

Multimillion-dollar legal bill for unsuccessful challenge to Santos' gas mega-project

Environmental Defenders Office ordered to stump up after court injunction delayed Barossa pipeline installation

Upstream, 28 Nov. 2024 by Amanda Battersby, Asia Bureau Chief Singapore

The Federal Court of Australia on Thursday ordered the taxpayer-funded Environmental Defenders Office (EDO) to pay Santos' A\$9.042 million (US\$5.87 million) legal costs in relation to its October 2023 court challenge that delayed the start of the gas export pipeline installation for its giant Barossa gas project offshore Australia.

The proceedings related to the 262-kilometre subsea gas export pipeline from the Barossa field to the existing Bayu-Undan pipeline. The EDO acted as the lawyers for three Tiwi Islanders in the proceedings to stop Santos from installing the pipeline.

The legal challenge commenced on 30 October 2023, two days prior to the date on which construction of the pipeline was due to start and some three and a half years after the Environment Plan for construction of the pipeline had been approved by Australia's offshore regulator NOPSEMA.

The EDO alleged the pipeline would disturb the travels of a rainbow serpent known as Ampiji and an ancestral being known as the Crocodile Man. It was also alleged that the sea floor, where the pipeline was to be laid, might contain evidence of human occupation, including burial sites, from tens of thousands of years ago when the seabed was subaerially exposed, before sea levels rose.

The applicants relied on evidence from several experts who were engaged by the EDO, including Mick O'Leary, associate professor in climate geoscience at the University of Western Australia. O'Leary collaborated with Antonia Burke, a spokesperson for the Stop Barossa Gas campaign — who was also engaged by the EDO as a paid consultant in the proceedings against Santos, in connection with the cultural mapping exercise.

In January, the Federal Court of Australia dismissed the applicants' case and allowed the pipeline to proceed.

The court found that Indigenous instructions had been distorted and manipulated before being presented to the court via O'Leary's expert report, and that part of the applicants' case had been confected or constructed.

Justice Natalie Charlesworth in her judgment stated: "I have concluded that the cultural mapping exercise and the related opinions expressed about it are so lacking in integrity that no weight can be placed on them.

"My conclusions about O'Leary's lack of regard for the truth, lack of independence and lack of scientific rigour are sufficient to discount or dismiss all of his reports for all purposes."

The court also found that the EDO was an active participant in the Stop Barossa Gas campaign, and it was evidenced that the EDO was considering all avenues, including political lobbying, to pause the construction of the pipeline.

The EDO's chief executive, David Morris, told local media: "After careful consultation with our insurer and with deep consideration of the best interests of our clients, staff and the organisation, EDO has agreed to resolve the claim."

The EDO had requested NOPSEMA require Santos to cease work on the Barossa pipeline installation and resubmit the pipeline's Environment Plan. This request was based on a hastily prepared report by O'Leary and Amanda Kearney, while recommended Santos undertake an underwater cultural heritage assessment along the planned pipeline route.

Following that report and the EDO's request, NOPSEMA performed an inspection and directed Santos to undertake an independent cultural heritage assessment, as defined in the offshore regulator's general direction.

That assessment concluded that there were no underwater cultural heritage places along the pipeline route, said Santos, adding that, notwithstanding that conclusion, the EDO commenced proceedings to stop construction of the pipeline.

"The clear, advertised objective of the Stop Barossa Gas campaign was to disrupt, delay and potentially shut down the Barossa gas project, thereby causing economic harm to the Barossa joint venture partners and to participants in the Darwin LNG JV," said Santos.

The Adelaide-headquartered independent added that the Barossa gas project and associated Darwin LNG life extension project would create around 600 jobs throughout the construction phase and secure around 350 jobs for the next 20 years of production at the Darwin LNG facility.

It has been publicly reported that the Northern Territory government estimates A\$2.5 billion-worth of wages and contracts will flow to Territorians from the projects during that time, noted the Barossa operator.

Australia's federal government sought a review of the EDO's funding arrangements after January's scathing court judgement. However, the review found the EDO had not breached the conditions of its A\$8.2million in federal funding, reported *The Guardian*.

Santos court battle highlights costs of failed legal challenges

It is critical that oil and gas producers are held to the highest standards - but appeals against projects must be rigorous too

Upstream, 6 Dec 2024. By Amanda Battersby



Australia's Environmental Defenders Office has been ordered to pay oil company Santos' legal costs of more than A\$9 million (US\$5.79 million) after its failed court challenge to halt installation of an offshore pipeline for the Barossa gas project.

UPSTREAM/ RYTIS DAUKANTAS

The global fossil fuel industry has long faced legal action from campaigners, but a recent ruling by a judge in Australia against the country's Environmental Defenders Office (EDO) has highlighted the risks and delays developers face from challenges that fail to withstand rigorous scrutiny.

The EDO last week was ordered to pay Santos' legal costs of more than A\$9 million (US \$5.79 million) after its failed court challenge to halt installation of an offshore pipeline for the giant Barossa gas project offshore Australia.

The National Offshore Petroleum Safety & Environmental Management Authority (NOPSEMA), the federal government's offshore regulator which has oversight of oil, gas and renewables projects, had already green-lighted the Barossa pipelaying campaign's Environment Plan (EP) and an installation vessel was ready to commence work when the EDO launched its 11th hour legal challenge on behalf of Jikilaruwu Traditional Owner, Simon Munkara.

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Media Release

28 November 2024

EDO ordered to pay 100 per cent of Santos' legal costs

Today the Federal Court of Australia ordered the Environmental Defenders Office Ltd (the **EDO**) to pay Santos the sum of \$9,042,093.05 in relation to Simon Munkara v Santos NA Barossa Pty Ltd (VID 907/2023) (the **Proceedings**).

The amount represents 100 per cent of the legal costs incurred by Santos in defending the Proceedings and recovering its legal costs. Costs are on an indemnity basis and without any discount. The order comes after the EDO volunteered to pay Santos' costs for the Proceedings.

In the Proceedings, the Federal Court found in favour of Santos and made an order for the Applicants to pay Santos' costs. Santos did not seek to pursue the Aboriginal and Tiwi Islander Applicants, but sought information relating to the funding of the Proceedings from the EDO and other third parties opposed to the Barossa Gas Project, some of whom were involved in the "Stop Barossa Gas" campaign.

The Proceedings related to the 262 km underwater Gas Export Pipeline (**Pipeline**), running from the Barossa Gas Field to the existing Bayu-Undan pipeline. The EDO acted as the lawyers for three Tiwi Islanders in the Proceedings to stop Santos from installing the Pipeline.

The Proceedings were commenced on 30 October 2023, two days prior to the date on which construction of the Pipeline was due to start and some three and a half years after the Environment Plan for construction of the Pipeline had been approved and made publicly available by NOPSEMA. It was alleged that the Pipeline would disturb the travels of a rainbow serpent known as Ampiji and an ancestral being known as the Crocodile Man. It was also alleged that the sea floor, where the Pipeline was to be laid, may contain evidence of human occupation, including burial sites, from tens of thousands of years ago when the seabed was subaerially exposed, before sea levels rose.

The Applicants relied on evidence from several experts who were engaged by the EDO, including Dr Mick O'Leary, Associate Professor in Climate Geoscience at the University of Western Australia. Prior to the Proceedings on 19 June 2023, Dr O'Leary and the EDO were involved in a "cultural mapping" exercise that led to an adapted account which was said to involve a "reinterpretation" of traditional cultural beliefs "through a Western scientific lens." The outcome was a narrative that the pipeline would separate Tiwi Islanders from Ampiji, that Ampiji would be disturbed by the pipeline and that the spiritual connection of Tiwi Islanders with sea country through which the pipeline passed would therefore be damaged.

Dr O'Leary collaborated with Ms Antonia Burke, a spokesperson for the "Stop Barossa Campaign", in connection with the cultural mapping exercise. Ms Burke was engaged by the EDO as a paid consultant in respect of the Proceedings against Santos.

In January 2024, the Federal Court of Australia dismissed the Applicants' case and allowed the Pipeline to proceed. The Court found that Indigenous instructions had been distorted and manipulated before

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being presented to the Court via Dr O’Leary’s expert report, and that part of the Applicants’ case had been confected or constructed.

Justice Charlesworth stated in her judgment, among other things, that:

“I have concluded that the cultural mapping exercise and the related opinions expressed about it are so lacking in integrity that no weight can be placed on them.”

And:

“.....my concerns about Dr O’Leary’s independence and credibility are such that I would not accept his evidence as sufficient to establish any scientific proposition at all, even if his evidence had gone unchallenged and even if he possessed the appropriate skills, qualification and experience to express them. My conclusions about Dr O’Leary’s lack of regard for the truth, lack of independence and lack of scientific rigor are sufficient to discount or dismiss all of his reports for all purposes.”

Following the Proceedings, Santos sought information from the Environment Centre NT (**ECNT**) and Jubilee Australia Research Centre Ltd (**Jubilee**) as members of the “Stop Barossa Gas” campaign and the Sunrise Project Australia Ltd (**Sunrise**) as an apparent supporter of the “Stop Barossa Gas” campaign. The Court found that the EDO was also an active participant in the “Stop Barossa Gas” campaign. It was evidenced that the EDO was considering all avenues to pause the construction of the Pipeline, including political lobbying.

The EDO requested NOPSEMA require Santos to cease work on the Pipeline and resubmit the Pipeline’s Environment Plan based on a hastily-prepared report by Dr O’Leary and Dr Amanda Kearney, who was also later engaged as an expert for the Applicants in the Proceedings. The report was titled “Knowing Sea Country” and recommended that Santos undertake, amongst other things, an underwater cultural heritage assessment along the planned pipeline route. Following that report and the EDO’s request, NOPSEMA undertook an inspection and directed Santos to undertake an independent cultural heritage assessment, as defined in NOPSEMA’s general direction. That assessment concluded that there were no underwater cultural heritage places along the Pipeline route. Notwithstanding that conclusion, the EDO commenced the Proceedings to stop construction of the Pipeline.

The clear, advertised objective of the “Stop Barossa Gas” campaign was to disrupt, delay and potentially shut down the Barossa Gas Project, thereby causing economic harm to the Barossa JV partners and to participants in the Darwin LNG JV.

The Barossa Gas Project and the associated Darwin LNG Life Extension project will create around 600 jobs throughout the construction phase and secure around 350 jobs for the next 20 years of production at the Darwin LNG facility. It has been publicly reported that the NT Government estimates A\$2.5 billion worth of wages and contracts will flow to Territorians from the projects during that time.

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