victoria was expected to effectively fill (either by tributary inflows or by bulk transfers from Hume Reservoir) at some stage during the spring-early summer in the wetter scenarios;

e. in relation to the Menindee Lakes, stated that:

   i. if the volume exceeds 640 GL at some time during 2016-2017, the MDBA would use water in the Menindee Lakes in preference to the storages upstream, such as Hume and Dartmouth Reservoirs, due to the higher evaporation and loss rates at Menindee; and

   ii. if the Menindee Lakes were accessible to the MDBA as a shared resource, they would be operated in accordance with the Harmony Operation.

96 By July 2016, the MDBA was in commercial dispute with MIL concerning the terms according to which the MDBA could access to the MIL Infrastructure.

97 In the week ending 7 September 2016, the MDBA commenced flood operations at Hume Reservoir with releases increased to 45,000 ML per day in response to high inflows.

98 From around 26 October 2016 until around 19 April 2017, the MDBA exercised the Release Power to direct releases from the Menindee Lakes, including at:

a. an average rate of release of 2,442 ML per day;

b. at around 1,750 ML per day from Weir 32 in the week ending 7 December 2016;

c. around 1,850 ML per day from Weir 32 from around 8 December 2016 until the week ending 11 January 2017;

d. around 6,500 ML per day from Weir 32 in the week ending 18 January 2017;

e. around 5,000 ML per day from Weir 32 from around 21 January 2017 to around 1 February 2017;

f. around 4,000 ML per day from Weir 32 from around 1 February 2017 to around 22 February 2017;

g. above 2,000 ML per day from Weir 32 from 23 February 2017 to 15 March 2017; and

h. above 1,000 ML per day from Weir 32 from 16 March 2017 to 25 April 2017.

99 The MDBA purports that:

a. from around 26 October 2016 until around 29 December 2016, the releases directed from the Menindee Lakes primarily comprised environmental water; and

b. from around 4 January 2017 through to 19 April 2017, the releases from the Menindee Lakes primarily comprised operational releases.

100 In the month of January 2017:

a. the MDBA exercised the Release Power to direct releases from Menindee Lakes totalling 135 GL; and

b. whereas the South Australian Department of Environment, Water and Natural Resources had forecast environmental water flow of 50 GL, the MDBA purports to have caused or delivered actual flow of environmental water to South Australia at around 164.1 GL.

101 From around 1 January 2017:

a. the flow rate at Yarrawonga weir was reduced to 8,000ML/day; and

b. demand downstream of Yarrawonga weir was met by supplementing flows from Hume Reservoir with flows from Menindee Lakes, together with flows from the Goulburn and Campaspe Rivers.

102 In the month of February 2017:

a. the MDBA exercised the Release Power to direct releases from Menindee Lakes totalling 118 GL; and

b. whereas the South Australian Department of Environment, Water and Natural Resources had forecast (successively) environmental water flow of 40 GL, 80 GL, and 75 GL, the MDBA caused actual flow of environmental water to South Australia at around 98 GL.

103 In this Amended Statement of Claim, the term **2016/2017 Menindee Releases** means releases from the Menindee Lakes at the direction of the MDBA in the 2016/2017 water year, which exceeded:

a. minimum releases prescribed by cl 10.3(d) of Appendix A to the O&O Document;

b. releases appropriate to the Harmony Operation of Lake Victoria (as pleaded at [46] above).

Particulars

Further and better particulars of the volume, dates and duration of the 2016/2017 Menindee Releases will be provided following disclosure and expert evidence.

104 The Commonwealth Environmental Water Holder directed releases of environmental water from the Menindee Lakes totalling 89 GL in the 2016 / 2017 water year.

105 In accounting for delivery of water across the South Australian border in the 2016-2017 water year, including in connection with the 2016/2017 Menindee Releases, the MDBA applied the Environmental Water Accounting Approach.

106 Actual system inflows for the 2016-2017 water year were:

a. approximately 16,580 GL; and

b. broadly in line with the wet scenario outlined in the 2016-2017 AOP.

G EVENTS OF 2017-18 WATER YEAR

(1) Rainfall, Tributary Inflows, Storage Levels and System Demand 2017-2018

107 By around 1 June 2017, total active storage in the upper River Murray storages was 5,477 GL, comprising:

a. 2,940 GL (76% capacity) at Dartmouth Reservoir;

b. 1,942 GL (65% capacity) at Hume Reservoir;

c. 296 GL (44% capacity) at Lake Victoria; and

d. 299 GL (17% capacity) at the Menindee Lakes.

108 By around 1 June 2017:

a. some climate models were forecasting potentially dry conditions during the second half of 2017 (2017-2018 AOP p.19);

b. in June, the BOM indicated ~50% chance of El Nino conditions developing during winter;

c. although more recent BOM and other international climate model outputs had reduced the likelihood of El Nino conditions developing during winter, other drivers of climactic conditions continued to suggest that drier than average conditions were likely to develop across south-east Australia during the 2017 winter period;

d. as of mid-June 2017, very little rainfall had been recorded across the Murray and lower Darling regions, and June system inflows seemed likely to be well below the long-term average.

Particulars

The MDBA's knowledge of the above matters is expressed in or to be inferred from statements in the 2017-2018 AOP, p.19.

109 The MDBA's Annual Operating Plan for the 2017-2018 water year (**2017-2018 AOP**), published in August 2017, included amongst its assumed inflow scenarios a moderate scenario, which assumed River Murray system inflows of about 4,400 GL.

110 Actual system inflows for the 2017-2018 water year were broadly in line with the moderate scenario (at approximately 4,100 GL).

111 In the week ending 21 June 2017, to the knowledge of the MDBA, most models, including BOM's three-month outlook from June to August, indicated an increased chance of warmer and drier than average conditions for Australia over winter.

Particulars

The MDBA's knowledge is expressed in or to be inferred from the MDBA's Weekly Report for the week ending Wednesday, 21 June 2017 p.1

112 In the month of June 2017:

a. the Basin experienced a very dry month, with large areas of northern Victoria and southern New South Wales experiencing rainfall that was the lowest on record, and BOM reporting that June was the equal fourth driest in 118 years of records; and

b. Murray System inflows totalled around 161 GL, well below the long-term average of 724 GL (since 1891, only around 6% of years have experienced lower inflows in June).

113 In the month of July 2017:

a. relatively dry conditions persisted over upper Murray catchments, following a very dry June, with rainfall elsewhere in the Basin mostly below average (with patches of "lowest on record" rain across NSW, which experienced the driest July since the Millennium Drought in 2002);

b. BOM reported area-averaged rainfall 54% below the long-term average, making July 2017 the 17th driest July in 118 years of records;

c. the MDBA observed that, during the three-month period from May to July, conditions had been very dry;

d. daily maximum temperatures were well above the July mean over most of the Basin;

e. Murray System inflows totalled just 270 GL, significantly below the long-term average of 1,230 GL;

f. total flow to South Australia (268.2 GL) exceeded South Australia's July entitlement of 108.5 GL, and included 173 GL of environmental water.

114 In the month of August 2017:

a. releases from the Yarrawonga Weir reached a peak of 10,500 ML per day due to higher inflows from the Kiewa and Ovens Rivers, with releases expected to exceed 15,000 ML per day in response to further tributary inflows following rainfall late in the week;

b. downstream of the Hume Reservoir, the Kiewa River at Bandiana exceeded the Minor Flood level and the Ovens River at Wangaratta peaked at around 29,000 ML per day;

c. flows from Kiewa and Ovens Rivers passed through Yarrawonga Weir, where releases peaked at 33,500 ML per day and were currently targeting 29,000 ML per day;

d. the storage volume at Lake Victoria increased by 42 GL to 523 GL (77% capacity);

e. rainfall improved over southern parts of the Basin, following the relatively dry conditions of June and July, but area-averaged rain was 30% below the long-term average;

f. Murray System inflows totalled 1,025 GL, below the long-term average of 1,575 GL;

g. total flow to South Australia (190 GL) exceeded South Australia's August entitlement of 124 GL, and included 84 GL of environmental water.

115 By around 30 August 2017, total active storage in the MDBA's reservoirs was 5,477 GL, comprising:

a. 2,940 GL (76% capacity) at Dartmouth Reservoir;

b. 1,942 GL (65%) at Hume Reservoir;

c. 296 GL (44% capacity) at Lake Victoria; and

d. 299 GL (17% capacity) at the Menindee Lakes.

116 As at 16 August 2017, BOM updated their climate outlook for spring, with no strong signal towards either wetter or drier conditions in the Basin, but with temperatures likely to be warmer than average.

117 In the month of September 2017:

a. Lake Victoria was effectively filled;

b. Australia experienced the equal 5th warmest September on record (2.03 degrees above average);

c. Australia experienced the driest September on record (in 118 years of records), with below average or very much below average rainfall across most of the Basin;

d. inflows into the River Murray system totalled 640 GL, representing an annual exceedance probability of 82% (only 18% of years would be expected to have lower inflows in September); and

e. total flow to South Australia (191 GL) exceeded South Australia's September entitlement of 135 GL, and included 64 GL of environmental water.

118 By around October 2017, the MDBA had received or was anticipating receiving a substantial volume of authorised water orders for delivery to South Australia.

Particulars

The flow report issued by the South Australian Department of Environment, Water and Natural Resources on 13 October 2017, p.3, states that, during October 2017, approximately 106 GL of environmental water was expected to be delivered to South Australia.

Further particulars to be provided following disclosure.

119 By around 4 October 2017, the MDBA was anticipating high system demands over the coming summer and autumn.

Particulars

MDBA's River Murray Weekly Report for the week ending 4 October 2017, p.3.

(2) River Operations 2017-2018

120 In August 2017, the MDBA published the Annual Operating Plan for the 2017-2018 water year (**2017-2018 AOP**), which:

a. included amongst its assumed inflow scenarios a **moderate** scenario, which assumed River Murray system inflows of about 4,400 GL;

b. assumed a conveyance loss of 850 GL for the moderate scenario, which was considered reflective of contemporary river losses observed in 2014-2016;

c. in the "moderate" scenario, forecast releases from Yarrawonga Weir generally at or near the channel capacity of the Barmah Choke, save for:

    i. a brief period in August 2017; and

    ii. a period of higher flows escalating from October 2017 and ceasing by January 2018;

d. identified a risk that insufficient channel capacity at the Barmah Choke would be available at certain times of the year to supply downstream demands (**2017-2018 Shortfall Risk**), and stated that:

    i. Barmah Choke capacity was likely to be an issue during 2017-2018 if demands are high and tributary inflows downstream of the Barmah Choke remained low; and

    ii. the risk of a shortfall was increased when there was little water available in the downstream storages (Lake Victoria and the Menindee Lakes);

e. outlined operational strategies for responding to the 2017-2018 Shortfall Risk, which involved (in the "moderate" scenario), above channel flows up to 15,000 ML per day from late spring into early summer, in order to transfer sufficient water downstream for lower system requirements, including for Lake Victoria over summer (together, the **2018-2019 Shortfall Risk AOP Strategies**);

f. assumed the MDBA would not have access to MIL Infrastructure to move water around the Barmah Choke, and stated that the 2018-2019 Shortfall Risk AOP Strategies had been designed to "overcome" the reduction in flow capacity resulting from the lack of access to MIL Infrastructure;

g. stated that the MDBA would aim to fulfil the intent of the Lake Victoria Operating Strategy, though in some circumstances, such as when the MDBA cannot call on water from the Menindee Lakes, water security assumes a higher priority and the levels in Lake Victoria may exceed the storage values recommended in the Lake Victoria Operating Strategy;

h. stated that in the “extreme dry” through to “moderate” scenarios, “translucent” releases of environmental water from Hume Reservoir were likely to only contribute to flows within channel through the Barmah Choke (ie not exceeding 10,000 ML per day downstream of Yarrawonga Weir); and

i. assumed delivery of 800 GL of environmental water over the South Australian border in the moderate scenario.

121 In the 2017-2018 water year, actual system inflows were approximately 4,100 GL, broadly in line with the moderate scenario outlined the 2017-2018 AOP (as pleaded at [120a] above).

122 As at all material times in the 2017/2018 water year:

a. irrigation demand in the Sunraysia irrigation region on the River Murray upstream of the South Australian border was increased relative to historical levels because of changing agricultural and horticultural activity including increased cultivation of almonds;

b. the balance of trade in water access entitlements and allocations required the delivery of significant volumes of water (which had previously been deliverable to irrigators in the NSW and Victorian Murray, Goulburn and Murrumbidgee Valleys) to South Australia; and

c. return flows (that is, the volumes of water returning to the river after diversion of water for consumptive use) were lower relative to historical levels as a consequence of the implementation of efficiency measures.

123 The MDBA knew or ought to have known the matters pleaded at [121] above.

Particulars

The MDBA’s knowledge (actual or constructive) of:

1. the matters pleaded at [122a]-[122b] above, is to be inferred from the statement in the Australian Water Markets Report 2016-2017 that “structural changes in the irrigation sector have had a noticeable impact on water markets in the southern MDB. In particular, the expansion of area planted to almonds has led to increased demand for water in the Victorian Murray region”; and
2. the matter pleaded at [122c] above, is to be inferred from the finding of the Murray Darling Basin Royal Commission Report dated 29 January 2019 (p.399) that: "Concerns regarding the issue of return flow are not new. Professor Grafton told the Commission that the earliest

published research he had found was from 1964, but that the most considerable body of published work on the issue emerged in the 1990s."

Further and better particulars may be provided following disclosure.

124 By around the week ending 12 July 2017, the MDBA caused the Forest Regulators into the Barmah-Millewa Forest to be opened:

a. in order to provide connectivity between the river and the floodplain in winter and into spring;

b. despite this historically only occurring when flows downstream of Yarrawonga Weir would result in the Barmah Choke channel capacity being exceeded; and

c. stating that the "small additional water loss associated with undertaking this action is being debited from water accounts held by the environmental water holders".

125 The Forest Regulators into the Barmah-Millewa Forest remained open until around 20 December 2017.

126 In the week ending 16 August 2017, releases from the Yarrawonga Weir increased to 10,500 ML per day due to higher inflows from the Kiewa and Ovens Rivers.

127 In the week ending 23 August 2017, releases from the Yarrawonga Weir increased to 33,500 ML per day due to higher inflows from the Kiewa and Ovens Rivers.

128 In the week ending 30 August 2017, releases from Yarrawonga Weir reduced from 29,000 ML per day to 12,000 ML per day.

129 From around 30 August 2017 or early September 2017, the MDBA commenced transfers from Hume Reservoir to Lake Victoria at rates within channel capacity to ensure that Lake Victoria had sufficient volume to supplement downstream demands during the peak of the irrigation season.

Particulars

2017-2018 Summary, p.20.

130 In the month of September, the MDBA caused a total of 40 GL to be transferred from Hume Reservoir to Lake Victoria.

131 The transfers from Hume Reservoir to Lake Victoria:

a. continued until at least January 2018;

b. between 2 August 2017 and the end of May 2018, included:

i. releases from Hume Reservoir of 3,009 GL; and

ii. diverted flow into Lake Victoria totalling 1,016 GL.

c. involved significant losses.

Particulars

Further and better particulars of the total volume transferred from Hume Reservoir to Lake Victoria, and the total volume of losses, will be provided following disclosure of MDBA's hydrologic models and expert evidence.

132 In the week ending 13 September 2017, the storage volume at Lake Victoria increased by 41 GL to 605 GL (89% capacity) through capture of operational water.

133 In the week ending 27 September 2017, the storage volume at Lake Victoria increased by 25 GL to 670 GL (99% capacity) through capture of operational water.

134 By around early October 2017, the MDBA implemented an operational strategy (the **October 2017 Strategy**), which involved:

a. drawing down on Lake Victoria (which was by that time already full);

b. transferring water from the Hume Reservoir to Lake Victoria at rates above the channel capacity of the Barmah Choke, with the aim of having Lake Victoria "as full as possible by the end of the year to supply anticipated high system demands over the coming summer and autumn".

Particulars

The aims of the strategy are described in the MDBA's River Murray Weekly Report for the week ending 4 October 2017, p.3-4. [2.91].

The "strategy" is described as such in the MDBA's River Murray Weekly Report for the week ending 11 October 2017. [2.92]

135 The MDBA did not obtain approval from the BOC for the October 2017 Strategy.

136 In the week ending 4 October 2017:

a. storage in Lake Victoria decreased by 8GL, as the MDBA began drawing Lake Victoria down; and

b. the MDBA directed above-minimum releases from Menindee Lakes to supply Lake Victoria.

137 In the week ending 11 October 2017:

a. storage in Lake Victoria decreased by 26GL, as the MDBA continued to draw Lake Victoria down; and

b. the MDBA directed above-minimum releases from Menindee Lakes to supply Lake Victoria.

138 In the week ending 18 October 2017:

a. storage in Lake Victoria decreased by 12GL, as the MDBA continued to draw Lake Victoria down; and

b. the MDBA directed above-minimum releases from Menindee Lakes to supply Lake Victoria.

139 In the week ending 25 October 2017, storage levels in Lake Victoria commenced rising again due to higher inflows from the Murray and Murrumbidgee Rivers and releases from the Menindee Lakes.

140 In the month of October 2017, in pursuance of the October 2017 Strategy:

a. releases were made from Lake Victoria totalling 78 GL; and

b. the net diminution of the storage level of Lake Victoria totalled 40 GL.

141 Between around 4 October 2017 and 27 December 2017, in pursuance of the October 2017 Strategy, the MDBA caused or permitted releases at Yarrawonga Weir in excess of the channel capacity at the Barmah Choke (**2017/2018 Overbank Transfers**), including flows above the channel capacity at the Barmah Choke for 13 consecutive weeks.

Particulars

Further and better particulars of the volume of the 2017/2018 Overbank Transfers will be given following disclosure and expert evidence.

142 As a result of the 2017/2018 Overbank Transfers, in the 2017/2018 water year:

a. flooding occurred in the Barmah-Millewa Forest which was “undesireable” within the meaning of cl 4.2(d) of the O&O Document; and

b. elevated losses were sustained.

Particulars

Further and better particulars will be provided following disclosure and expert evidence.

143 In the week ending 20 December 2017, the storage level in Menindee Lakes dropped below 480GL, such that the MDBA was no longer able to direct releases from the Menindee Lakes.

144 In the conduct of the River Operation Functions in the 2017/2018 water year, the MDBA:

a. extended the period for refilling Lake Victoria into December 2017; and

b. in the period 1 February 2018 to 31 May 2018, made releases from Lake Victoria above the minimum release pleaded at [52] above.

145 During the 2017-2018 water year, in the exercise of the Environmental Water Release Discretion, the MDBA released 434 GL of held environmental water from the Hume Reservoir and the Menindee Lakes.

Particulars

2017/2018 Summary, p.58 and p.63.

146 In accounting for delivery of water across the South Australian border in the 2017-2018 water year, the MDBA applied the Environmental Water Accounting Approach.

147 The MDBA purports:

a. in the 2017-2018 Summary (p.26), that it delivered 1,203 GL of environmental water over the South Australian border in the 2017-2018 water year;

b. in the Transition Period Water Take Report 2017–18 (dated July 2019), that it delivered 934 GL of environmental water over the South Australian border in the 2017-2018 water year; and

Particulars

The Plaintiffs rely upon an inference drawn from the fact that Transition Period Water Take Report 2017–18 (dated July 2019) (p.158) reports that 934 GL of held environmental water was used in South Australia in 2017-2018, and that the 934 GL which was used represented 100% of held environmental water lawfully accessible for use in South Australia in 2017-2018. It is to be inferred from the fact that only 934 GL was accessible for use in South Australia in 2017-2018 that only 934 GL of environmental water was delivered across the border in 2017-2018.

c. in the Southern Connected Basin Environmental Watering Group (**SCBEWG**) 2017-2018 Annual Report, that it delivered 853 GL of environmental water over the South Australian border in the 2017-2018 water year.

Particulars

The MDBA is the secretariat and chair of the SCBEWG. The total of 853 GL is the sum of the volumes of water purported to have been "returned" to the River Murray from each of the main sites within the Southern Basin upstream of the South Australian border, as depicted in the diagram at p.17 of the SCBEWG's 2017-2018 Annual Report, namely:

a. 69 GL returned from Murrumbidgee River;

b. 385 GL returned from Barmah-Millewa Forest;

c. 332 GL returned from the Goulbourn River;

d. 53 GL returned from the Hattah Lakes; and

e. 14 GL returned from the Lower Darling River.

148 In the premises pleaded at [147] above:

a. the MDBA does not know what quantity of environmental water was delivered over the South Australian border in the 2017/2018 year; and

Particulars

The Plaintiffs rely upon an inference drawn from the matters pleaded at [147] above.

b. the delivery of environmental water over the South Australian border in the 2017/2018 year exceeded the assumed/planned delivery for the moderate scenario in the 2017/2018 AOP (as pleaded at [120i] above).

H EVENTS OF 2018-19 WATER YEAR

(1) Rainfall, Tributary Inflows, Storage Levels and System Demand 2018-2019

149 As at 1 June 2018, total active storage in the MDBA's reservoirs was 4,618 GL (48% capacity), comprising active storage of:

a. 3,341 GL (87% capacity) at Dartmouth Reservoir;

b. 1,078 GL (36% capacity) at Hume Reservoir;

c. 199 GL (29% capacity) at Lake Victoria; and

d. 0 GL at the Menindee Lakes.

150 By around 1 June 2018, to the knowledge of the MDBA:

a. there was a significantly higher chance of drier and warmer than average conditions in the Basin for the next three months (2018-2019 AOP p.22);

b. a significant volume of the MDBA's active storage was held in storages upstream of the Barmah Choke (2018-2019 AOP p.11);

c. the MDBA had no access to the Menindee Lakes, and assumed under moderate and drier scenarios that it would have no access to Menindee Lakes for the balance of the water year (2018-2019 AOP p.16 and 50);

d. the target storage volume for Lake Victoria was 350 GL by the end of June 2018 (2018-2019 Summary, p.19); and

e. under a dry or very dry scenario, there was a risk that Lake Victoria may not fill (2018-2019 AOP p.24).

Particulars

The MDBA's knowledge of these matters is expressed in or to be inferred from the passages of the 2018-2019 AOP identified in each subparagraph.

151 In the month of June 2018:

a. day-time temperatures recorded in Australia were warmer than average, and nights were cooler than average;

b. area averaged rainfall across the Basin was 30% below the average;

c. River Murray system inflows totalled around 203 GL, compared to long term median inflow of 450 GL, representing the 10th percentile driest Junes on record;

d. the storage volume at the Hume Reservoir rose to approximately 1,324 GL (44% capacity); and

e. the storage level at Lake Victoria rose to approximately 366 GL (54%), or 24.21 m AHD.

152 In the week ending 18 July 2018:

a. the MDBA noted that, if conditions remain dry, transfers from Hume Reservoir to Lake Victoria may need to begin in readiness for higher system demands later in the season; and

b. storage volume at Lake Victoria increased by 2 GL to 366 GL (54% capacity).

153 In the month of July 2018:

a. BOM reported that day-time temperatures for July were the second-warmest on record;

b. July was the driest for Australia as a whole since 2002, the 5th driest July for NSW on record, continuing a run of seven consecutive months of below average rainfall for NSW, and was the State's driest January to July period since 1965;

c. area-averaged rainfall for the Basin was 68% below the average and ranked 12th driest out of 119 years of historical record; and

d. River Murray system inflows totalled around 254 GL, compared to long term median inflow of 868 GL, representing the lowest 5 percent on record for July, below the long term and 10 year averages.

154 In the month of August 2018:

a. area-average rainfall for the Basin was 21.6mm, 43% below the long-term average and making August 2018 the 28th driest August out of 119 years of record;

b. River Murray system inflows totalled around 564 GL, compared to long term median inflow of 1,272 GL, such that only about 16% of previously monthly totals for August had been lower than the inflows observed in August 2018;

c. as at 29 August 2018:

i. the storage volume at Dartmouth Reservoir was 3,443 GL (89% capacity);

ii. the storage volume at Lake Victoria was 333 GL (49% capacity); and

d. total flow to South Australia (174.7 GL) exceeded South Australia's August entitlement of 124 GL, and included 51 GL of environmental water.

155 In the month of September 2018:

a. Australia experienced its driest September on record, with area-averaged rainfall for the Basin at 10.2 mm, 70% below the long-term average and the 6th driest September out of 119 years of record;

b. River Murray system inflows totalled around 480 GL, compared to long term median inflow of 1,334 GL, such that only about 9% of previously monthly totals for September had been lower than the inflows observed in September 2018;

c. the storage volume at Dartmouth Reservoir was reduced by 177 GL (to 3,285 GL (85%)); and

d. the storage volume at Lake Victoria increased by 27 GL (to 360 GL (53%)).

156 In the month of October 2018:

a. BOM reported that Australia experienced an exceptionally warm month;

b. area-averaged rainfall for the Basin was 36.6 mm, 9% below the long-term average for October;

c. River Murray system inflows totalled around 318 GL, compared to long term median inflow of 973 GL, such that only about 9% of previous monthly totals for October had been lower than the inflows observed in October 2018;

d. in the execution of the September 2018 Strategy (as pleaded at [176c] below):

i. the storage volume at Dartmouth Reservoir was reduced by 235 GL (to 3,050 GL (79%));

ii. the storage volume at Lake Victoria increased by 116 GL (to 476 GL (70%)); and

iii. elevated losses were sustained;

e. total flow to South Australia (227 GL) exceeded South Australia's October entitlement of 170 GL, and included 68 GL of environmental water.

157 As at 9 November 2018, the latest Bureau of Meteorology weather outlook for November 2018 to January 2019 indicated below average rainfall with warmer than average temperatures across most of Australia, including the Basin.

158 In the month of November 2018:

a. MDBA reported that rainfall during spring 2018 had been below average across much of the southern Basin, and BOM reported that area-averaged springtime rainfall across the Basin was 20% below the long-term average;

b. area averaged rainfall across the Basin was 42.4mm in November, 5% above the long-term average – the first month since December 2017 where area averaged rainfall across the Basin was above the long-term average;

c. River Murray system inflows totalled around 230 GL, well below the long term median of 594 GL, such that only about 12% of previously monthly totals for November had been lower than the inflows observed in November 2018;

d. in the execution of the September 2018 Strategy (as pleaded at [176c] below), between 7 November 2018 and 5 December 2018:

   i. the storage volume at Dartmouth Reservoir was reduced by 192 GL (to 2,858 GL (74%));

   ii. the storage volume at Lake Victoria increased by 78 GL (to 554 GL (82%));

   iii. elevated losses were sustained;

e. MDBA active storage further reduced to an end-November storage of 4,835 GL (56.3% capacity), approximately 1,839 GL below the long term end-November average; and

f. total flow to South Australia (203.1 GL) exceeded South Australia's November entitlement of 180 GL, and included 34 GL of environmental water.

159 In the month of December 2018:

a. rainfall was generally average or below average in the northern Basin, but much of the southern Basin experienced above average rainfall;

b. temperatures were well above average across the Basin;

c. River Murray system inflows for December totalled around 234 GL, below the long-term average near 450 GL;

d. intense rainfall resulted in short but significant increases in stream flows in most upper Murray tributaries, particularly in the Kiewa and Ovens Rivers;

e. a rainfall rejection event occurred at Lake Mulwala and/or the Yarrawonga Weir Pool, owing to local rainfall causing high flows particularly in the Ovens River;

f. in the execution of the September 2018 Strategy (as pleaded at [176c] below),

   i. the storage volume at Dartmouth Reservoir was reduced by 192 GL (to 2,724 GL (71%));

   ii. the storage volume at Lake Victoria decreased by 33 GL (to 521 GL (77%)); and

   iii. elevated losses were sustained;

g. the MDBA determined to deliver 60 GL of environmental water as a pulse in December 2018 and January 2019, by way of direct trade from upstream accounts for delivery at the South Australian border; and

h. total flow to South Australia (264.4 GL) exceeded South Australia's December entitlement of 217 GL, and included 60 GL of environmental water.

160 In the month of January 2019:

a. BOM reported that area-averaged rainfall for the Basin was 16.2mm, 71% below the long-term average and the 11th driest January in 120 years of historical records;

b. temperatures were the warmest on record in terms of mean, maximum and minimum temperatures, with sustained and unprecedented heatwaves throughout the Basin;

c. River Murray system inflows for January totalled around 100 GL, well below the long-term median of 193 GL (around 8% of January monthly totals have been lower than 2019);

d. the storage volume at Lake Victoria reduced by 29 GL to 467 GL (69% capacity); and

e. total flow to South Australia (267.7 GL) exceeded South Australia's January entitlement of 217 GL, and included 65 GL of environmental water.

161 In the month of February 2019:

a. BOM reported that area-averaged rainfall for the Basin was 13.1mm, 68% below the long-term average for the Basin;

b. temperatures were the fourth warmest on record for Australia as a whole;

c. River Murray system inflows for February totalled around 77 GL, well below the long-term median of 138 GL;

d. total flow to South Australia (226.9 GL) exceeded South Australia's February entitlement of 194 GL, and included 29 GL of environmental water;

e. conveyance for the period from 1 June 2018 to 31 January 2019 was currently estimated to be about 620 GL, and was likely to reach between 850 and 1000 GL by the end of May.

162 Total flows to South Australia in water year 2018-19 were 2,456 GL (77% AEP), and included:

a. entitlement flow of 1,850 GL; and

b. environmental water totaling 617 GL.

163 Total inflows for the water year were close to 2,803 GL (93% AEP).

164 Total water use for the water year was estimated at around 2,650 GL.

165 Total active storage at the end of May 2019 was 3,006 GL.

(2) River Operations 2018-19

166 In July 2018, the MDBA published the Annual Operating Plan for the 2018-2019 water year (**2018-2019 AOP**), which:

a. included amongst its assumed inflow scenarios a dry scenario, which assumed River Murray system inflows of about 3,000 GL;

b. assumed a conveyance loss of 850 GL in drier scenarios, which was considered reflective of contemporary river losses observed in 2014-2016;

c. identified a risk under the dry (and very dry) scenario that Lake Victoria may not be filled to the effective full supply level;

d. identified a risk of a system wide shortfall, which might occur if demands in the mid and lower Murray system were higher than the channel capacity available to deliver that water (**2018-2019 Shortfall Risk**);

e. outlined operational strategies for responding to the 2018-2019 Shortfall Risk, which involved, in the "dry" scenario:

i. operational flows at or near channel capacity rates through the Barmah Choke from around August 2018 to April 2019;

ii. delivering a record volume of Goulburn IVT water (similar to or possibly more than the volume delivered in 2017-2018); and

iii. reducing the delivery of environmental water to South Australia,

(the "**2018-2019 Shortfall Risk AOP Strategies**");

f. assumed delivery of environmental water over the South Australian border in the dry scenario of 490 GL; and

g. stated that, in the "extreme dry" and "dry" scenarios, there was less opportunity to deliver large volumes of environmental water to South Australia, due to overall reduced water availability.

167 As at all material times in the 2018/2019 water year:

a. irrigation demand in the Sunraysia irrigation region on the River Murray upstream of the South Australian border was increased relative to historical levels because of changing agricultural and horticultural activity including increased cultivation of almonds;

b. the balance of trade in water access entitlements and allocations required the delivery of significant volumes of water (which had previously been deliverable to irrigators in the NSW and Victorian Murray, Goulburn and Murrumbidgee Valleys) to South Australia; and

c. return flows (that is, the volumes of water returning to the river after diversion of water for consumptive use) were lower relative to historical levels as a consequence of the implementation of efficiency measures.

168 The MDBA knew or ought to have known the matters pleaded at [167] above.

Particulars

The MDBA's knowledge of:

1. the matters pleaded at [167a]-[167b] above, is to be inferred from the statement in the Murray Darling Basin Water Markets: trends and drivers 2002-3 to 2018-19 report that: "shift in demand has led to changes in the location of water use and interregional trade flows in the sMDB. For example, the increase in demand for water for almonds has occurred mainly in the Victorian Murray below the Barmah choke, with this expansion facilitated by interregional trade, mainly from regions above the Barmah choke"; and

2. the matter pleaded at [122c] above, is to be inferred from the finding of the Murray Darling Basin Royal Commission Report dated 29 January 2019 (p.399) that: "Concerns regarding the issue of return flow are not new. Professor Grafton told the Commission that the earliest published research he had found was from 1964, but that the most considerable body of published work on the issue emerged in the 1990s."

Further and better particulars may be provided following disclosure.

169 In the month of June 2018:

a. the MDBA caused or permitted 27.5 GL of environmental direct trade to be released from Lake Victoria; and

b. total flow to South Australia (132.5 GL) exceeded South Australia's June entitlement of 90 GL, and included 42.5 GL of environmental water.

170 In the week ending 18 July 2018, the MDBA opened the Forest Regulators to the Barmah-Millewa Forest.

171 The Forest Regulators to the Barmah-Millewa Forest remained open until 9 January 2019.

172 In the month of July 2018, total flow to South Australia (239.7 GL) exceeded South Australia's July entitlement of 108.5 GL, and included 131.2 GL of environmental water.

173 In the week ending 1 August 2018:

a. transfers from Hume Reservoir to Lake Victoria commenced at low rates, consistent with the drier scenarios in the MDBA Annual Operating Plan;

b. the MDBA stated that, if conditions remained dry, releases downstream of Yarrawonga Weir would continue to gradually increase throughout early August as water is transferred to Lake Victoria in readiness for higher system demands later in the season;

c. Forest Regulators in the Barmah-Millewa Forest remained open; and

d. the storage volume of Lake Victoria increased by 4 GL to 372 GL (55% capacity).

174 The MDBA continued making transfers from Hume Reservoir to Lake Victoria within the channel capacity of the Barmah Choke until the week ending 5 September 2018.

175 Throughout the period the MDBA was directing in-channel transfers from Hume Reservoir to Lake Victoria:

a. Forest Regulators in the Barmah-Millewa Forest remained open;

b. the MDBA continued delivering environmental water to South Australia, including from Lake Victoria; and

c. the storage volume at Lake Victoria declined.

176 In late August 2018, the MDBA:

a. reviewed its Annual Operating Plan against observed conditions and determined that the storage level of Lake Victoria was tracking below the extreme dry planning scenario; and

b. decided to abandon or modify the 2018-2019 Shortfall Risk AOP Strategy; and

c. decided to implement a new or revised operational strategy, which involved commencing bulk transfers from Hume Reservoir to Lake Victoria at rates above the channel capacity of the Barmah Choke from September 2018, with

the purpose of refilling Lake Victoria from the system's drought reserve, the Dartmouth Reservoir (**September 2018 Strategy**).

177 The MDBA did not obtain approval from the BOC for the September 2018 Strategy.

178 Between around 5 September 2018 and around 2 January 2019, in the implementation of the September 2018 Strategy, the MDBA caused or permitted releases at Yarrawonga Weir in excess of the channel capacity at the Barmah Choke (**2018/2019 Overbank Transfers**), including flows above the channel capacity at the Barmah Choke for 18 consecutive weeks, or 141 days.

Particulars

Further and better particulars of the volume of the 2018/2019 Overbank Transfers may be provided after disclosure and evidence.

179 As a result of the 2018/2019 Overbank Transfers, in the 2018/2019 water year:

a. flooding occurred in the Barmah-Millewa Forest which was "undesireable" within the meaning of cl 4.2(d) of the O&O Document; and

b. elevated losses including, transmission losses, were sustained.

Particulars

Further and better particulars will be provided following disclosure and expert evidence.

180 From around early September 2018, MDBA's operations planning indicated that a level of at least 500 GL in Lake Victoria was required to reduce an elevated shortfall risk across the summer and autumn (2018-2019 Summary, p.22).

181 In the week ending 5 September 2018, the release from Yarrawonga Weir increased to 11,600 ML per day, which MDBA stated:

a. was required to ensure sufficient water is transferred to Lake Victoria in advance of expected system demands over summer and into autumn; and

b. was being delivered now to take advantage of pre-wetted anabranch channels that can transfer water efficiently around the Barmah Choke.

182 At the time of implementing the September 2018 Strategy:

a. Forest Regulator settings remained configured for "in-channel watering", rather than being configured in the "efficient" setting which would maximise flows returning to the River Murray; and

b. there was no agreed method for accounting for any environmental component of the increased quantities of the water which were proposed to be delivered through the Forest Regulators under the September 2018 Strategy.

183 In the period 1 February 2019 to 31 May 2019, the MDBA made releases from Lake Victoria above the minimum release pleaded at [52] above.

184 In the 2018-2019 water year:

a. actual system inflows were approximately 2,803 GL, closer in line with the dry scenario outlined in the 2018-2019 AOP;

b. the total volume of directed releases of environmental water totalled 153.6 GL, comprising releases from the Hume Reservoir;

c. the MDBA purports that delivery of environmental water over the South Australian border totalled 617 GL (2018-2019 Summary, p.20); and

d. the purported delivery of 617 GL of environmental water over the South Australian border exceeded the assumed/planned delivery for the dry scenario in the 2018/2019 AOP (as pleaded at [166f] above).

185 In accounting for delivery of water across the South Australian border in the 2018-2019 water year, including in connection with the 2018/2019 Overbank Transfers, the MDBA applied the Environmental Water Accounting Approach.

I MDBA BREACHES OF DUTY

(1) 2016-2017 Breaches

186 In the circumstances pleaded at Part C and Part F above, a reasonably prudent authority in the position of the MDBA:

a. exercising the River Operations Functions; further or alternatively

b. exercising the Environmental Water Functions; further or alternatively

c. exercising the Release Power,

in the 2016/2017 water year, would not have conducted the 2016 / 2017 Menindee Releases.

187 The MDBA breached the MDBA Duty of Care by conducting the 2016 / 2017 Menindee Releases.

Particulars of Breach

In the circumstances pleaded at Part C and Part F above, the MDBA should have done some or all of the following:

a. directed minimum releases from Menindee Lakes as required by:

   i. cl 10.3(d) of Appendix A to the O&O Document; and/or

   ii. the Harmony Operation of Lake Victoria (as pleaded at [46] above);

b. sought to maximise the volume of water stored in the Menindee Lakes;

c. not directed releases from Menindee Lakes in excess of minimum releases, except as necessary to:

   a. comply with the Harmony Operation;

   b. meet such portion of system demand downstream of the Barmah Choke which could not be met by:

      i. operating the River Murray at capacity through the Barmah Choke; and

      ii. releasing water from the Goulburn and Campaspe Rivers;

d. considered or had regard to, or given sufficient weight to:

   i. the matters pleaded at [43], [51], [57], [60], and [67] above;

   ii. the objectives of maximising water availability, ensuring supply to South Australia, and minimising evaporative losses from the Menindee Lakes (Specific Objective 12.2 of the O&O Document);

   iii. cl 4(2)(a)(i) of the O&O Document, requiring the MDBA to operate the River Murray system in an efficient and effective manner in order to deliver State water entitlements (cl 4(2)(a)(i) of the O&O Document);

   iv. cl 4(2)(a)(ii) of the O&O Document, requiring the MDBA to maximise the water available to Southern Basin States (including New South Wales), after providing for operating commitments in the River Murray System;

   v. cl 4(2)(b)(i) of the O&O Document, requiring the MDBA to conserve water and minimise losses;

   vi. the 2016/17 AOP (as required by cl 10(1)(d) of the O&O Document), and which did not require or provide for:

      1. the 2016 / 2017 Menindee Releases;

      2. releases above the minimum provided for in cl 10.3(d) of Appendix A to the O&O Document; or

      3. releases in excess of Harmony Operation of Lake Victoria;

vii. cl 30 of the Agreement, requiring the MDBA to consult the BOC if any release with the potential to have a material effect on State water entitlements was contemplated;

e. ensured that its conduct of river operations complied with operation manuals and standing practices, including but not limited to the Harmony Operation;

f. ensured that its modelling and water accounting practices were updated to the extent necessary based on:

i. the best available science;

ii. the best available data, including so as to incorporate:

1. the impact of climate change upon the Basin;

2. variability of inflows, including since 2000;

3. the effects of efficiency measures on return flows;

4. the effects of the relaxation of operational constraints to facilitate environmental watering on conveyance and distribution losses,

(**Best Available Data**);

g. not applied the Environmental Water Accounting Approach;

h. ensured that its operations manuals and standing practices were:

i. evaluated to ensure their continuing currency and feasibility; and

ii. updated as necessary to reflect the best available science and the Best Available Data.

Further particulars may be provided after disclosure and expert evidence.

188 The breaches alleged in paragraphs 187 above are referred to as the **2016 / 2017 Breaches**.

(2) 2017-2018 Breaches

189 In the circumstances pleaded at Part C and Part G above, a reasonably prudent authority:

a. exercising the River Operations Functions; further or alternatively

b. exercising the Environmental Water Functions; further or alternatively

c. exercising the Release Power,

would,

d. between October 2017 and December 2018, not have conducted the 2017 / 2018 Overbank Transfers; further or alternatively

e. have operated the River Murray System so as to avoid the need to make the 2017 / 2018 Overbank Transfers.

190 The MDBA breached the MDBA Duty of Care by:

a. conducting the 2017 / 2018 Overbank Transfers; further or alternatively

b. failing to operate the River Murray System so as to avoid making the 2017 / 2018 Overbank Transfers.

Particulars of Breach

In the circumstances pleaded at Part C and Part G above, the MDBA should have done some or all of the following:

a. retained more water in the Menindee Lakes;

b. given priority to refilling Lake Victoria using natural inflows or in-channel transfers in autumn, winter and spring;

c. adhered to the "fundamental principle" (pleaded at [47] above) and the "Basic Rule" (pleaded at [48] above) of the Lake Victoria Operating Strategy;

d. kept flows through the Barmah Choke at or below channel capacity during Summer and Autumn;

e. to the extent that authorised water orders required delivery of water to South Australia in excess of what could be delivered without breaching channel constraints in the Barmah Choke:

i. released water from Menindee Lakes storage to fulfil the relevant orders; and

ii. purchased access to the MIL Infrastructure to enable delivery of the relevant orders;

iii. otherwise, postponed delivery of those orders until such water could be delivered without breaching channel constraints at the Barmah Choke;

f. ensured that it considered and had regard to:

i. the matters pleaded at [43], [51], [57], [60], and [67] above;

ii. BOM rainfall and temperature forecasts together with the best available long-term modelling of rainfall and temperature forecasts;

iii. the likely effect of available forecasts on system demand;

iv. the likely impact of forecast low rainfall levels on:

A> inflows into the River Murray downstream of the Barmah Choke;

B> the operation of, and prospects of refilling Lake Victoria in line with, the Lake Victoria Operating Strategy; and

C> the supply of South Australia's entitlement in the spring and summer of 2017-2018;

v. the fact that it did not have access to the MIL Infrastructure;

vi. the increasing demand for delivery of:

A> held environmental water to South Australia; and

B> water (including traded water) to the Sunraysia region;

vii. the current storage levels in the Hume Reservoir, Dartmouth Reservoir, Lake Victoria and the Menindee Lakes;

viii. the availability of water from the Goulburn and Campaspe Rivers to meet system demand downstream of the Barmah Choke;

ix. the diminished channel capacity of the Barmah Choke, and the risk of further diminution resulting from sustained overbank flows;

x. the fact that inundation of the Barmah-Millewah forest was not desirable, at all or to the extent that would be involved in the 2017 / 2018 Overbank Transfers;

xi. the "fundamental principle" (pleaded at [47] above) and the "Basic Rule" (pleaded at [48] above) of the Lake Victoria Operating Strategy;

xii. cl 3.1a(d) of Appendix A to the Objectives & Outcomes Document, requiring the MDBA to procure that the BOC establish a method for accounting for losses where flows downstream of Yarrawonga Weir approach the capacity of the Barmah Choke;

xiii. cl 4(2)(a)(i) of the O&O Document, requiring the MDBA to operate River Murray system in an efficient and effective manner in order to deliver State water entitlements (cl 4(2)(a)(i) of the O&O Document);

xiv. cl 4(2)(b)(iii), stipulating that the MDBA was not required to deliver authorised water orders where "physical constraints of the River Murray System prevent this from occurring";

xv. cl 4(2)(a)(ii) of the O&O Document, requiring the MDBA to maximise the water available to Southern Basin States (including New South Wales), after providing for operating commitments in the River Murray System;

xvi. cl 4(2)(b)(i) of the O&O Document, requiring the MDBA to conserve water and minimise losses;

xvii. cl 4(2)(c) of the O&O Document, requiring the MDBA to minimise undesirable transmission losses when delivering water downstream of the Barmah-Millewa Forest;

xviii. cl 4.2(d) of the O&O Document, requiring the MDBA to facilitate desirable watering of the Forest, and to minimise as far as possible undesirable watering of the Barmah-Millewa Forest (cl 4.2(d));

xix. Specific Objective 12.9 in the O&O Document (as pleaded at [41] above);

xx. the 2017/18 AOP (as required by cl 10(1)(d) of the O&O Document), which:

1. contemplated adherence to the Lake Victoria Operating Strategy;

2. did not require or provide for the 2017 / 2018 Overbank Transfers; and

3. did not contemplate delivery of environmental water in the quantities which the MDBA actually delivered;

xxi. cl 30 of the Agreement, requiring the MDBA to consult the BOC if any release with the potential to have a material effect on State water entitlements was contemplated;

g. ensured that its conduct of river operations complied with operation manuals and standing practices, including but not limited to the Lake Victoria Operating Strategy;

h. ensured that its modelling and water accounting practices were updated to the extent necessary based on:

i. the best available science; and

ii. the Best Available Data;

i. not applied the Environmental Water Accounting Approach;

j. ensured that its operations manuals and standing practices, including but not limited to the Lake Victoria Operating Strategy, were:

i. evaluated to ensure their continuing currency and feasibility; and

ii. updated as necessary to reflect the best available science and the Best Available Data; and

Further particulars may be provided after disclosure and expert evidence.

191 Further or alternatively, a reasonably prudent authority:

a. exercising the River Operations Functions; further or alternatively

b. exercising the Environmental Water Functions; further or alternatively;

c. exercising the Release Power,

in the 2017/2018 water year would have acted in compliance with the Lake Victoria Operating Strategy.

192 The MDBA breached the MDBA Duty of Care by failing to act in compliance with the Lake Victoria Operating Strategy.

Particulars of Breach

a. Contrary to the "fundamental principle" (pleaded at [47] above), the period for refilling Lake Victoria was extended into December 2017.

b. Contrary to the "conditional rule" (pleaded at [49] above), in the period 1 February 2018 to 31 May 2018, the MDBA made releases from Lake Victoria above the minimum release pleaded at [52] above, where storage in the Menindee Lakes was below 480GL.

c. In a conservative operation of Lake Victoria (as required by the matters pleaded at [50] above), the MDBA should not have done all or some of the following:

i. failed to give priority to refilling Lake Victoria prior to summer;

ii. implemented the October 2017 Strategy;

iii. drawn down Lake Victoria once it had filled in around early October 2017;

iv. managed releases and/or the refilling of Lake Victoria in such a way as to require it to be refilled in December 2017; and

v. made above-minimum releases from Lake Victoria in the period 1 February 2018 to 30 May 2018 in circumstances where storage in Menindee Lakes was below 480GL.

Further particulars may be provided following disclosure and expert evidence.

193 The breaches alleged in paragraphs 190 and 192 are referred to as the **2017 / 2018 Breaches**.

(3) 2018-2019 Breaches

194 In the circumstances pleaded at Part C and Part H above, a reasonably prudent authority:

a. exercising the River Operations Functions; further or alternatively

b. exercising the Environmental Water Functions; further or alternatively

c. exercising the Release Power,

would:

d. between September 2018 to January 2019, not have conducted the 2018 / 2019 Overbank Transfers; further or alternatively

e. operated the River Murray System so as to avoid making the 2018 / 2019 Overbank Transfers.

195 In the circumstances pleaded at Part H ([149]-[183]) above, the MDBA breached the MDBA Duty of Care by:

a. conducting the 2018 / 2019 Overbank Transfers; further or alternatively

b. failing to operate the River Murray System so as to avoid making the 2018 / 2019 Overbank Transfers.

Particulars of Breach

In the circumstances pleaded at Part H ([149]-[183]) above, the MDBA should have done some or all of the following:

a. given priority to refilling Lake Victoria using natural inflows or in-channel transfers in autumn, winter and spring;

b. adhered to the “fundamental principle” (pleaded at [47] above) and the “Basic Rule” (pleaded at [48] above) of the Lake Victoria Operating Strategy;

c. kept flows through the Barmah Choke at or below channel capacity during Summer and Autumn;

d. to the extent that authorised orders required delivery of water to South Australia in excess of what could be delivered without breaching channel constraints in the Barmah Choke:

   i. released water from Menindee Lakes storage to fulfil the relevant orders;

   ii. purchased access to the MIL Infrastructure to enable delivery of the relevant orders; and

   iii. otherwise, postponed delivery of those orders until such water could be delivered without breaching channel constraints at the Barmah Choke;

e. ensured that it considered and had regard to:

   i. the matters pleaded at [43], [51], [57], [60], and [67] above;

   ii. BOM rainfall and temperature forecasts, together with the best available long-term modelling of rainfall and temperature forecasts;

   iii. the likely effect of available forecasts on system demand;

   iv. the likely impact of forecast low rainfall levels on:

      A> inflows into the River Murray downstream of the Barmah Choke;

      B> the operation of, and prospects of refilling, Lake Victoria in line with the Lake Victoria Operating Strategy; and

      C> the supply of South Australia's entitlement in the spring and summer of 2018-19;

   v. the fact that it did not have access to the MIL Infrastructure;

   vi. the increasing demand for delivery of:

      A> held environmental water to South Australia; and

      B> water (included traded water) to the Sunraysia region;

   vii. the current storage levels in the Hume Reservoir, Dartmouth Reservoir, Lake Victoria and the Menindee Lakes;

   viii. the availability of water from the Goulburn and Campaspe Rivers to meet system demand downstream of the Barmah Choke;

ix. the diminished channel capacity of the Barmah Choke, and the risk of further diminution resulting from sustained overbank flows;

x. the fact that inundation of the Barmah-Millewah Forest was not desirable, at all or to the extent that would be involved in the 2018 / 2019 Overbank Transfers;

xi. the "fundamental principle" (pleaded at [47] above) and the "Basic Rule" (pleaded at [48] above) of the Lake Victoria Operating Strategy;

iv. cl 3.1a(d) of Appendix A to the Objectives & Outcomes Document, requiring the MDBA to procure that the BOC establish a method for accounting for losses where flows downstream of Yarrawonga Weir approach the capacity of the Barmah Choke;

v. cl 4(2)(a)(i) of the O&O Document, requiring the MDBA to operate River Murray system in an efficient and effective manner in order to deliver State water entitlements (cl 4(2)(a)(i) of the O&O Document);

vi. cl 4(2)(b)(iii), stipulating that the MDBA was not required to deliver authorised water orders where "physical constraints of the River Murray System prevent this from occurring";

vii. cl 4(2)(a)(ii) of the O&O Document, requiring the MDBA to maximise the water available to Southern Basin States (including New South Wales), after providing for operating commitments in the River Murray System;

viii. cl 4(2)(b)(i) of the O&O Document, requiring the MDBA to conserve water and minimise losses;

ix. cl 4(2)(c) of the O&O Document, requiring the MDBA to minimise undesirable transmission losses when delivering water downstream of the Barmah-Millewa Forest;

x. cl 4.2(d) of the O&O Document, requiring the MDBA to facilitate desirable watering of the Forest, and to minimise as far as possible undesirable watering of the Barmah-Millewa Forest (cl 4.2(d));

xi. Specific Objective 12.9 in the O&O Document (as pleaded at [41] above);

xii. the 2018/19 AOP (as required by cl 10(1)(d) of the O&O Document), which:

A> contemplated adherence to the Lake Victoria Operating Strategy;

B> did not require or provide for the 2018 / 2019 Overbank Transfers;

C> contemplated that there would be reduced opportunity to deliver large volumes of environmental water to South Australia in a drier scenario;

xiii. cl 30 of the Agreement, requiring the MDBA to consult the BOC if any release with the potential to have a material effect on State water entitlements was contemplated;

f. ensured that its conduct of river operations complied with operations manuals and standing practices, including but not limited to the Lake Victoria Operating Strategy;

g. ensured that its modelling and water accounting practices were updated to the extent necessary based on:

iii. the best available science; and

iv. the Best Available Data;

h. not applied the Environmental Water Accounting Approach;

i. ensured that its operations manuals and standing practices were:

i. evaluated to ensure their continuing currency and feasibility; and

ii. updated as necessary to reflect the best available science and the Best Available Data;

Further particulars may be provided after disclosure and expert evidence.

196 Further or alternatively, a reasonably prudent authority:

a. exercising the River Operations Functions; further or alternatively

b. exercising the Environmental Water Functions; further or alternatively

c. exercising the Release Power,

in the 2018/2019 water year would have acted in compliance with the Lake Victoria Operating Strategy.

197 The MDBA breached the MDBA Duty of Care by failing to act in compliance with the Lake Victoria Operating Strategy.

Particulars of Breach

a. Contrary to the "fundamental principle" (pleaded at [47] above), the MDBA caused or permitted the delivery of such quantities of environmental water to South Australia in calendar year 2018 that it compromised its ability to refill Lake Victoria in line with drier scenarios in the 2018/2019 AOP.

b. Contrary to the "conditional rule" (pleaded at [49] above), in the period 1 February 2019 to 30 May 2019, the MDBA made releases from Lake Victoria above the minimum release pleaded at [52] above, where storage in the Menindee Lakes was below 480GL.

c. In a conservative operation of Lake Victoria (as required by the matters pleaded at [50] above), the MDBA should not have done all or some of the following:

    i. failed to give priority to refilling Lake Victoria prior to summer;

    i. implemented the September 2018 Strategy;

    ii. caused or permitted the delivery of such quantities of environmental water to South Australia as would compromise its ability to refill Lake Victoria in line with drier scenarios in the 2018/2019 AOP; and

    iii. made above-minimum releases from Lake Victoria in the period 1 February 2019 to 30 May 2019 in circumstances where storage in Menindee Lakes was below 480GL.

Further particulars may be provided following disclosure and expert evidence.

198 The breaches alleged in paragraphs [195] and [197] are referred to as the **2018 / 2019 Breaches**.

J CAUSATION

199 In the 2017-2018 water year, the Available Water Determinations included an allocation of 51% for NSW Murray general security water entitlement holders.

200 In the 2018-2019 water year, the Available Water Determination resulted in an allocation of 0% for NSW Murray general security water entitlement holders.

201 In the 2019-2020 water year, the Available Water Determinations resulted in an allocation of 0% for NSW Murray general security water entitlement holders.

202 By reason of the 2016-2017 Breaches the Plaintiffs and Group Members suffered loss and damage.

Particulars

If the MDBA had not engaged in the 2016 - 2017 Breaches:

a. the MDBA would have had a higher total active storage at the commencement of the 2017-2018 water year;

b. the MDBA would have had a higher available volume of storage at the Menindee Lakes at the commencement of the 2017-2018 water year;

c. to the extent necessary, the MDBA would have had sufficient available water to refill Lake Victoria from the Menindee Lakes in the 2017/2018 water year, without the 2017/2018 Overbank Transfers;

d. there would have been no cause to adopt the October 2017 Strategy, alternatively the October 2017 Strategy would not have been adopted;

e. distribution losses and/or conveyance through the Barmah-Millewa Forest:

   i. would not have been incurred;

   ii. would not have been incurred to as great an extent; or

   iii. would have been accounted for on “user-pays” principles leaving the Plaintiffs and Group Members allocations unaffected;

f. the volume of water set aside to run the system in the following year would have been lower;

g. the volume of water to which New South Wales was entitled under the Act and the Agreement would have been higher;

h. a higher volume of water would have been available for allocation to consumptive users under the NSW Murray-Lower Darling Water Sharing Plan;

i. a sufficient volume of water would have been available to be set aside from the NSW Allocation to make the provisions required under cl 48(2) of the NSW Murray-Lower Darling Water Sharing Plan;

j. the closing allocations to NSW Murray general security water entitlement holders would have been greater;

k. MIL would have received a higher allocation under the MIL Access Licence;

l. the Second Plaintiff would have received a higher allocation under the Doyle Entitlement Contract;

m. the Third, Fourth and Fifth Plaintiffs would have received a higher allocation under the Coobool Water Entitlements.

Further and better particulars will be provided following disclosure and expert evidence.

203 By reason of the 2017 - 2018 Breaches the Plaintiffs and Group Members suffered loss and damage.

Particulars

If the MDBA had not engaged in the 2017 - 2018 Breaches:

a. distribution losses and/or conveyance in the 2017-2018 water year would have been lower;

b. any increase in distribution losses and/or conveyance in the 2017-2018 water year incurred through delivering:

i. environmental water; and/or

ii. traded entitlements and allocations;

would have been properly accounted for on “user-pays” principles and debited from the allocations of the relevant entitlement holders;

c. some or all of the environmental water delivered in excess of South Australia’s monthly entitlement would have been impounded in Lake Victoria;

d. the MDBA would have had a higher volume of water available in its storages and weir pools at the commencement of the 2018-2019 water year;

e. there would have been no cause to adopt the October 2017 Strategy, alternatively the October 2017 Strategy would not have been adopted;

f. conveyances losses through the Barmah-Millewa Forest would not have been incurred, or would not have been incurred to as great an extent;

g. the volume of water set aside to run the system in the following year would have been lower;

h. the MDBA would have had a higher volume of water available in its storages and weir pools at the end of May 2018;

i. the volume of water to which New South Wales was entitled under the Act and Agreement would have been higher;

j. a higher volume of water would have been available for allocation to consumptive users under the NSW Murray-Lower Darling Water Sharing Plan;

k. a sufficient volume of water would have been available to be set aside from the NSW Allocation to make the provisions required under cl 48(2) of the NSW Murray-Lower Darling Water Sharing Plan; and

l. the closing allocations to NSW Murray general security water entitlement holders would have been greater;

m. MIL would have received a higher allocation under the MIL Access Licence;

n. the Second Plaintiff would have received a higher allocation under the Doyle Entitlement Contract; and

o. the Third, Fourth and Fifth Plaintiffs would have received a higher allocation under the Coobool Water Entitlements.

Further and better particulars will be provided following disclosure and expert evidence.

204 By reason of the 2018-2019 Breaches, the Plaintiffs and Group Members suffered loss and damage.

Particulars

If the MDBA had not engaged in the 2018-2019 Breaches:

a. distribution losses and/or conveyance in the 2018-2019 water year would have been lower;

b. any increase in distribution losses and/or conveyance in the 2018-2019 water year incurred through delivering:

i. environmental water; and/or

ii. traded entitlements and allocations;

would have been properly accounted for on “user-pays” principles and debited from the allocations of the relevant entitlement holders;

c. some or all of the environmental water delivered in excess of South Australia’s monthly entitlement would have been impounded in Lake Victoria;

d. there would have been no necessity to adopt the September 2018 Strategy, alternatively the September 2018 Strategy would not have been adopted;

e. the MDBA would have had a higher volume of water available in its storages and weir pools at the end of May 2019;

f. the volume of water to which New South Wales was entitled under the Act and Agreement would have been higher;

g. a higher volume of water would have been available for allocation to consumptive users under the NSW Murray-Lower Darling Water Sharing Plan;

h. a sufficient volume of water would have been available to be set aside from the NSW Allocation to make the provisions required under cl 48(2) of the NSW Murray-Lower Darling Water Sharing Plan; and

i. the closing allocations to NSW Murray general security water entitlement holder would have been greater;

j. MIL would have received a higher allocation under the MIL Access Licence;

k. the Second Plaintiff would have received a higher allocation under the Doyle Entitlement Contract; and

l. the Third, Fourth and Fifth Plaintiffs would have received a higher allocation under the Coobool Water Entitlements.

Further and better particulars will be provided following disclosure and expert evidence.

K LOSS AND DAMAGE

205 By reason of the:

a. 2016 / 2017 Breaches; further or alternatively

b. 2017 / 2018 Breaches; further or alternatively

c. 2018 / 2019 Breaches,

the Plaintiffs and the Group Members have suffered loss and damage.

Particulars of loss and damage

The Plaintiffs have suffered loss or damage in the following categories:

a. loss of the market value of the water which they would have received referable to the Doyle Water Entitlements and Coobool Water Entitlements;

b. reduction in the value of the Doyle Water Entitlements and Coobool Water Entitlements;

c. reduction in the value of the land identified in paragraphs 2d, 4e, 4f and 5e;

d. reduction in goodwill, including their ability to retain existing supply contracts;

e. increased costs of business;

f. lost profits;

g. loss of opportunity to make a profit.

Further particulars will be provided before trial.

206 The Plaintiffs and Group Members are entitled to the relief claimed.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiffs that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature	
Capacity	Solicitor on record
Date of signature	9 April 2020

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

1 **If you intend to dispute the claim or part of the claim,** by filing a defence and/or making a cross-claim.

2 **If money is claimed, and you believe you owe the money claimed,** by:

- Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
- Filing an acknowledgement of the claim.
- Applying to the court for further time to pay the claim.

3 **If money is claimed, and you believe you owe part of the money claimed**, by:

- Paying the plaintiff that part of the money that is claimed.
- Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS	
Street address	Law Courts Building, 184 Phillip Street, Sydney
Postal address	Supreme Court of NSW, GPO Box 3, Sydney NSW 2001
Telephone	1300 679 272

AFFIDAVIT VERIFYING

Name	John Gerard Doyle
Address	'Claredale Sherwins Road' RMB 1024 Berrigan NSW 2712
Occupation	Director
Date	9 April 2020

I [#say on oath #affirm]:

1 I am the second plaintiff and a director of the first plaintiff.

2 I believe that the allegations of fact in the statement of claim are true.

#SWORN ~~#AFFIRMED~~ at

Signature of deponent John. G. Doyle

Name of witness GERARD KEVIN McCARTHY

Address of witness 78 Jerilderie St, Berrigan NSW

Capacity of witness Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

1 #I saw the face of the deponent. [OR, delete whichever option is inapplicable]

~~#I did not see the face of the deponent because the deponent~~ was wearing a face covering, but I am ~~satisfied that the deponent~~ had a special justification for not ~~removing the cov~~ering.*

2 #I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]

~~#I have confirmed the deponent's identity using the following identification~~ document:

Identification document relied on (may be original or certified copy) †

Signature of witness

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

AFFIDAVIT VERIFYING

Name	Rodney James Dunn
Address	423 Officers Road, Mellool NSW 2734
Occupation	Director
Date	9-4-2020

I [#say on oath ~~#affirm~~]:

3 I am the fourth plaintiff and a director of the third plaintiff.

4 I believe that the allegations of fact in the statement of claim are true.

#SWORN ~~#AFFIRMED~~ at	SWAN HILL, VICTORIA
Signature of deponent	Rodney J. Dunn
Name of witness	[illegible]
Address of witness	2/226 BRIDGE ST, SWAN HILL VIC 3585
Capacity of witness	Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

1 #I saw the face of the deponent. [OR, delete whichever option is inapplicable]

~~#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.*~~

2 #I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]

~~#I have confirmed the deponent's identity using the following identification document:~~

[illegible]

Identification document relied on (may be original or certified copy)[†]

Signature of witness

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[†"Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]

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AFFIDAVIT VERIFYING

Name	Valerie Jeanette Dunn
Address	423 Officers Road Mellool NSW 2734
Occupation	Director
Date	9-4-2020

I [#say on oath #~~affirm~~]:

5 I am the fifth plaintiff and a director of the third plaintiff.

6 I believe that the allegations of fact in the statement of claim are true.

#SWORN #~~AFFIRMED~~ at	SWAN HILL, VICTORIA.
Signature of deponent	Valerie J. Dunn
Name of witness	GIUSEPPE PINO.
Address of witness	2/226 BEVERAGE ST, SWAN HILL VICTORIA.
Capacity of witness	Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

1 #I saw the face of the deponent. [OR delete whichever option is inapplicable]

~~#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.*~~

2 #I have known the deponent for at least 12 months. [OR delete whichever option is inapplicable]

~~#I have confirmed the deponent's identity using the following identification document:~~

~~Identification document relied on (may be original or certified copy)†~~

Signature of witness

Note. The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[†"Identification documents" include current driver licence, proof of age card, Medicare card.

FURTHER DETAILS ABOUT PLAINTIFFS

First plaintiff

Name	Doyle's Farm Produce Pty Ltd (ACN 119 734 539) as trustee for Claredale Family Trust
Address	50 Belmore Street, Yarrawonga VIC 3730

Second plaintiff

Name	John Gerard Doyle
Address	Claredale Sherwins Road' RMB 1024 Berrigan NSW 2712

Third plaintiff

Name	Coobool Downs Pastoral Co Pty Ltd (ACN 002 806 617) as trustee for the Dunn Family Trust
Address	14 Pritchard Street, Swan Hill VIC 3585

Fourth plaintiff

Name	Rodney James Dunn
Address	423 Officers Road, Mellool NSW 2734

Fifth plaintiff

Name	Valerie Jeanette Dunn
Address	423 Officers Road, Mellool NSW 2734

Legal representative for plaintiffs

Name	Amanda Banton
Practising certificate number	41719
Firm	Banton Group
Contact solicitor	Amanda Banton
Address	Level 12 60 Martin Place Sydney NSW 2000
DX address	
Telephone	02 8076 8090
Fax	
Email	amanda.banton@bantongroup.com
Electronic service address	amanda.banton@bantongroup.com

DETAILS ABOUT DEFENDANT

First defendant

Name	Murray Darling Basin Authority
Address	33 Allara Street Canberra ACT 2601

APPENDIX A TO THE AMENDED STATEMENT OF CLAIM

River Murray system poster titled: 'River Murray System – Sharing the water resources of the River Murray' – retrieved from the MDBA website on 6 March 2020 [https://www.mdba.gov.au/publications/products/river-murray-system-poster]

River Murray System

Sharing the water resources of the River Murray

Australian Government

MURRAY–DARLING BASIN AUTHORITY

www.mdba.gov.au

About the River Murray

The River Murray flows for 2,530 km from the Australian Alps through New South Wales along the Victorian border and into South Australia before reaching the Murray Mouth and flowing into the Southern Ocean.

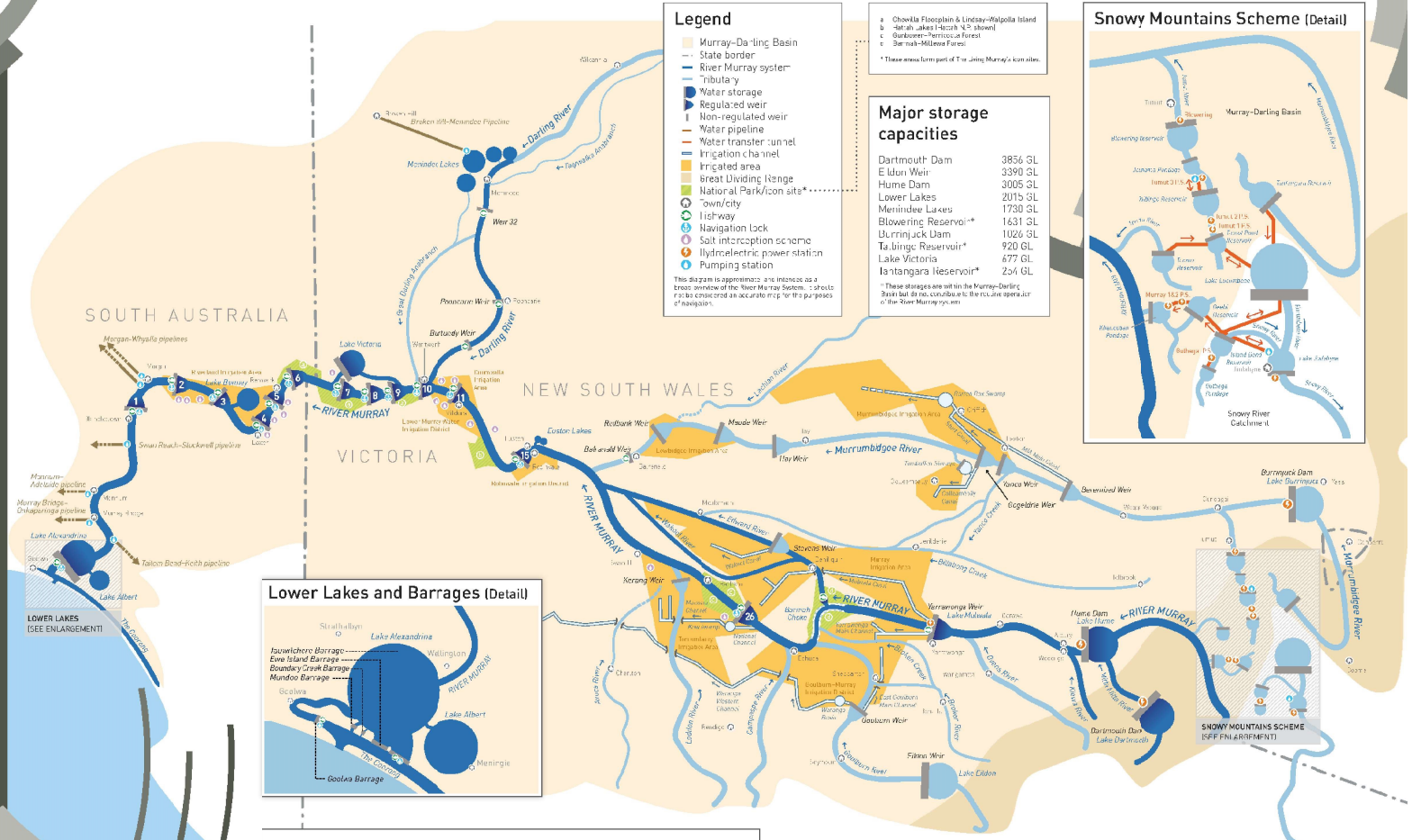
The Murray's water flow is low and highly variable when compared to rivers in other countries with similar catchment areas. To deal with the Murray's variable flows, water storages and weirs have been built along the river's length to provide reliable water supplies.

The MDBA operates four major storages — Dartmouth Dam, Hume Dam, Lake Victoria and the Menindee Lakes (which are leased from New South Wales) — 14 weirs (13 with locks); and five barrages (barriers built at the Murray Mouth to stop sea water entering the river system).

To operate the river, MDBA staff coordinate and direct releases from the storages to meet the demand for water along the river system. The MDBA works cooperatively with state authorities responsible for river infrastructure to adjust flows as necessary.

The River Murray must serve multiple, and often competing, demands for water. These demands include water conservation and supply (including for critical human water needs), irrigation, environmental protection and enhancement, protection of cultural heritage, protection of water quality, river navigation, recreation and tourism, hydro-power generation and flood mitigation.

For more information on the River Murray system visit our website: www.mdba.gov.au



Constructing and maintaining assets

River Murray operations assets are owned by a joint venture of Australian, New South Wales, Victorian and South Australian Governments. Assets are designed, constructed, operated and maintained by three state constructing authorities under the direction of the Murray-Darling Basin Authority.

The three state constructing authorities are:

NSW: State Water Corporation
Victoria: Goulburn-Murray Water
SA: SA Water
(as agent of the Minister for Water)

Reference: MDBA 37/11