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**TRANSCRIPT OF PROCEEDINGS**

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O/N H-927208

**MR B. WALKER SC, Royal Commissioner**

**IN THE MATTER OF THE MURRAY-DARLING BASIN ROYAL COMMISSION**

**ADELAIDE**

**9.58 AM, THURSDAY, 16 AUGUST 2018**

**Continued from 2.8.18**

**DAY 18**

**MR S. O'FLAHERTY, Junior Counsel Assisting**

MR O'FLAHERTY: Good to go, Commissioner. Commissioner, I'd like to start by saying that we acknowledge this land that we meet on today as the traditional lands of the Kurna people and we respect their spiritual relationship with our country. We also acknowledge the Kurna people as the custodians of the Adelaide region and  
5 that their cultural and heritage beliefs are still important to the living Kurna people today. We also pay respects to the cultural authority of Aboriginal people visiting or attending from other areas of South Australia or Australia present here today.

Commissioner, we have scheduled three witnesses today. First will be Rob and  
10 Katharine McBride to give evidence in respect to their sheep farming activities in the Lower Darling, and continuing on with the sheep farming theme today, we have Ms Louise Burge who has a property on the mid-Murray with distinct concerns quite separate to that we will hear this morning. So, first of which, I will call Mr Rob and Mrs Katharine McBride.

15

MR McBRIDE Thank you.

20 <ROBERT EDWIN McBRIDE, SWORN [10.00 am]

<KATHARINE FRANCES McBRIDE, AFFIRMED [10.00 am]

25 MR O'FLAHERTY: Thank you both. Now, in respect of the questions that I and – myself and the Commissioner will be asking – we will most likely be asking both of you. To assist the reporter, of course, if you both – both of you speak at the same time, it's going to get difficult. So I think we should work it out amongst ourselves and we can chop and change in terms of who answers questions and adds to them.

30

MS McBRIDE: Sure.

MR McBRIDE: Thank you.

35 MR O'FLAHERTY: I'm sure we will work them out as we go along.

MR McBRIDE: The intelligent questions, you can ..... them for Kath, and me the heartfelt ones.

40 MR O'FLAHERTY: Well, I will open it for the floor and you can decide as you see fit.

THE COMMISSIONER: I address to each of you – well, both of you, feel free to contradict each other.

45

MR McBRIDE: I've got to go home tonight.

THE COMMISSIONER: I said feel free.

MR O'FLAHERTY: Yes. Use your own discretion on that front.

5 THE COMMISSIONER: I leave the risk assessment to you.

MR O'FLAHERTY: Now, Tolarno Station comprises three properties, does it not: Tolarno, Peppora – am I pronouncing that right?

10 MR McBRIDE: Thank you. Peppora.

MR O'FLAHERTY: And Wyoming – and you're – it's about 45 kilometres south of Menindee; is that - - -

15 MR McBRIDE: That's correct, yes.

MR O'FLAHERTY: Yes, and of the three properties, it's Tolarno that's the closest to Murray River – in fact borders the river.

20 MR McBRIDE: About 55 kilometres of river frontage at Tolarno Station.

MR O'FLAHERTY: Yes, and that's the oldest of the properties and it's – I think it's been there since about the 1850s, I think. Is that - - -

25 MR McBRIDE: 1851 .....

MR O'FLAHERTY: Yes.

30 MR McBRIDE: But it was going before that, but as a station, it started in 1851.

MR O'FLAHERTY: Yes, and I think I'm right in saying that the McBride family, your father purchased the property in about 1949, I think.

35 MR McBRIDE: We've been farming in Australia since eighteen - - -

MR O'FLAHERTY: Yes.

MR McBRIDE: About 160 years so, yes, that was correct.

40 MR O'FLAHERTY: What are the water sources for the station? For these people?

MR McBRIDE: Firstly, I would like just to pay my respects to the Barkindji nation as well.

45 MR O'FLAHERTY: Certainly.

MR McBRIDE: They are part of the world and they're good friends and we respect them greatly. So two main water sources – well, three main water sources, we have. Tolarno station, the river has been there forever. We ran 338,000 sheep there in the 1860s, so pretty good water supply. Secondly, underground water. We have got two  
5 bores. They're fed, effectively, by the aquifer of the river. So there's not – we're not the Great Artesian. Sadly, we are totally supplied by the Darling River, and, finally, obviously dams, and dams are pretty dry at this juncture in time.

MR O'FLAHERTY: Yes, and do you – and with the dams, do you have any sort of  
10 infrastructure to get water to those?

MR McBRIDE: About 450 kilometres of pipeline - - -

MR O'FLAHERTY: Yes.  
15

MR McBRIDE: - - - unites the property. So three sections, about 450 kilometres all up of pipeline – two-inch pipeline and pumps, solar pumps, etcetera.

MR O'FLAHERTY: Yes. Now, you've – you both co-authored a submission to  
20 this Commission and if I could take you to – you should have a folder of materials in front of you.

MS McBRIDE: Yes.

MR O'FLAHERTY: Behind tab 1 is, I think, your submission on – dated 7 May  
25 2018.

MS McBRIDE: Yes.

MR O'FLAHERTY: I want to start somewhat chronologically. Although we have  
30 started in the 1850s and 1950s, we will jump a bit forward to another 150 years to – and then some, to – if I can take you to page 4 of your submission. That's where – under the heading Recent Experiences from about 2012 Onwards, am I right in thinking – so the sequence of events is that 2012, the Menindee Lakes system  
35 became full as a result of the breaking of the millennium drought.

MS McBRIDE: Correct.

MR O'FLAHERTY: And then around – was it around summer of the 2013/14 year  
40 that there were significant releases from the Menindee Lakes?

MR McBRIDE: That – that – that's been the problem. That, effectively, there was  
10 years supply of water - - -

MR O'FLAHERTY: Yes.  
45

MR McBRIDE: - - - and that was released very quickly and carelessly.

MR O'FLAHERTY: And those were – as I understand, that MDBA directed releases because it was above the 640 gigalitre limit?

MS McBRIDE: Yes.

5

MR O'FLAHERTY: So it was in MDBA control.

MS McBRIDE: Yes, so it is managed by MDBA under the tri-state agreement.

10 MR O'FLAHERTY: And then as a result, you then talk about the 2015/16 year that the Lower Darling was dry. Just in terms of matching that up, the table on page 3 talks about a dry period between April and August. That's the period that the river was physically dry?

15 MS McBRIDE: So this is a cease to flow at the Burtundy which is south of Pooncarie.

MR O'FLAHERTY: Yes.

20 MR McBRIDE: We are north of Pooncarie. Obviously, they had a cease to flow prior – because the water was slowing down. It was coming to us, but it wasn't making it further down.

MR O'FLAHERTY: Yes. Okay. Right.

25

MS McBRIDE: So the river ceased to flow, and then the river actually ran dry in November. So we were standing on the dry riverbed in November 2015.

MR O'FLAHERTY: Okay. Yes.

30

MS McBRIDE: So there is a cease to flow when the river stops flowing.

MR O'FLAHERTY: Yes.

35 MS McBRIDE: But there may still be water held back, so to speak.

MR O'FLAHERTY: In pools, so to speak, yes.

40 MS McBRIDE: So to speak, and then it continually dries out to that point where you actually stand on a dry riverbed.

MR O'FLAHERTY: Yes. Now – and you made the point that – in the next paragraph, about 2,000 acres of land was lost to production. Now, was that 2,000 acres of your property?

45

MR McBRIDE: Twofold. So, conceivably, we – the other properties that are joined to Tolarno which are part of Tolarno now, Wyoming and Peppora have pipelines.

So, conceivably, first port of call, like, in the next month or two, we're going to lose 20,000 acres straightaway because we just can't retain sheep in our area, and then it will grow to about half our property which is 250,000 acres which will be lost because we don't have water.

5

MR O'FLAHERTY: Yes. Sorry, I misread.

MS McBRIDE: So - - -

10 MR O'FLAHERTY: That was 200,000 acres, not 2,000.

MS McBRIDE: Yes. 200,000.

MR O'FLAHERTY: Yes.

15

MS McBRIDE: So, fundamentally, there are two issues: one is that you lose your boundary fence - - -

MR O'FLAHERTY: Yes.

20

MS McBRIDE: - - - because, obviously, all the properties have a boundary fence which is the river, and then the river runs dry, you have no fence line.

MR O'FLAHERTY: Yes.

25

MS McBRIDE: So we lose land through that. We also lost a significant amount of land because we had no potable water for one and a half of our stations.

MR O'FLAHERTY: Yes.

30

MS McBRIDE: Yes.

MR O'FLAHERTY: So you essentially have to consolidate your stock on what little - - -

35

MR McBRIDE: Either - - -

MR O'FLAHERTY: - - - land you can have to maintain that.

40 MR McBRIDE: Either sell them off and become unviable or keep them running.

MR O'FLAHERTY: Yes.

45 MR McBRIDE: But to give you an example, that's what we have in the river at the moment.

MR O'FLAHERTY: Right.

MR McBRIDE: This is supposedly what we're giving to our stock at this very moment in time. So that's as good as it's going to get for us. Blue-green algae will join us in a few weeks' time which will certainly kill a large number of our stock, but we have no alternative.

5

MR O'FLAHERTY: Right. So that's the quality of the water that is currently in the river of the Lower Darling?

MR McBRIDE: Two days ago – two day ago, that came from Pooncarie, so that's the quality of the water at the moment.

10

MR O'FLAHERTY: Right.

MR McBRIDE: So that's as good as it gets, but we've got blue-green algae at Pooncarie which is 100 kilometres south, and the Menindee Lakes are getting blue-green algae. Now, just – just for those viewers who don't understand, blue-green algae, you can't cook it. That is to say, can't boil it to get the diseases out.

15

MR O'FLAHERTY: No, it's unlike – as we've heard evidence from other irrigators downstream of Pooncarie about having to address the pH level of water for their crops. That's something that's treatable, although a consumable exercise, but with blue-green algae, that's - - -

20

MR McBRIDE: We - - -

25

MR O'FLAHERTY: - - - you don't have a similar fix; is that right?

MR McBRIDE: And that quality of water goes down to a certain point. Sheep just walk away and would rather die than drink water, and, you know, we had a gentleman – one of our staff the other day said he was crying because he had to put a young lamb out of its misery, two days old. Its mum had just said, "I refuse to drink that", and that's a degree when you talk about mental issues when you get a young man of 30 saying that he's crying because he's putting sheep down for no reason, it does hurt and it is personal.

30

35

MR O'FLAHERTY: So in – back in 2016, you refer on page 4 of your submission to a meeting with – in around March or April of 2016.

MS McBRIDE: Yes, the meeting was held on 6 April.

40

MR O'FLAHERTY: 6 April. Excellent. Who from DPI water was there? Do you recall?

MS McBRIDE: So there were a number of staff who were there. The one who I do strongly recall being there was Gavin Hanlon.

45

MR O'FLAHERTY: Yes.

MS McBRIDE: There were also some Water New South Wales employees there.

MR O'FLAHERTY: Sure, and in terms of the locals there, yourselves and were other - - -

5

MS McBRIDE: There - - -

MR McBRIDE: About three or four – three or four other people were invited. Now, we thought that was totally wrong. You do want everybody from the community. It's their community but - - -

10

MR O'FLAHERTY: So it wasn't an open invitation.

MS McBRIDE: Sorry – sorry, dear. Look, you're getting confused between meetings.

15

MR O'FLAHERTY: All right.

MS McBRIDE: That was actually an open meeting - - -

20

MR O'FLAHERTY: Okay.

MS McBRIDE: - - - and it was around – and it was a discussion around – because there was no water in the river, obviously.

25

MR O'FLAHERTY: Yes.

MS McBRIDE: How – what was being done in the short term to manage the issue.

MR O'FLAHERTY: Okay.

30

MS McBRIDE: Yes. So that was an open meeting. The next one was shut.

MR O'FLAHERTY: All right. And so you say at this meeting, the New South Wales DPI Water were asked that. Was any particular people that were asking this, or is this a recounting of the general sentiment that was conveyed by the people at the meeting to the New South Wales Government people?

35

MS McBRIDE: So we actually provided an issues paper to Gavin Hanlon calling for these matters, for these three things, and they were reflected generally in the discussion throughout the meeting.

40

MR O'FLAHERTY: Sure.

MS McBRIDE: Yes, but there was – there was a clear and formal ask for – for these three actions.

45

MR O'FLAHERTY: I wanted just to touch on the second of those dot points, namely, the proposal for an embargo and then over the page - - -

MS McBRIDE: Yes.

5

MR O'FLAHERTY: - - - you state:

*We were told by a senior bureaucrat that, categorically, there would be no embargoes placed to support return of flows to the Lower Darling.*

10

Who was the senior bureaucrat who said that?

MS McBRIDE: Gavin Hanlon.

15 MR O'FLAHERTY: And do you remember the – roughly what he said?

MS McBRIDE: No, but that was - - -

MR O'FLAHERTY: But that's the - - -

20

MS McBRIDE: That there would not be embargoes placed on water - - -

MR O'FLAHERTY: Sure.

25 MS McBRIDE: - - - because it would not make a difference, which was contradictory to another point he made within the meeting which was that if small flows – in the events leading up because there had been a number of small flows that had occurred - - -

30 MR O'FLAHERTY: Yes.

MS McBRIDE: - - - in the previous 12 months, if those small flows had been allowed to come through, he actually conceded that there probably would be water in the river.

35

MR O'FLAHERTY: Right.

MR McBRIDE: And so, therefore, very much from a generational perspective, we know small flows keep – is the lifeblood. It's great having heart – blood in the system, but unless it's getting pumped around a little bit, it's going to die. So it was critically important, and we made it abundantly clear as a community, that we need these – the embargoes - - -

40

MR O'FLAHERTY: Yes.

45

MR McBRIDE: - - - to be lifted and that – sorry, to be placed on the water so that small flows do get through and keep the system alive.

THE COMMISSIONER: So I'm trying to understand what you recall as Mr Hanlon's statement that there would be no embargoes because it would make no difference with your recollection that he'd accepted that had small flows not been embargoed, there would be water in the Lower Darling. Do I gather from that that

5 - - -

MS McBRIDE: He actually contradicted - - -

10 THE COMMISSIONER: - - - in your conversation with him – well, that's either a contradiction or he's regarding the benefit of water in the Lower Darling as not counting?

MS McBRIDE: I took it as a contradiction.

15 MR McBRIDE: In our opinion, it's just very much a case of – the argument was it's a long way to go to get down the Darling River, so from Bourke, you're talking about five, 600 ks, so it won't get there anywhere. So we will just keep it in the north and keep up, you know, our entire irrigation base. So it was – that was - - -

20 MR O'FLAHERTY: So your ..... could be – it could be a combination of what the Commissioner just put to you, I think, that it won't make a difference and because it won't make a difference, it's better being kept upstream.

25 MR McBRIDE: Correct.

MR O'FLAHERTY: I'm trying to interpret someone else's opinion, but - - -

MS McBRIDE: Yes.

30 MR McBRIDE: From our perspective, it was critically important to come down. From a bureaucratic perspective, it was justification for not doing it by saying, "Look, it wouldn't get there anyway. So we will just keep it up in the northern Basin." And we say, well, hang on, the whole basis of the Darling is that it does get down there. It has for 30 million years.

35

MR O'FLAHERTY: You then state that it, in the submission that around the middle of 2016, flows returned, and by the end of 2016, we had a full Menindee Lakes again.

40 MS McBRIDE: Correct.

MR O'FLAHERTY: And do I take it essentially your concerns today are essentially a concern of a repeat of history, so to speak, that what happened in 2013/14/15/16 is happening again.

45

MR McBRIDE: Without a doubt, and I just bring up Neil Andrews who is the Chairman of the Murray-Darling Authority. On a weekly basis, every week I rang

him up ..... at least about 45, 50 per cent of the water of Menindee Lakes in about four or five months. I was ringing him up on a weekly basis saying, "Neil, what in God's name are you doing? You're destroying the Murray-Darling again. What's going on?" And I said, "The Murray is ..... flood. What are you doing this for?"  
5 And he said, "It's in our policy". And I said, "Look, there's no policy to destroy the Menindee Lakes. What are you doing? This is madness".

There were unseasonable rains we got in the middle of winter which we had never had – very, very, rarely had before. The Lakes were full. And you've got to  
10 remember in my lifetime, the Lakes had never gone dry until these events started happening. So for 54 years, the Lakes are amazing. They've been there for 30 million years because the small flows and nature has managed it exceptionally well, but that was our grave concern with Neil Andrews was that he deliberately destroyed the integrity of the Menindee Lake system, and that's pretty personal.

15 MS McBRIDE: So Rob has talked about the releases that commenced in early 2017 or from December 2016.

MR O'FLAHERTY: All right. Yes. So it's essentially that the releases that have  
20 happened have been around that summer period. And the policy intent – I now know you take issue with it because the intent is to deliver it to the Murray system so it goes downstream.

MR McBRIDE: But literally on a calculated basis throughout history and time, the  
25 South Australian Government has called upon the water since the 1950s. It has been regulated to go down in a correct fashion so that you had, like, a supply of water there for – you know ..... the fact that the Murray was ..... flooded at the same time – if you were calling large amounts, if the Murray was dry, that would make sense, but when the Murray was all in flood, and you're draining 50 per cent of the Lakes in  
30 four months, that's economic disaster for our region, and we will be paying for that for the next five, 10 years.

MR O'FLAHERTY: All right. What I will do – and I'm continuing on the theme of  
35 going chronologically is to go – address the topic of the teleconference meetings you've had with – I think it's with Water New South Wales.

MS McBRIDE: Correct.

MR O'FLAHERTY: We've got a number of meeting minutes in the bundle before  
40 you. So bear with me as I direct you to some of those. If we go to tab 10 in that volume.

MS McBRIDE: Yes.

45 MR O'FLAHERTY: That should be a document titled Lower Darling Stakeholder Meeting Teleconference 5 October 2017.

MS McBRIDE: Yes.

MR O'FLAHERTY: Is that when these teleconferences started, or were there ones before that.

5

MS McBRIDE: So there had been meetings prior to this. My understanding with the meetings is that they started in 2015 when the river ran dry, and the purpose of the meetings was to keep Lower Darling stakeholders informed and engaged in the process - - -

10

MR O'FLAHERTY: Yes.

MS McBRIDE: - - - around short-term management for the Lower Darling by Water New South Wales when they are – not in terms of policy in charge, but in charge of releases in the river.

15

MR O'FLAHERTY: Now, because Water New South Wales aren't the ..... the operators of the river.

20

MS McBRIDE: Correct.

MR O'FLAHERTY: They don't set the policy; they implement it.

MS McBRIDE: Correct. So they were operationally discussing matters around it.

25

MR O'FLAHERTY: Sure.

MS McBRIDE: So I believe the teleconferences started in 2015. They might have started prior. What happened was that a – one of our neighbours was no longer able to attend those meetings, and, therefore, we were invited in their place to attend these meetings. So they only have a small number of landholders, but the concept is that we communicate the information to the rest of the group.

30

MR O'FLAHERTY: Sure. Yes.

35

MS McBRIDE: And so this was the first teleconference that I had attended.

MR O'FLAHERTY: In terms of who drafts these minutes, is that – was this a new – Water New South Wales document that - - -

40

MS McBRIDE: Yes.

MR O'FLAHERTY: - - - they draft for you and disseminate to the people who attend these meetings?

45

MS McBRIDE: Yes.

THE COMMISSIONER: It may not matter. This is 5 October 2017 the meeting was actually held?

MS McBRIDE: Yes.

5

THE COMMISSIONER: So on page 3, propose to jump into a time machine, is it, at the foot of the page, under the next meeting?

MR O'FLAHERTY: There are a few discrepancies, I think.

10

THE COMMISSIONER: So was it monthly or - - -

MS McBRIDE: So it's monthly, generally held on the first Thursday of every month. In the recent months it has become a fortnightly teleconference as requested by landholders.

15

THE COMMISSIONER: Thank you.

MS McBRIDE: These are quite informal minutes, actions which are circulated so that we have in writing some of the discussion so they're not formally tabled and reviewed at each meeting, and that's not the purpose of them.

20

THE COMMISSIONER: No, thanks.

MR O'FLAHERTY: Just on that page that the Commissioner took you to in the bottom of page 2 is where there's a discussion about concerns of the drawdown or, at least, the concern – yes, drawdown of the system, and I'm assuming “the system” is the Menindee Lakes system.

25

MS McBRIDE: Correct.

30

MR O'FLAHERTY: There were concerns being raised prior to substantial ..... environmental releases, because I think we're establishing that it's mainly around the summer of '16 and '17 that these release – '17 and '18 that those releases tend to be made, but it's obviously a gradual process.

35

MS McBRIDE: So there was a significant call in early 2017 - - -

MR O'FLAHERTY: Yes.

40

MS McBRIDE: - - - made and then there was another call made. So MDBA still have management control of the Menindee Lakes at the time of this teleconference. There was an additional call for – and I believe it was a call for environmental water releases out of Menindee Lakes at this time that we were informed of, and our concerns here was saying that this additional release will mean that we go into drought management and minimal flows down the river in the middle of summer. So there was a potential not to call that water, and that would have actually helped us

45

maintain higher levels of flow during summer, manage blue-green algae and sustain water flow. So, currently, we're looking at a cease to flow in December 2018.

5 MR O'FLAHERTY: Yes, and just to give a bit of context to that, on page 1, there's a summary of the storage totals.

MS McBRIDE: Yes.

10 MR O'FLAHERTY: And you can see there 510 gigalitres being the total storage. Of course, what we would call the drought management conditions is when it reaches 480; is that right?

MS McBRIDE: Yes.

15 MR O'FLAHERTY: And in terms of the release, is that the reduction of 197 gigalitres since the teleconference on 11 September? Is that the release that you refer to or is that - - -

20 MS McBRIDE: Sorry, where are you?

MR O'FLAHERTY: Sorry. I'm still on page 1 - - -

MS McBRIDE: Okay

25 MR O'FLAHERTY: - - - under the heading Storage Totals.

MS McBRIDE: Yes.

30 MR O'FLAHERTY:

*Total storage volume 510 gigalitres, according to their ..... this is a reduction of 197 gigalitres since the teleconference on 11 September.*

35 That now sounds like a fairly large release. Is that the sort of releases that you're talking about – you were just talking about?

MS McBRIDE: Yes.

40 MR O'FLAHERTY: All right.

MR McBRIDE: And one of our issues was very much the case that Hume and Dartmouth were left untouched and, you know - - -

45 MR O'FLAHERTY: Yes.

MR McBRIDE: - - - with discussions with the Murray-Darling Basin Authority, we're saying, "well, hang on, why are you destroying the Menindee Lakes?" And the

argument came back, “Well, it evaporates.” And we say, “Well, hang on. Forgive me if we were incorrect, but the Dartmouth and Hume Dam is on the Murray River system. So if you destroy the integrity of the Darling River system, how are you going to get the water across?” Yes, they didn’t quite have an answer to that one.

5

MR O’FLAHERTY: Sure. Yes, and the reference to Lake Hume, I think, is on page 2 where it says that was about 90 per cent, as opposed to 32 per cent in the Menindee Lakes.

10 MR McBRIDE: Still is about 89 or somewhere in the eighties, I believe, at the moment.

MR O’FLAHERTY: Yes.

15 MR McBRIDE: Well, the Menindee Lakes’ still dry.

MR O’FLAHERTY: All right.

20 THE COMMISSIONER: In this section on page 2 under the heading ‘Discussion,’ Q stands for question, does it?

MS McBRIDE: Yes.

25 THE COMMISSIONER: A stands for answer.

MS McBRIDE: Yes.

THE COMMISSIONER: What does C stand for?

30 MS McBRIDE: Comment.

MR McBRIDE: Confusion?

35 THE COMMISSIONER: Okay. And - - -

MR O’FLAHERTY: I had it as customer ..... but ‘comment’ is probably right.

THE COMMISSIONER: What does R stand for?

40 MS McBRIDE: Response.

MR McBRIDE: Comment and then, maybe, responses.

45 MS McBRIDE: Yes.

THE COMMISSIONER: So the last of those comments which I think is concerning what you were just explaining here is a comment by a landowner. Is that you, Mrs McBride?

5 MS McBRIDE: Yes – no, it wasn't me. I think I – from memory, I supported the comment, but I didn't make the comment.

MR McBRIDE: I think it was Wayne Smith from Cooroola Station - - -

10 THE COMMISSIONER: So the lake that's already full is Dartmouth, is it?

MS McBRIDE: Yes.

15 THE COMMISSIONER: And Lake Hume is sitting, I take it, about 90 per cent?

MS McBRIDE: Yes.

20 THE COMMISSIONER: So there's, here, being recorded a radical disagreement between persons on the Lower Darling seeing the desirability of maintaining what I'm going to call a drought reserve.

MS McBRIDE: Yes.

25 THE COMMISSIONER: When I say a "drought reserve", I mean something that you will use in a drought in the hope that the drought will break, but you won't use beforehand – you won't use it up beforehand.

30 MS McBRIDE: So I think the drought reserve language is incorrect. What it really means is that there will be low flows maintained down the Lower Darling largely for the consumptive use – or for the use of the Lower Darling - - -

MR McBRIDE: So where - - -

35 MS McBRIDE: - - - and will not contribute to broader Murray-Darling Basin flows.

MR O'FLAHERTY: More – it's more of a local reserve, rather than a - - -

40 MS McBRIDE: Yes, it's a local reserve, not a drought reserve. I think that's a much more appropriate term for it.

THE COMMISSIONER: Just to – because the word drought reserve is used in this recorded comment. With the correction you've just given, do I understand it means a body of water, the purpose of which is to supplement at low or approaching no flow conditions so as to maintain low flow?

45 MS McBRIDE: Yes, you are correct.

THE COMMISSIONER: Some people from Sydney, for example, might think that a river not flowing is a symptom of the drought.

MS McBRIDE: Yes.

5

MR McBRIDE: And also the fact that the Menindee Lakes have been a very instrumental part of South Australian supply, and so, literally, you've got 1.3 million people in South Australia. So if the Murray ever got under stress, then the Darling was there. So it's not just a reserve for 600 kilometres of the river system, but it's there to protect the Murray as a supply, you know, protect the Murray – the integrity of the Murray system going into South Australia.

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THE COMMISSIONER: Well, did you understand from these discussions in 2017

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MS McBRIDE: Yes.

THE COMMISSIONER: --- that the strategy, either being carried out or being considered, was to use the Menindee water beyond the level of so-called drought reserve and relatively quickly so as to reduce what I will call saving in terms of reduced evaporation?

20

MS McBRIDE: Correct. So the – in the discussions that we had – and Rob has, you know, mentioned that he was on the phone on a regular basis to Neil Andrew, but the discussions that we had generally with the MDBA for the – you know, across the period of 2017, was that Menindee Lakes was their first call for water throughout the system. Because of the high evaporation rates of Menindee Lakes, that was their primary – primary justification for using water out of Menindee Lakes over water out of Hume and Dartmouth because we were told that it is a shallow lake with high evaporation rates, and, therefore, they will use it to create efficiencies within the system. Now, as Rob has already outlined, you know, this is a false argument, if you like, because firstly Menindee Lakes is a natural lake system and Hume and Dartmouth are constructed dams, and they sit on two different river systems, and so from a justification of, “We do this because of efficiency”, we're seeing a river die because of that argument.

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30

35

MR McBRIDE: And just to follow on, can I say how the whole evaporation rate, like, lived on there for 40 years. There was no such – well, if there was evaporation, we just knew it was nature. You have to remember how this calculation is produced. There's a little metal tray about a metre in diameter in Menindee. It has got six inches of water in it and a thermometer that hasn't worked for three years, but, conceivably, it's that drop in rate. So it's a – it's four kilometres from the actual lakes. It's sitting on paved pavement, and the evaporation drop in water level is extrapolated over the whole Darling River system – the Menindee lakes and river system. Now, the fact is that ---

40

45

MR O'FLAHERTY: I think the term is that – of that that's used is pan evaporation calculation, I think, or pan evaporation ..... yes.

5 MR McBRIDE: But when you look at Cawndilla which is seven metres deep, the evaporation rates are catastrophically wrong, and there's also no calculation taking into consideration the recharging of the aquifer. It's just – the science is just so horribly wrong. We've got the same little meter dish that we have at every little point across Australia, but that's just – that doesn't extrapolate onto the two and a half sizes of the – of the Sydney Harbour. This is a vast amount of water that has survived there for 30 million years. So the science is just totally flawed. It has been 10 picked up on, and the little science have changed over the last few years, 50 thousand Olympic dams of – Olympic swimming pools of water gets evaporated each year.

15 Like, excuse me? Never used to. I know there's supposedly global warming, but all my life, the Menindee Lakes basically sat on about 60, 70 per cent, and it came from recharge. So the science is changing, and it was just coincidental how Cotton Australia in the annual report last year had asked for that \$5 million to be spent on a pipeline coming out of the Murray River system to supply Broken Hill and decommission the pipeline that has lasted for 65 years unchanged coming out of the 20 Menindee Lakes. It just seemed a hell of a coincidence that these changes are happening in our system.

MR O'FLAHERTY: All right.

25 THE COMMISSIONER: Just leaving to one side the weaknesses of the empirical data on evaporation, all other things being equal – they never are, I know, but - - -

MR McBRIDE: .....

30 THE COMMISSIONER: Just in order to test the thinking, it does remain axiomatic, doesn't it, that the greater the surface area of a given volume of water, the higher percentage of that water will be evaporated.

35 MS McBRIDE: Correct.

MR McBRIDE: Without a doubt. No question, but - - -

THE COMMISSIONER: No one disputes that.

40 MS McBRIDE: Correct. We're not arguing that.

MR McBRIDE: We're not – not against surface area and - - -

45 THE COMMISSIONER: I'm – I've sometimes wondered whether there's anything really beyond that in terms of the – what I might call the rather easy characterisation of the Menindee Lakes as being reduced by evaporation more than what I call deeper storages, the paradigm being ..... of course.

MR McBRIDE: I guess you look back at history, and I'm not a particularly religious man, but when the guy upstairs put two and a half Sydney Harbours in the middle of outback New South Wales, he obviously had a vast sense of humour because he has kept that supplied for, you know, six – 30 million years, and the  
5 Mungo man, which is the oldest skeletal remains, is 100 kilometres south of us in Mungo National Park. So, conceivably, Mungo man survived – and his descendants, the Barkandji, have survived there for 60,000 years. So if it wasn't particularly a really good river, I don't think 60,000 years of civilisation with the Barkandji Nation would still be there. So it has just been drawn into the calculations. Without a  
10 doubt, Commissioner, yes, evaporation happens. Evaporation has to happen. If it doesn't happen, we don't get rain. We don't get clouds. There's no question about that. It's a no-brainer.

But it's just that it has been extrapolated out of all proportions by comparing six  
15 inches of water with seven metres of water and taking no calculation into the aquifer that feeds, you know, hundreds of thousands, if not millions of hectares of area in the western division of New South Wales because that water has to go underneath an area somewhere in the vicinity of 1000 kilometres, maybe 1,000 kilometres below five or 10 kilometres. That's a large vast area of underground water supplies that is  
20 not in the calculation.

So it could be out by 70, 80 per cent. Who knows? I'm not ..... accounting at university. I'm not an academic in that regard, but, clearly, we just want proper science. And all my life, we've known evaporation happens. The clouds come  
25 across South Australia. They hit either Lake Eyre or Menindee Lakes, and we get generally two or three inches more of rain each year. That's just the way it used to happen. And now you've made the centre a dust bowl, and all that happens now is the clouds burn up in the atmosphere, and the rain has kind of dried up too.

30 MR O'FLAHERTY: I guess, so the point you're making is that the lakes, because they've been there for such a long time and insofar as there is an aspect of evaporation, nonetheless the Lakes and the river persisted, and the result of what you're seeing of recent times is not a result of drought conditions or natural conditions. Your concern is that it's a result of poor management decisions of a  
35 system.

MS McBRIDE: Correct.

MR McBRIDE: This is 100 per cent a man-made disaster. Just answer the  
40 Commissioner's words. Just you look at nature. Three fish species, and I will pick on the Golden Perch as example, but 80 per cent of the Golden Perch comes out of Menindee Lakes and Lower Darling.

MR O'FLAHERTY: Yes.  
45

MR McBRIDE: So is it a weakness or a strength to have a large surface area? Well, conceivably, throughout the last 30 million years, it has been a distinct

5 advantage because it has allowed species of the fish to come and breed on massive amounts and 215 species of bird life from around the world as far away as Siberia come to the western division of New South Wales. So it's not a by chance occurrence that this lake system is being intentionally destroyed. The integrity of it is being undermined, and that concerns us greatly because people on the western division have been living out here for 200 years, we pretty much know, and we've been driving past and respects the most amazing lands south of Kakadu throughout history.

10 THE COMMISSIONER: I don't think there's much controversy about the reality and significance of the ecology of filling and drying lakes or billabongs, not only in the Darling system, but in other parts of the system. So the filling and drying which is a function of shallow – I don't think it's controversial. That's not some vice in the system. It's a characteristic of the system which happens to provide living  
15 conditions for many biota. So I don't need to be, as it were - - -

MS McBRIDE: Correct.

20 MR McBRIDE: No, no.

THE COMMISSIONER: - - - persuaded that it's an error to see it as a vice of an aspect of the system that it fills and dries, so it does, and, fortunately, it does so for the biota that need that.

25 MR McBRIDE: I guess it was just that the Murray River system is far more prevalent to get a black water event. It has got much more – greater foliage. Therefore, leaf litter destroys the habitat of regenerating fish species. So it wasn't – I wasn't saying, you know - - -

30 THE COMMISSIONER: No, I understand. Now, could you just – I didn't understand a contraction on the abbreviation on the top of page 3, line 5. What's OEH?

35 MR O'FLAHERTY: Office of Environmental and Heritage, I think, is that?

MS McBRIDE: Yes.

MR O'FLAHERTY: New South Wales government department.

40 THE COMMISSIONER: Then I don't understand that sentence:

*Maintaining 400 gigalitres a day for OEH.*

45 MS McBRIDE: From environmental flows. So the comment was made that the water has been released at very high rates. It was – had gone up to, I think, 1,200 megs a day. In October, it was sitting around 400 megs a day, and that amount of water was still being released out of the lakes in October, and our concern was that

was far too high, and it was not a suitable option for, again, in October going into summer knowing that we were just about to hit the 480 trigger and going down to a release of around 120 megs a day, that that type of release in October which would bring on that trigger at an earlier stage, at the, you know, start of December was not a  
5 good option.

THE COMMISSIONER: It should have been being released more slowly.

MS McBRIDE: At a lower rate.  
10

THE COMMISSIONER: Okay.

MR McBRIDE: Probably somewhere around 100, and then you would have maybe five to seven years supply of water in the Menindee Lakes at the moment rather than  
15 being empty and the worse national disaster in our country facing us in the next few years.

THE COMMISSIONER: Well, if I've – I've read everything you've written and a bit more. If I understand correctly in summary, you identify as a mistake – you  
20 might use other language – something wrong that the Menindee Lakes are proposing to be operated, particularly under the STL adjustment project, in such a way as to leave out of account and neglect the capacity of them to maintain the Lower Darling environmentally for the traditional owners and for those who work the land around.

MS McBRIDE: Correct.  
25

THE COMMISSIONER: Have I got that in summary?

MS McBRIDE: Correct.  
30

MR McBRIDE: Without a question.

THE COMMISSIONER: By a strategy that you identify as being wrong is to privilege 100 per cent the use of that water beyond the Darling and in particular in  
35 what I will call the South Australian Murray.

MR McBRIDE: Twice in four years is economic disaster for us and the Darling going forward. Sorry.

MS McBRIDE: Yes.  
40

THE COMMISSIONER: Have I got that right?

MS McBRIDE: Fundamentally, Murray-Darling Basin is one river system, and we  
45 recognise that water has to come out of Menindee Lakes and contribute to the Murray and contribute to flows going out of the Mouth. However, what we have seen since 2012 is that there has been – the Lower Darling has been significantly

compromised and you have lost connectivity for extended periods that we have not seen in white history prior to this. And therefore, we're actually putting at detriment a significant part of that basin and losing connectivity.

5 We don't dispute the fact that we, you know, that water has to come out of the northern basin, through Menindee Lakes, down the Lower Darling and flow into the Murray and into South Australia. However, what is happening is that the Lower Darling has been compromised through the actions of a number of groups which has meant that that river, that – that 500 kilometres of river is dying, and it is having  
10 significantly worse environmental outcomes than it experienced prior to 2012. And we associate that with two separate issues.

One is the Barwon-Darling Water Sharing Plan and small flows are not able to come down the system like they always did. Even during the millennium drought which  
15 was horrible in our region, we always had small flows coming down the Lower Darling because they were making it through the Barwon-Darling. So there's no water getting to the Menindee Lakes on a reliable basis. The other issue is that the water that is held in the Menindee Lakes is being released at far too great a rate and is not being well managed which results in the river drying out and significant  
20 environmental detrimental outcomes.

MR McBRIDE: So to give you some indications – so just following on from Katharine, if – in my opinion, it's – over the last few years, there has been an undertaking to show that Menindee Lakes is a weakness, that is to say, it's not a  
25 sustainable lake system, that is to say, it fails. See, it has failed twice in four years. By December this year, the New South Wales Government will come to the press and say we've saved Broken Hill. We've put a pipeline in. Thank God, we're wonderful, and the Murray-Darling system – the Murray-Darling Basin Authority will say the same, but the reality of living on the river system is to know it has kind  
30 of worked for 30 million years.

So why has it gone so pear-shaped in a short space of time? It – nature gave us an amazing second chance. When that rainfall happened in 2016, there's no way in hell that should happen. That probably happened once in 20 or 50 years. It filled it twice  
35 in four years, which is an act of God. Again, not particularly a religious man, but then to drain it so quickly, that's not mismanagement. That's something a bit darker, in my humble view.

THE COMMISSIONER: I'm always nervous whether I fully grasp the reasoning of  
40 this as a supply measure.

MR O'FLAHERTY: Yes.

THE COMMISSIONER: By concentrating the storage by – as that – it's put, decommissioning Cawndilla while there's water in the lake. It's deeper, but it's –  
45 which is said to have this evaporative advantage. It doesn't – it doesn't slow evaporation. It alters the ratio of rate water that is stored.

MR O'FLAHERTY: Rates per amount of water, yes.

5 THE COMMISSIONER: Yes. The more rapid resort to draining off of that water then looks to what I will call the time dimension of evaporation. So it's there for a - - -

MR O'FLAHERTY: Shorter period of time. So it has got less chance to evaporate.

10 THE COMMISSIONER: Surface area has a smaller ratio to the volume, and the time it is exposed to wind and sun is reduced so that for the volume of water, there is said to be an increment in, what, liquid water as opposed to vaporised water.

15 MR O'FLAHERTY: I think the reasoning behind it appears to be that this water being delivered for environmental reasons - - -

THE COMMISSIONER: That's the next step.

20 MR O'FLAHERTY: Yes, is spending less time in a place where it will evaporate quicker and more time in the river channels or in – being delivered to environmental sites.

THE COMMISSIONER: Right. Now, that's where I think I - - -

25 MR O'FLAHERTY: That's what I think the reasoning is.

THE COMMISSIONER: I keep faltering there. So the – in order for it to be a lawful justification of an amendment of the SDL - - -

30 MR O'FLAHERTY: Yes a.

35 THE COMMISSIONER: - - - it needs to, correct me if I'm wrong, subject to any special status of the Menindee Lakes in terms of having to supply environmental equivalency – leave that possibility to one side at the moment – if it fell within the general rule, you would have to show that the measure permitted the same environmental outcome to be achieved with what I'm going to call loosely less environmental water.

MR O'FLAHERTY: Yes.

40 THE COMMISSIONER: But it's only a loose description, isn't it, because stock and domestic in particular is a proper, indeed, very high priority permitted, encouraged use of that water.

45 MR O'FLAHERTY: Yes.

THE COMMISSIONER: Maintaining low flows has – is multi-functional if you do divide stock and domestic off from environmental, just for ease of reference, it certainly serves both those purposes, doesn't it, at the same time?

5 MR O'FLAHERTY: Low flows, yes. Yes.

THE COMMISSIONER: Well, now, if the rule requiring environmental equivalency applies to the Menindee Lakes project, how broadly do we look at the region, to use one of the terms of art, or the sites where you are measuring for  
10 environmental equivalency?

MR O'FLAHERTY: Well, I guess it depends on what tool we used to measure environmental equivalency. If we are – because the spectre of applicable method arises in that chapter of the Basin Plan.  
15

THE COMMISSIONER: The whole purpose of adjusting an SDL is that more water can be used consumptively, used for irrigation.

MR O'FLAHERTY: Yes.  
20

THE COMMISSIONER: So it's a real increase in irrigation water somewhere.

MR O'FLAHERTY: Yes, and presumably it has a result that less water needs to be delivered to the Menindee Lakes system because less will be evaporated. I think that  
25 – there's the effect - - -

THE COMMISSIONER: That doesn't have - - -

MR O'FLAHERTY: - - - effect on the SDL.  
30

THE COMMISSIONER: If environmental equivalency applies to Menindee if – then you have to go further, don't you, and say and the same or better environmental outcomes will be served with less water. Less water because we – the adjustment has the purpose and effect of permitting greater consumptive use.  
35

MR O'FLAHERTY: It would require assessment of the environmental outcomes that are attributed to the Menindee Lakes system. Yes.

THE COMMISSIONER: That's right.  
40

MR O'FLAHERTY: Certainly.

THE COMMISSIONER: So is this ever discussed at these meetings?

45 MS McBRIDE: No.

MR McBRIDE: Of course not.

MS McBRIDE: We have had no consultation on the SDL Adjustment Mechanism project for the Menindee Lakes as a community. The first consultation that was held was yesterday, and the consultation specifically related to risk mitigations for businesses along the Lower Darling, none of which actually meet the – not being a lawyer, but I can – they don't mitigate the economic and social impact of – as required under chapter 7(15) of the Basin Plan.

THE COMMISSIONER: Believe me. It may not help to be a lawyer in this area. Let me just pursue this, then, in terms of what you've come across in these discussions.

MS McBRIDE: Yes.

THE COMMISSIONER: Might there not be this kind of thinking in effect: that the Menindee Lakes are and have for a long time been reservoirs from which the river downstream is fed in varying amounts, depending upon seasons and cycles. Those flows may broadly be seen as having environmental outcomes attached to the historical overuse of the river system. That might be supposed to have degraded those environmental outcomes and section 21 of the Water Act, which is ..... for. Sounds as if it's modelled on the Anglican prayer of general confession.

So we've done something wrong, we have to fix it up. And so an ESLT is devised in what might be called crude flow measures, discharge measures, but not crudely. It has been done by scientific proxies and the like, and it produces this figure which then produces the SDL which is designed to be, what I'm going to call, a protect and restore point for the environment. Just enough to protect and restore, not more than because you've got to optimise social and economic and ..... for consumptive use.

And so a supply measure might lead to an adjustment if those environmental outcomes that constitute protect and restore, that is avoiding compromise of the protect and restore notion, if it turns out that by some engineering or operating rules or whatever the measure might be, that those same environmental outcomes can be achieved with, what I'm going to call, again, crudely by flow or discharge terms, less water for the environment.

Sometimes it might just be that of time to deliver water for the environment; hence, some of the elaborate engineering in the Murray to simulate bank breaking events. Well, now, it just seems to me that in principle, then, if people are talking to you about the Menindee Lakes, it's a bit deficient not to have in mind what the environmental equivalency is that would justify saying, "Well, whereas we needed to have X amount, now, we can have X minus Y amount and Y can become available for consumptive use." I gather you've never had discussions like that; is that right?

MS McBRIDE: No.

MR McBRIDE: And the thing is, like - - -

THE COMMISSIONER: Is it ever raised, this topic of how can you do this without wrecking things?

5 MS McBRIDE: Yes. So the community has been calling – so there was a meeting in March 2017 – sorry, yes, late March 2017. This was a closed meeting which Rob attended. There was a meeting in Pooncarie and a meeting in Broken Hill.

THE COMMISSIONER: This is March this year?

10 MS McBRIDE: March 2017.

THE COMMISSIONER: '17. All right.

15 MS McBRIDE: Which was hosted by the MDBA. Rob, you may like to comment further, but the discussion that we had following the meetings was that the MDBA had come to give a progress report on how the Plan was going. That here were numerous questions asked by community members at those meetings around what did the Menindee Lakes Project look like and that the group was told that MDBA were not doing consultation on it. That it was the responsibility of New South Wales  
20 Government to do all the consultation, and that was reiterated late last year when MDBA came out and did the consultation on the adjustment mechanisms.

Meetings which I did attend, that, again, it was not the role of the MDBA to do  
25 consultation for New South Wales Government. It was the role of the New South Wales Government to do the consultation on the Menindee Lakes Project, and as I said, we have had absolutely no consultation undertaken by New South Wales Government around the Menindee Lakes project. We've been calling for this for over a year – or two years. You know, we know as a community that we have not  
30 been given any information on this and we've not been given an opportunity to input into what is proposed and that we're left completely in the dark. The first that I had written information on the Menindee Lakes Project was the release that came out of the senate on the MDBA's own analysis of the project which was late last year.

35 MR O'FLAHERTY: Just - - -

MR McBRIDE: So just to follow on, if I may, sorry. Five generations of farmers  
40 been up there for a couple of hundred years. We kind of know that landscape and so when you talk about efficiencies with water, we've got things called flood plains. They used to flood; that's called nature. Now, funny enough, they're not taken into calculations. It seems to be the only calculation is to getting a little bit of water  
45 down the river. We will lose millions of trees on our station over the next few years. Millions because you're – you're talking about floodplains racing out to about five and six kilometres. When the – when the Darling used to flow, she's an amazing river and she threw a lot of water down, and these calculations other than trying to average how much water coming down the river, they haven't been used to the advantage.

And so what we're saying as a community, we do understand that floods are a natural part and to decommission 80 per cent of the Menindee Lakes, why not just fill in the Grand Canyon and brick up Niagara Falls. I'm just saying there is efficiencies; we do understand that things have to get a bit more efficiency over  
5 time, but we also do understand there is a thing called nature, and if you disregard her, you do so at your peril. So we have been ignored totally as a community. We're not that dumb. We're not silly farmers. We've survived hundreds of years of hardship, and we do so with the respect and understanding that the Barkandji Nation has for 60,000 years to look after our environment around us. So we would have –  
10 and we have asked desperately for consultation, but, certainly, the doors of Sydney have been closed to us.

MR O'FLAHERTY: I just want to unpick a bit of what we just discussed in terms of what consultation and what contact you have had, and to assist, if we go back to  
15 the March 2017 meetings, this is discussed in the submission that's behind tab 4 of your pack. That's a submission to the most recent senate inquiry.

MS McBRIDE: Yes.

20 MR O'FLAHERTY: If you go to page 4 of that submission, there's discussion about those meetings on the top there. Now, you said they were closed meetings. Is that that they weren't – they were only certain members of the community that were invited?

25 MR McBRIDE: New South Wales said that it was – New South Wales Water said it was effectively closed. If too many people turned up, they wouldn't speak. It was that type - - -

MR O'FLAHERTY: Right.

30 MR McBRIDE: - - - of abrupt behaviour that – you know, “We will only speak to a select few. We will tell you what we're doing and the rest can just – they're of no importance. They should just stay in Broken Hill,” and that's - - -

35 MR O'FLAHERTY: Yes. And - - -

MR McBRIDE: A lot of people from Broken Hill, Menindee, Tilpa, everybody, we all take it very personally.

40 MR O'FLAHERTY: Yes. And – yes.

MS McBRIDE: So just to clarify, that was New South Wales Department of Primary Industries who were holding that, not Water New South Wales.

45 MR O'FLAHERTY: Yes, there's a mention – yes, sorry, yes. And so that's DPI Water and MDBA, and that's the – is that when the meeting – meeting at which MDBA said, “We don't do the consultation; New South Wales Government does.”

MR McBRIDE: Yes. Correct.

MR O'FLAHERTY: You're nodding – yes. Yes. There's a mention of very little information provided subject to a six-page information sheet.

5

MS McBRIDE: Yes.

MR O'FLAHERTY: Now, I'm not sure whether the core folder of the exhibit version of the Menindee Lakes, my version has got a six-page document, but I'm not too sure whether the - - -

10

MS McBRIDE: I have – I actually have a copy myself of the six-page document here.

MR O'FLAHERTY: I've got tab A which may suggest that there is not a version of it in the – but just for purposes of now, if that just could be – and we can start the tender of it later. Can you show that to Mr and Mrs McBride?

15

MS McBRIDE: Yes, I do have a copy. I'm looking at it.

20

MR O'FLAHERTY: Excellent. That is a document – now that I've given mine away – entitled, I think, Securing New South Wales Water Future, New South Wales Government Approach to Menindee Lakes dated March 2017.

MS McBRIDE: Yes.

25

MR O'FLAHERTY: Is that the six-page document that you were given?

MS McBRIDE: It is.

30

MR O'FLAHERTY: Yes.

THE COMMISSIONER: I thought - - -

MS McBRIDE: That was a detailed version. There was also the abbreviated two-page version, yes.

35

MR O'FLAHERTY: That's detailed, is it? Right.

THE COMMISSIONER: I thought this has been tendered already. I've seen it before, haven't I?

40

MR O'FLAHERTY: We have seen it before, yes, Commissioner. I don't think it has been formally tendered.

45

THE COMMISSIONER: Right. Is it in the Menindee Lakes supply measure court folder?

MR O'FLAHERTY: It's in mine. There is, in fact, a tab 8, I'm told. I've got a tab A. So almost there.

THE COMMISSIONER: No, it is – it's tab 8.

5

MR O'FLAHERTY: There we go.

THE COMMISSIONER: It says A on the reverse.

10 MR O'FLAHERTY: Anyway, we're - - -

THE COMMISSIONER: Got that. Thanks.

MR O'FLAHERTY: - - - all on the same tab at least.

15

THE COMMISSIONER: No, I - - -

MS McBRIDE: We're all looking at the same document.

20 THE COMMISSIONER: Yes. No, I'm familiar with it, yes.

MR O'FLAHERTY: So that's what you were given on that occasion.

MS McBRIDE: Yes.

25

MR O'FLAHERTY: All right. Well, I tender that document if it hasn't been already.

30 THE COMMISSIONER: Yes. Now, are we to take it, are we, that – I'm sorry, this is a bit of law. Where in the Plan do I find compliance with the statutes requirement that the Authority is not to propose an adjustment without inviting members of the public to make submissions to the Authority on the proposed adjustment?

MR O'FLAHERTY: That would be under section 7.06.

35

THE COMMISSIONER: Is that right?

MR O'FLAHERTY: Public consultation which provides a process of a draft determination and consultation on that draft determination.

40

MS McBRIDE: So we provided - - -

THE COMMISSIONER: Well, sorry, 7.06 is just about what you have to do before finalising a determination of the amounts of proposed adjustments.

45

MR O'FLAHERTY: It - - -

THE COMMISSIONER: I'm more interested in something that is antecedent to that, namely, should the project go ahead at all.

5 MR O'FLAHERTY: Well, I guess the MDBA's function, as I understand it, is in determining those amounts based on those pages.

THE COMMISSIONER: No, you're correct. You're correct. 23A, the adjustment is by an amount determined by the Authority.

10 MR O'FLAHERTY: Yes.

THE COMMISSIONER: So that would suggest that the Act, notwithstanding certain general objectives in it, the Act doesn't insist that the Plan itself requires public prior consultation about a measure.

15

MR O'FLAHERTY: Well, it begs the question what will be the content of that requirement. One can make submissions on a - - -

20 THE COMMISSIONER: That's pretty familiar from planning law, isn't it? You publish the proposal and invite people to examine it and - - -

MR O'FLAHERTY: Yes, and the argument that could be made is the only way in which one can make reasonable consultation is one which provides full detail, not only of the SDL adjustment amount, but of the project themselves that underpin that.

25

THE COMMISSIONER: Well, quite.

MR O'FLAHERTY: So – now, is it a question of whether the Authority has by the draft determination report complied with that.

30

THE COMMISSIONER: Right. All right.

MR McBRIDE: And could we just say that every shire, Wentworth Shire, Broken Hill, every person involved in this from a regional perspective asked for it to not go ahead or get some consultation, and we got neither.

35

MR O'FLAHERTY: Yes.

MR McBRIDE: Because, remember, at the end of the day \$500 million was spent on 20,000 people supposedly, so it works out to be \$25,000 for every man, woman and child in Broken Hill to get water that used to come out of Menindee Lakes. So the question that everybody asked all the way along was who's going to pay for this. If it's user pays, then everybody in Broken Hill has to be up for about \$100,000 per household. There's no economic basis for that and this was a real concern of ours.

45

THE COMMISSIONER: No, it's not interrupting. Thank you.

MR O'FLAHERTY: And I'm reminded as well that section 7.17(2)(c) talked about compliance with approval processes. I'm not – and it explicitly envisages that those approval processes may incorporate opportunities for public consultation.

5 THE COMMISSIONER: Well, that - - -

MR O'FLAHERTY: Commissioner, you may recall that we do have – we have had regard to the documents which are called phase 1, 2 and 3 processes. I'm not sure the extent to which they address public consultation, but I would be surprised if they would.

10 THE COMMISSIONER: Well, that can be established by - - -

MR O'FLAHERTY: But I can certainly look into that to - - -

15 THE COMMISSIONER: - - - finding out what the Ministerial Council has approved.

MR O'FLAHERTY: Yes.

20 MR McBRIDE: Consultation wasn't an issue. It was bulldozed through without our consent or knowledge of everybody in the western division.

MR O'FLAHERTY: Yes.

25 MR McBRIDE: We just – and I actually asked for an environmental impact statement. So I was given a 1800 number and I got Kathy at the 1800 number, and she was at a telecentre and I said, “Kathy, can you tell me what the environmental impact statement of bypassing the Menindee Lakes and running the water out of the Murray”, and she said, “Sorry”, and I said, “You know, you are involved in this pipeline.” She didn't know where the pipeline was. She didn't know there was Menindee Lakes and, also, the environmental impact statement is you weren't going to – you're only going to push over a few trees because you're going right along the main Silver City pipeline – sorry, Silver City Road on the western side of the Darling River. So other than pushing over a few little trees and killing the odd kangaroo, that was the environmental statement, and that was crazy because, remember, you're going to decommission the Menindee Lakes by stealth and that was our concern.

35 MS McBRIDE: So, sorry, just to clarify, Rob is talking about the business case for the Broken Hill pipeline - - -

MR O'FLAHERTY: Yes.

45 MS McBRIDE: - - - which does not fit under the supply measures. However, we see it as a complementary requirement to enable the supply method to do ahead.

MR O'FLAHERTY: Yes, the – because the Menindee Lakes supply measure project explicitly makes reference and, in fact, relies upon the presence of the pipeline. Yes.

5 MS McBRIDE: Correct. Yes. Sorry, just – I thought I should – we should clarify that.

MR O'FLAHERTY: No. Sure. Just in terms of tying up the consultation or the – their concerns about consultation, if we go back to that October 2017 teleconference,  
10 there's a bit of a mention of that. That's behind tab 10 of the bundle. If you go to page 3, third dot point from the bottom below – above Communication, the heading Communication, there's a:

15 *See significant concerns are raised about the lack of consultation of SDL project at Menindee.*

Do I take it that information has been passed through executive to raise with – and I take it that's Crown Land and Water. I take it that wasn't an extensive discussion because you were dealing with Water New South Wales at these meetings who had  
20 no decision-making function.

MS McBRIDE: Correct.

MR O'FLAHERTY: Right.  
25

MS McBRIDE: This is another issue that we continually experience - - -

MR O'FLAHERTY: Yes.

30 MS McBRIDE: - - - on the Lower Darling. The people that we generally engage with is Water New South Wales and the – we feel the message does not get through to the policymakers in Department of Industry – or now Department of Industry and our concerns are not being raised through this. So, yes, we put the concern up.

35 MR O'FLAHERTY: Yes, and - - -

MS McBRIDE: Jock Laurie has visited the region; however, that has not been consultation.

40 MR O'FLAHERTY: No.

MS McBRIDE: That has not provided information or been consultation on the SDL Adjustment Mechanism project.

45 MR O'FLAHERTY: And I'm going to come to that, but if we continue on the slow traverse through the months.

MS McBRIDE: My apologies.

MR O'FLAHERTY: Sorry. No, no, I'm just – I can be a bit belligerent on this front. Behind tab 9 - - -

5

MS McBRIDE: Yes.

MR O'FLAHERTY: - - - is the next – even though, as the Commission noted, we had a meeting, going back to the future of 4 October, I take it this one being 7  
10 December 2017 is the next teleconference following that October one.

MS McBRIDE: I would have to check. I cannot recall if there was a November teleconference or not.

15 MR O'FLAHERTY: Sure. All right.

MS McBRIDE: Generally, they are held on a monthly basis. However, every so often, if people aren't available they are cancelled.

20 MR O'FLAHERTY: Yes. Then going to page 3 of those minutes - - -

MS McBRIDE: Yes.

MR O'FLAHERTY: - - - under the heading 'Other Business,' and there's a  
25 reference to an Andrew Garrett. Now, on the front of that, he's identified as someone from Crown Lands and Water.

MS McBRIDE: Yes.

30 MR O'FLAHERTY: So he was essentially an invitee to these discussions which normally only include Water New South Wales.

MS McBRIDE: Yes. So Andrew is a regular on the teleconference.

35 MR O'FLAHERTY: Okay.

MS McBRIDE: We also have other people from Environment and Heritage who attend.

40 MR O'FLAHERTY: Sure.

MS McBRIDE: But the meeting is hosted by New South Wales Government–  
Water New South Wales, and it is only in the last couple of months that there has  
45 been a spokesperson for the Department of Industry attending.

MR O'FLAHERTY: Right. Okay. In terms – the second filled in dot point talks about concern – is starting concerned – I say that probably concerns raised by

community that the SDL business cases, etcetera, without consultation. The indented dot point states:

5           *Andrew assured community representatives that future engagement will be a vast improvement on past efforts.*

MS McBRIDE: That's not particularly difficult.

10 MR O'FLAHERTY: Yes. Did he explain how that improvement was going to play out? Did he give details?

MS McBRIDE: So we have been given a name that consultation would start once it had got through the Senate processes.

15 MR O'FLAHERTY: Right.

MS McBRIDE: That name provided was Mitchell Isaacs. The first communication that we had with Mitchell Isaacs was two weeks ago, and he was not able to come out to the region yesterday, but he is part of the team leading the work around the consultation on the six options for Lower Darling users, yes.

MR O'FLAHERTY: Yes, so I will actually let – let's jump to that. If I - - -

25 MS McBRIDE: So that is what we were told that – apart from vague information that, yes, we will do significant consultations, that is the detail that we have been given around what that consultation would look like, that it would be Mitchell Isaacs.

MR O'FLAHERTY: So then if we go to tab 12 in that bundle - - -

30 MS McBRIDE: Yes.

MR O'FLAHERTY: - - - that's an email from Mr Isaacs to yourself dated 7 August 2018.

35 MS McBRIDE: Yes.

MR O'FLAHERTY: And there's a reference to a phone call of that evening. Was that the first contact you had with Mr Isaacs?

40 MS McBRIDE: Yes.

MR O'FLAHERTY: And he talks about a visit with Deloitte and an options analysis.

45 MS McBRIDE: Yes.

MR O'FLAHERTY: And that doesn't sound like a consultation on the option that's already proposed. This is something different, is it?

MS McBRIDE: Correct. So in response to this email, I replied to this email.  
5 Unfortunately, we obviously weren't able to be at the meetings yesterday because we can't be 700 kilometres apart in two places at once. I responded to that email saying that they could not come out and consult on options. They could not expect community members to be able to provide informed responses around consultation if we hadn't seen the six options. We then last week – I believe it was Wednesday or  
10 Thursday – received a two page options - - -

MR O'FLAHERTY: Yes, if you go to tab 11.

MS McBRIDE: - - - which outlines what those six options are.  
15

MR O'FLAHERTY: I think that's that document.

MS McBRIDE: Yes, that is the document I'm referring to.

20 MR O'FLAHERTY: Yes.

MS McBRIDE: And as you can see, they do not relate overall to the Adjustment Mechanism project.

25 MR O'FLAHERTY: No. Well, save with respect - - -

MS McBRIDE: They relate to what I would call mitigation.

30 MR O'FLAHERTY: Save with respect to one. If you go over to page 2, that's where you have six options. The only one that I think – that I think see relates to the – well, there's two that potentially relate to – sorry, no, I withdraw that.

35 THE COMMISSIONER: Aren't they all premised on the Menindee Lakes water savings project going ahead and these are options too as Ms McBride put it, to mitigate the detrimental consequences of that?

MR O'FLAHERTY: Yes, save with respect possibly 6.

40 MS McBRIDE: Correct - - -

THE COMMISSIONER: Well - - -

45 MR O'FLAHERTY: Which talks about reconfiguring the Menindee Lakes supply management project.

THE COMMISSIONER: Yes, that's the so-called drought reserve.

MR O'FLAHERTY: That's – I would hasten to suggest that's probably the least likely of those six options to be - - -

THE COMMISSIONER: Well, the last phrase of option 6 tends to suggest that - - -

5

MR O'FLAHERTY: Indeed.

THE COMMISSIONER: - - - it's not going to be considered.

10 MR O'FLAHERTY: Yes.

MS McBRIDE: So we have had discussions with those people who were able to attend the meetings yesterday. It was very strongly put forward that none of the options were acceptable to the community. However, they had an overwhelming  
15 sense that it was tick boxing consultation and that none of it would be listened to. So that is feedback that I received last night from community members.

MR McBRIDE: So those people might not understand that theatrics. It's, effectively, either we're going to shoot you or push you off the cliff. Which do you  
20 want? And that's really what we're facing. So, you know, because people are listening hopefully who are out there. It is that serious that it's not giving us options. It's telling us we're going to shoot you, and you go do you want to be shot – which way. And it's an insult to everybody who has lived from Broken Hill down. You know, it's just – it is personal. People don't understand they're destroying our  
25 environment and giving us options to say a pipeline will replace what people for 60,000 years have been lucky enough to live by.

I'm sorry. A pipeline doesn't cut it and it is – I know Kat is very analytical. I'm passionate. This is personal. This is insulting our intelligence, and it's destroying  
30 our environment. And, you know, I know this is just a rant, but it is just – it is destroying our environment and not – we have not been part of consultation at any juncture in time, and after 200 years of living in the bush, a lot of people have a lot of knowledge that bureaucrats in Sydney don't have any iota of what's going on. Sorry.

35 MR O'FLAHERTY: In terms, and also to touch upon that in terms of the nature of this contact, am I right in thinking that the first time you heard about this – well, I withdraw that. Was the email and telephone conversation with Mr Isaacs the first you heard of this six options proposal?

40 MS McBRIDE: Yes.

MR O'FLAHERTY: And that was on the evening of 7 August which takes us about a week before they were going to come round to the – to the area and you said you only – when did you receive this document behind tab 11?

45

MS McBRIDE: So I believe I received it on Wednesday.

MR O'FLAHERTY: Late last week.

MS McBRIDE: Yes.

5 THE COMMISSIONER: I see that among the key questions, that you were informed of by that document, was whether you were familiar with the Menindee Lakes water saving project and the preliminary business case that was publicly released.

10 MS McBRIDE: Yes. So we were - - -

MR O'FLAHERTY: Euphemistically publicly released.

15 MS McBRIDE: Yes. So there was a meeting held by Jock Laurie – let me just go to my dates – on 27 June in Menindee. Simon Draper who's the Secretary of Department of Industry, Ms Livingstone who was the Deputy Secretary of Lands and Water and Rachel Connell who's the Executive Director of Water were at that meeting. They came to start a discussion around consultation. They didn't provide any information about the supply project at that meeting and what was – obviously  
20 current – because they're currently facing a cease to flow in December, there was discussion about that, but the discussion that focussed on the Menindee Lakes water saving project at that meeting was we need to understand as a community what are the decision points that New South Wales Government need to go through in making this project. That is what was discussed. There was no information and no  
25 consultation. We were told at that point that the business case had been publicly released. However, none of us had a copy of it at that meeting and we weren't aware that it had been released. That was circulated after that meeting. So that was the end of June.

30 MR O'FLAHERTY: So that – what a – that email was circulated from someone in the New South Wales Government attaching or linking to the business case?

MS McBRIDE: Yes, Jock Laurie, or Jock Laurie's office.

35 MR O'FLAHERTY: Right.

MR McBRIDE: And Jock had come out about three or four months earlier, and I just – I've known Jock for 30 years, and I said, "Look, you're not a Trojan horse, are you? Are you going to seriously going to take some information back and release it  
40 to the general public?" And he said, "I can't guarantee, Rob". And I said "well, look, we will get the community behind us as long as the voice actually gets heard of what's happening around here." And, clearly, he took it back, and Noel Blair decided to shelve it somewhere. And that's the frustrating thing for us, the fact that there has been so many different faces. Every time we've had a meeting, there's five  
45 new people who you've got no idea their background.

MR O'FLAHERTY: Yes.

MS McBRIDE: I think it's Rachel now. It was Charlie for a bit. We've had about four guys in charge. So it has been so much smoke and mirrors. You couldn't start a rapport with people and actually show them what's going on before they moved on.

5 THE COMMISSIONER: Sorry. Which of the core documents is being referred to by the expression, the preliminary business case that was publicly released?

MR O'FLAHERTY: I imagine that – I don't know why they call it preliminary, but the document we all seem to be referring to as a business case is the document  
10 behind tab 2 of the Menindee Lakes core folder. There is an interim proposal project proposal behind tab 3.

THE COMMISSIONER: That's June 2017, though. Is that right?

15 MR O'FLAHERTY: That's the one, yes. The business case is dated June 2017 which appears to be the date on ..... it was produced at the Senate, and subsequently, I understand, linked on the New South Wales Government websites earlier this year.

THE COMMISSIONER: So as you say, leave the epithet preliminary to one side at  
20 the moment.

MR O'FLAHERTY: Yes.

THE COMMISSIONER: Is this the most advanced business case that exists in  
25 public?

MR O'FLAHERTY: I understand that to be the case, yes.

THE COMMISSIONER: So it's the version that was prepared on 9 June 2017 - - -  
30

MR O'FLAHERTY: Yes.

THE COMMISSIONER: - - - for submission to the Basin Officials Committee.

35 MR O'FLAHERTY: And that is consistent with the fact it was produced under those auspices in the Senate, yes.

THE COMMISSIONER: Do we know when it was publicly released?

40 MR O'FLAHERTY: We can find that out. It was produced under a Senate order.

THE COMMISSIONER: No. No. Not - - -

MR O'FLAHERTY: But in terms of when it was uploaded to a New South Wales  
45 Government website, we can certainly find that out.

THE COMMISSIONER: Yes. You first got this very recently; is that right?

MS McBRIDE: So we first received – we first got it at the end of June.

THE COMMISSIONER: June 2018?

5 MS McBRIDE: Yes, this year.

THE COMMISSIONER: Did anyone ever – has anyone ever explained why it took a year to release it publicly?

10 MS McBRIDE: No. We were told that it was – had confidential material in it and, therefore, couldn't be released.

THE COMMISSIONER: Who told you that any of this was confidential in the sense that the public shouldn't see it?

15

MS McBRIDE: New South Wales Government. Department of Industry staff.

THE COMMISSIONER: Did they explain why it was confidential?

20 MS McBRIDE: No.

MR McBRIDE: They want to rush all this through underneath the radar without - - -

25 THE COMMISSIONER: No. No. No. We – yes.

MR O'FLAHERTY: You will note, Commissioner, that the copy that's behind tab 2 does have redactions.

30 THE COMMISSIONER: It also says commercial in confidence, not a phrase - - -

MR O'FLAHERTY: And it does – yes. I was going to point that out, but - - -

35 THE COMMISSIONER: Not a phrase that engenders, if I can use the word differently, any confidence because I can't see a single thing there that could seriously be said to damage the public interest by reason of some distortion of competition upon publication. That's the only way in which commercial in confidence could possibly justify keeping it from the public.

40 MR O'FLAHERTY: Save with respect to - - -

THE COMMISSIONER: That's why I'm asking the witnesses - - -

MR O'FLAHERTY: Yes.

45 THE COMMISSIONER: - - - has anyone every explained to you, look, we would love to show this to you, but then that would ruin the probity, say, of tender process - - -

MS McBRIDE: No.

THE COMMISSIONER: - - - because that is a very serious thing to be considered when material that might be beneficial for the public to consider nonetheless needs to  
5 be kept secret because it may spoil the competition that the public needs in, say, a tender process.

MR McBRIDE: Sir, this is heart-breaking, and it – no, we – it is that serious to us, too, and we are just kept out of the loop on every occasion. So - - -  
10

MS McBRIDE: No, no one has ever explained that to us.

MR O’FLAHERTY: And in respect of that minor point, Commissioner, the only redactions that are on this document do seem to relate to possible tender processes in  
15 terms of costings. Like yourself, I don’t see any other basis on which this could possibly be confidential.

THE COMMISSIONER: Well, to put it another way, if, as I would hope would always be the case, people are sensitive to probity requirements, one makes sure that  
20 those topics are dealt with in different documents.

MR O’FLAHERTY: Yes, you would have a consultation document and an internal costings document.

THE COMMISSIONER: It’s not a forces of nature that includes probity – matters that need to be kept secret as a matter of probity. It’s not a force of nature or an  
25 accident by which they’re included in a document. Someone chose to do so.

MR O’FLAHERTY: Yes.  
30

THE COMMISSIONER: You would put it in a separate document, and all the rest could be publicly released with simply a reference to the fact that there will need to be a tender process conducted in the usual confidential fashion. Very well.

MS McBRIDE: As I said, the most information that I had on – or that we had on the project was from the information that was released under the Senate which then –  
35 which was the MDBA’s own analysis of it. That was an 11-page document which was really the only content of – or detail that we had on the Menindee Lakes water saving project until the end of June this year.  
40

THE COMMISSIONER: Yes. Well, do you understand that there – whether there’s intended to be further – I will call it community engagement, or as they call it, stakeholder engagement, along the lines of the Lower Darling options analysis document that was prepared for the meeting this week?  
45

MS McBRIDE: Yes. So what we have been told is that they will be narrowing it down to a few options and then coming back and doing further consultation around this.

5 MR O'FLAHERTY: But given that - - -

THE COMMISSIONER: Well, where do I find – I'm not sure that I can see that. I'm sorry to be pessimistic, but at the foot of the first page of this document - - -

10 MR O'FLAHERTY: Yes.

THE COMMISSIONER: - - - which I guess was at least contributed to by Deloitte's, it's said that their work will be finished in September 2018, although it must be very quick because they describe themselves in this document as being in  
15 the early stages of an engagement. But it includes Deloitte's identifying options warranting further analysis and those not, and I may be wrong, but unless hydrological risks is a phrase intended to include the environment, that doesn't seem to get a look in, except with respect to obtaining approvals, which Deloitte's is not being asked to - - -

20

MS McBRIDE: I would agree.

MR McBRIDE: As Katharine said, I think it was just – this is a tick of the box. The locals feel that way. It's like the pipeline. We got no say in it. It was just put down  
25 without consulting us, without our consent, and without our blessing, and we just knew long-term, it was going to do damage, and this is the same. This is ridiculous to suggest September to get a big accounting firm to do that type of – would normally take six to 12 months, 18 months, because you've got to actually talk to people in the community, and - - -

30

MR O'FLAHERTY: And it doesn't seem like they've left a lot of time to consult if, you know - - -

THE COMMISSIONER: Well, if I can just unpick this, on the first page – I don't  
35 know whether this is the government or Deloitte's or both speaking – it describes the project, that is, the Menindee Lakes water savings project, as being a package of proposed operational changes and infrastructure works that together will deliver water efficiency savings, better river operations, and improved environmental outcomes. And I gather from what you've been telling me that you have looked in  
40 vain for an official, any official publication providing particulars of those three outcomes; is that right?

MS McBRIDE: Yes.

45 MR McBRIDE: That's correct.

THE COMMISSIONER: But from your lifetime experience and contemporary experience, better river operations and improved environmental outcomes seem counter-intuitive.

5 MS McBRIDE: Correct.

MR McBRIDE: Conceivably, you're just dividing up the northern and the southern Basin and putting a pipeline to keep us amused, and, therefore, you will just – we are the conduit between the northern and the southern Basin, and this is a pipeline out of  
10 the Murray to take a bit more water out of the Murray - - -

MR O'FLAHERTY: Yes.

MR McBRIDE: - - - and it seems those in the northern Basin get all the water, and  
15 Menindee Lakes are decommissioned so that only 20 per cent of the water even bothers to get to Menindee. That means 80 per cent of the whole catchment of the Murray Darling – or, sorry, 80 per cent of the catchment of the Darling River system, stays north of Bourke. Now, to give your listeners some idea, the Darling runs for 1,470 kilometres. The bit that's dry at the moment is the bit that's 1,000 kilometres  
20 south. So you're giving all the water to about 300 to 350 kilometres of a 1,450 kilometre 30 million year old river system.

THE COMMISSIONER: Okay. Well, there's a reference then to early consultation with stakeholders in the community. Should I understand that from your experiences  
25 extending back into 2017?

MS McBRIDE: Yes, but they haven't actually formally been tabled, and I think it would be fair to say that we, as a community, have been raising these concerns, feeling like they're falling on deaf ears, and not being recorded. And many of the  
30 opportunities that we take to raise those concerns are not – you know, we raise them at every opportunity that we possibly can, whether it be Water New South Wales, Department of Industry coming out and consulting on something else, or MDBA.

THE COMMISSIONER: Well, have you any information about what was said by  
35 the government and Deloitte's about option six during this – what's called the initial consultation?

MS McBRIDE: No, I don't.

40 THE COMMISSIONER: Because option six, which it seems to involve the possibility of re-scoping the project to maintain a drought reserve, maintaining the Lower Darling's long-term reliance on the Menindee Lakes system, that depending on the detail, that's more or less what you would favour, isn't it?

45 MR McBRIDE: I would favour, actually, a living ecosystem, if – because, you know, it's not about the Lower Darling. I mean, we have 600 kilometres of a river system. This has to get to South Australia. Too - - -

THE COMMISSIONER: No. No, I understand. But - - -

MR McBRIDE: So they're trying to amuse us by using words like a "drought preparedness fund". It's not about droughts.

5

THE COMMISSIONER: What about maintaining the Lower Darling's long-term reliance on the Menindee Lakes system? If that were maintained, it would, by definition, flow through, would it not?

10 MR McBRIDE: I would suggest – sorry, I would suggest that just 2 million tonnes of salt has to go out to the Murray Mouth each year. It has got to come down the Murray-Darling. So to suggest that you can maintain and amuse a small number of people on the Darling River is superfluous to the long-term importance of the Darling River system.

15

THE COMMISSIONER: So you read that as suggesting that maintaining just enough low-flow, not quite to make it to the Murray - - -

20 MS McBRIDE: So currently, the drought reserve that is in place under the current agreements, which have been in place for - - -

THE COMMISSIONER: Yes.

25 MR O'FLAHERTY: Yes.

MS McBRIDE: - - - numerous years, far earlier than the Murray-Darling Basin Plan, was that there would be a 480 - - -

30 THE COMMISSIONER: Yes.

MS McBRIDE: - - - drought reserve or local community reserve. Now, in – in previous – prior to 2012, that seemed to work relatively well.

35 MR O'FLAHERTY: Yes.

MS McBRIDE: Since 2012, we know that that reserve really only lasts us a year on poor quality low-flows. So – and we usually don't start with a 480 active reserve at the start of that. So there may be 480 in the - - -

40 MR O'FLAHERTY: Yes. When you say 480, you can't use all of it, because it's not all - - -

MS McBRIDE: Yes.

45 MR McBRIDE: There's passive – there's passive – passive is the amount of water in a – in a lake system that you can't get out because it just actually sits - - -

MS McBRIDE: Yes.

MR O'FLAHERTY: Yes, you can't actually extract out.

5 MR McBRIDE: Exactly.

MS McBRIDE: Yes.

MR O'FLAHERTY: No.

10 MR McBRIDE: So there's passive and active.

MR O'FLAHERTY: Yes.

15 MS McBRIDE: Yes.

MR McBRIDE: Active is the actual amount that you can get out.

MS McBRIDE: Yes. So, I mean, the level of detail in that two and a half sentences  
20 does not give us enough information - - -

THE COMMISSIONER: I understand.

MS McBRIDE: - - - to have any confidence in what a drought reserve would look  
25 like - - -

MR O'FLAHERTY: Yes.

MS McBRIDE: - - - or how it would be managed.  
30

THE COMMISSIONER: I understand but I want to direct your attention to the way  
it finishes up:

35 *...which would likely have –*

I presume someone is having a joke here –

*...which would likely have flow-on impacts –*

40 I think that means no flow-on impacts –

*to the water savings that could achieved.*

45 Now, I take it – I read that as meaning if we take this option, we won't be able to  
make as large an SDL adjustment as would otherwise be the case - - -

MS McBRIDE: Correct. So the - - -

THE COMMISSIONER: - - - which I am sufficiently cynical enough to think is a not particularly kind way of saying, "Well, we've raised the option, but we're on the verge of eliminating it".

5 MS McBRIDE: Yes. So the proposed drought reserve – we will use the term drought reserve – the proposed drought reserve under the new water saving project is an 80 gig reserve as opposed to a 480 gig.

10 MR O'FLAHERTY: So your concern is when they're talking about drought reserve there, it's 80 rather than 480.

MR McBRIDE: 80 per cent – 80 per cent - - -

15 MS McBRIDE: We don't – yes, we don't know.

MR O'FLAHERTY: So, it will – but, again, you're not – you're sceptical of the lack of detail here, I imagine.

20 MS McBRIDE: Yes, and we – we have received very little from the New South Wales Government which would not make you cynical about that.

MR O'FLAHERTY: Yes.

25 THE COMMISSIONER: Can you explain to me the option five, particularly 5B.

MS McBRIDE: Yes. So five - - -

30 THE COMMISSIONER: So from the Murray up to Weir 32 to supply all entitlements and users. How would that work?

35 MS McBRIDE: Yes. So just some broader background, number One and number Five are quite similar in the fact that they have option A and B which reflect – you know, are the same for both; however, option one is around structure adjustment packages for buybacks of irrigation licences - - -

THE COMMISSIONER: Yes.

40 MS McBRIDE: - - - whereas option five supplies all users, including town, stock, and domestic and irrigation from my reading of that.

THE COMMISSIONER: Yes.

45 MS McBRIDE: So Weir 32 sits at Menindee Lakes, so it would be a pipeline from the Murray up to Menindee Lakes to pump from the Murray all entitlements and users up the Lower Darling.

MR O'FLAHERTY: So that – would that - - -

THE COMMISSIONER: Down the Lower Darling.

MR O'FLAHERTY: So that would envisage - - -

5 MS McBRIDE: Well, yes, but the river is going up, pumping.

MR O'FLAHERTY: - - - pumping from the Murray up to the top of the Lower Darling, and I - - -

10 MR McBRIDE: And then bring it down.

MR O'FLAHERTY: - - - and it would then flow through the Lower Darling, or it would - - -

15 MR McBRIDE: No. No. No. No. No, it stays in the pipe. Stays in the pipe.

MR O'FLAHERTY: Okay.

MR McBRIDE: No. No, it stays in the pipe, because – look, it's only 1,000  
20 kilometres of River Red Gums that are going to collapse. Like, what the hell? It doesn't - - -

THE COMMISSIONER: No. Sorry, just hang on.

25 MR O'FLAHERTY: Yes. Well - - -

MR McBRIDE: Yes, don't worry about them. That's only the environment.

THE COMMISSIONER: So do you understand option five is a pipeline, the extent  
30 of which is as far north as Weir 32, upstream of Weir 32, but it would, along its length, be the source, rather than the river, for stock and domestic?

MR McBRIDE: Yes, absolutely. So we lose all our river - - -

35 MS McBRIDE: Correct, and irrigation and township.

MR O'FLAHERTY: That wouldn't, of course, address the issue of the fact you've got that border boundary issue with the ..... River, but - - -

40 MS McBRIDE: Yes.

MR McBRIDE: Yes. But it - - -

MS McBRIDE: It also doesn't account for the loss of valuable productive land on  
45 our river country that we would lose because there is no water in the river. So we would lose our fences, and we would lose - - -

THE COMMISSIONER: So you don't understand this as being an offer to build your fences for you.

MS McBRIDE: No.

5

MR McBRIDE: If you would like somebody to shoot you. But – no. But it's also the landscape. Like, country along the river country, you've got the River Red Gums. It's nature at its best. If you could extrapolate the land of the Darling River out a million miles, you would be a very rich man or woman. Conceivably, it's our best country, and it really is most productive. It's probably 10, 15 times more productive than any other parts of the land in the western division. It's that good. And this is kind of saying, "Well, just disregard that. We will just put a pipeline. Don't worry about it". You know, it's taking your best land off you and your insurance. It's always when times get tough, you can always throw your sheep on the river, and they will come out alive and in good nick. And so this is just totally disregarding any concept of a business acumen. Like, yesterday we were shearing at Tolarno Station, and tomorrow we will be back shearing. We're shearing our wethers at the moment, which best price of wool in 100 years, eight times more valuable than other products. But we've got to get rid of those stock now not for an economic reason, but because the government is destroying our river in a view months, and our sheep will just walk away. So, you know, it is a great impetus to destroy our businesses by allowing these type of plans which are just economic suicide.

25 MR O'FLAHERTY: I wonder if that's a clear point to have a morning break?

THE COMMISSIONER: Is that a convenient time? Yes. We will take until five to 12. Thanks.

30 MR O'FLAHERTY: Very well.

MS McBRIDE: Thank you.

MR McBRIDE: Thank you.

35

**ADJOURNED** [11.37 am]

40 **RESUMED** [11.53 am]

THE COMMISSIONER: When you're ready.

45 MR O'FLAHERTY: Thank you, Commissioner. Just – and a follow-up query about when the business case – Menindee Lakes business case was publicly released.

I'm instructed that the New South Wales Government provided the Commission with a copy of that business case on 21 June of this year.

5 THE COMMISSIONER: No. I mean when was it publicly released?

MR O'FLAHERTY: And in that letter they indicated it would be published on a New South Wales Government website shortly thereafter. It would appear from our inquiry that it was published within a number of days of that letter on 21 June 2018.

10 THE COMMISSIONER: Thanks.

MR O'FLAHERTY: Just in terms of – another point I raised in discussion with you in respect of the net requirement for consultation for these supply measure project, and I drew your attention to the approval process, approved by the ministerial  
15 council under 7.17(2)(c).

THE COMMISSIONER: Yes.

MR O'FLAHERTY: Just on my brief review of the assessment guidelines, in – I  
20 might just take you briefly to that which is in the SDL core folder.

THE COMMISSIONER: Yes.

MR O'FLAHERTY: Now, I think we're operating under the assumption that these  
25 phased assessment guidelines are what is referred to in 7.17 as approved by Ministerial Council. Operating under that assumption, under tab 8 is the assessment guidelines for phase 2.

30 THE COMMISSIONER: Yes.

MR O'FLAHERTY: And if you go to page 27 of that document.

THE COMMISSIONER: Yes.

35 MR O'FLAHERTY: There's what's called a stakeholder management strategy, and there's requirements that the business case needs to provide. And over the page, there's – sorry. So those requirements require a listing of relevant stakeholders and concerns and issues, a strategy to engage with those issues. There's a requirement –  
40 this is over the page, on page 28:

*The business case needs to provide sufficiently detailed information that could allow an independent assessment of the proponents' engagement with stakeholders.*

45 And then, under the heading 'Procedure to Assess Information,' it indicates:

*The business case will be assessed on the basis that - - -*

THE COMMISSIONER: How does the last of those:

*Evidence of broad community support for the project.*

5 MR O'FLAHERTY: Yes.

THE COMMISSIONER: How does that come about?

10 MR O'FLAHERTY: Well, it begs the question how the particular business case in this respect could possibly have evidenced that.

THE COMMISSIONER: But how would you evidence unless you had gone to and circled broad community?

15 MR O'FLAHERTY: Well, it would have to be more than a bland statement that there's broad community support for this project. There would have to be something further than that, whether there would be - - -

20 THE COMMISSIONER: But I can't support a project or not unless I know what it is, can I?

25 MR O'FLAHERTY: Well, that would be the requirement for the sufficiently detailed information, indeed. One flows from the other. The other aspect of this is that the business case would be assessed on the basis that those materially affected have been consulted.

THE COMMISSIONER: Who wrote this?

30 MR O'FLAHERTY: This, I understand, is an MDBA document.

THE COMMISSIONER: Really. What does "stakeholder" - - -

MR O'FLAHERTY: It's on your website.

35 THE COMMISSIONER: What does "stakeholder management" mean? Managing the stakeholders, is it?

40 MR O'FLAHERTY: Look, I imagine that's a term that would – can be translated into common English as "consultation".

THE COMMISSIONER: No, it can't. No. It's far less - - -

MR O'FLAHERTY: Perhaps I'm being a bit too

45 THE COMMISSIONER: It's far less attractive than that.

MR O'FLAHERTY: It's probably less - - -

THE COMMISSIONER: Look, in simple terms, it is surely reprehensible to talk in terms of stakeholder management.

5 MR O'FLAHERTY: Yes. Well, I take your point that it's – it has got a more-pejorative element to it than the more open term of "consultation". Yes. That would seem to be – well, that seems to be addressing requirements which, in my submission, appear to be severely lacking in the business case that appears to have been approved, and following from that, it may beg the question that might be for these witnesses.

10

I take it that you have not seen evidence of broad community support for the Menindee Lakes project?

MS McBRIDE: Correct.

15

MR McBRIDE: To destroy – destroy one of nature's amazing – most-amazing features, yes. No. No. I haven't met anybody, and we haven't been consulted and – you know, we live beside it. We live and breathe like the bush does. And just one little issue. Barkandji Nation: it's not a little issue. The life expectancy on the Darling River for a male is 37, 42 for a female. They cannot pass on their traditions without water, and I know that's just a little issue, but we are proud of standing beside the Barkandji and acknowledging that. So going back to the Murray-Darling Basin Authority. No, we haven't heard anybody in their right mind suggest that destroying a river system and the Menindee Lakes would be of advantage to any – this generation or future generations to come.

20  
25

MR O'FLAHERTY: Now, I understand you have raised your concerns by writing to the Prime Minister on these issues. And behind tab 13 of the bundle in front of you, there's a letter in response. I haven't seen the letter that produced this letter, and it may be that we can address it by discussing it now, but it – well - - -

30

MR McBRIDE: More than happy to. More than happy to.

MR O'FLAHERTY: Yes.

35

MR McBRIDE: I guess about four weeks ago, caught up with the Prime Minister in Broken Hill, had 25 minutes sitting down with him and the Deputy Prime Minister, Michael McCormack, and just discussing where we sat and with regard to this letter.

40

MS McBRIDE: This letter was sent prior to that, though.

MR O'FLAHERTY: Right. Okay. So this letter on 19 June 2018 predated the Prime Minister's visit to the area.

45

MS McBRIDE: Yes.

MR McBRIDE: That's correct.

MR O'FLAHERTY: Just in – over the page, on page 2 of – so this is a letter, not from the Prime Minister, but from the Minister for Agriculture and Water Resources. The second paragraph talks about the Menindee Lakes reconfiguration project, and there's a reference to it being in the early stage of development. They're talking  
5 about – there's a reference to regulators to enable access to existing dead storage. Then there's a reference to:

*This is consistent with your suggestion.*

10 What's that a reference to?

MR McBRIDE: Okay. So, literally, before white man got to this part of the world, there was at least six natural weirs on the Darling River. So this wasn't - - -

15 MR O'FLAHERTY: Right.

MR McBRIDE: This wasn't man-made structures, as obviously the Barkindji had fine-tuned it to make it more workable to catch fish - - -

20 MR O'FLAHERTY: Yes.

MR McBRIDE: - - - but effectively up to, maybe, a metre deep of natural granite that ran across the Darling River. Now, what I was proposing was, for connectivity reasons, that we return these to where they were. The Barkindji know where at least  
25 - - -

THE COMMISSIONER: They were removed for navigation reasons, were they?

MR McBRIDE: Exactly, to – they were all blown up in the 1860s so that river boats  
30 could traverse the river system.

MR O'FLAHERTY: Yes.

MR McBRIDE: So we were just purporting that we would like that it be returned to  
35 its natural environment. The Barkindji know at least five of the locations. We can get actually get transcripts or – you know, the river boat captains at Echuca had their little wind-out maps. So we can work out where the other one was. So we were just asking that they be returned and give connectivity to this river during this natural disaster because - - -

40

THE COMMISSIONER: Is there a difference between them and the temporary artificial block banks?

MS McBRIDE: Yes.

45

MR McBRIDE: Yes, absolutely. What - - -

THE COMMISSIONER: What's the difference?

MS McBRIDE: So the natural weirs were natural rock weirs, essentially, and the fish were able – actually able to sort of swim up through them, from my  
5 understanding – very basic understanding.

MR O'FLAHERTY: Bit more of a sieve than an opaque blocking.

MS McBRIDE: Yes. Yes.  
10

MR O'FLAHERTY: Yes.

MS McBRIDE: Whereas block bank is a weir, effectively, that nothing can get past.

15 MR O'FLAHERTY: Yes.

MS McBRIDE: There are pipes through it which enable some fish movement if there is connectivity below and above. Obviously it's dependent on that, but they're quite – they're very, very different structures. And the natural weirs were actually  
20 very low – from my understanding, quite low weirs – only a metre or so.

MR O'FLAHERTY: Right.

MS McBRIDE: They also are contingent on low flows coming down the river.  
25

MR McBRIDE: But a metre or so – you have to put it in perspective. To follow on from Katharine, we are purporting that we need these earth weirs that were – never been put in north of Pooncarie before because the river has never been destroyed like it has. So we're asking between two and four metres where - - -  
30

MR O'FLAHERTY: Yes. I'm going to come to what block banks. Yes.

MR McBRIDE: Yes. Yes. So that conceivably the natural weirs – even though it's a metre, doesn't sound like a lot, the drop of the Darling River - - -  
35

MR O'FLAHERTY: No.

MR McBRIDE: - - - is so subtle that a one-metre natural weir might go back 20, 30 kilometres.  
40

MR O'FLAHERTY: Yes.

MR McBRIDE: So by having those six weirs naturally in there that may well have allowed water to remain in the Darling River for time immemorial. So we just think  
45 – we've spoken to the elders of the Barkandji from the north, Fred – Fred Hooper, down to Badger Bates, to other gentlemen and ladies further down the catchment. Everybody is in favour of it provided that they're shown these – you know, what the

government is purporting to replace them with. Just show these gentlemen of the Nation, and they're happy to reinstate them. And that would be the most-natural insurance policy against this mismanagement of the Darling River because it was nature there before white man. So it's no improvement on nature, it's actually  
5 returning it to what it was before white man settled.

MR O'FLAHERTY: And this is a proposal for these weirs in respect to – in corresponding and in discussion with the Federal Government. Is that something that you've raised with the New South Wales Government as a solution to the concerns  
10 raised by the community?

MR McBRIDE: We spoke to Austin Evans, who's one of the sitting members outside Mildura; we also raised it with Niall Blair; and it has kind of fallen on deaf ears.  
15

MR O'FLAHERTY: Yes, because it doesn't seem to be replicated in the six options.

MR McBRIDE: It's – none of the consultation from the people in the Western  
20 Division has been considered, even though we're asking for nature to be returned to what it was before we got here. So to answer the question, we've spoken to Niall Blair, spoken to – obviously federally, and also the Murray-Darling Basin Authority. All – all three have been – discussed these and all three have fallen on deaf ears.

25 THE COMMISSIONER: Well, has it fallen on deaf ears? I'm looking at Minister Littleproud's letter replying to yours to the Prime Minister, and he concludes about the proposal for weirs, as he calls them, as follows:

30 *I expect your proposal for construction of additional weirs on the Darling would be able to be considered by the New South Wales Government for inclusion in the project's scope if it could further improve system efficiency.*

Now, I'm not quite sure what "system efficiency" comprehends, but that doesn't sound as if it's deaf ears.  
35

MR McBRIDE: Well, New South Wales – like, these block banks are going to cost half a million dollars each. So they're putting block banks in that you've got to – you know, yes, it will shore a little bit of short-term water, but the weirs are forever. I mean, it's - - -  
40

THE COMMISSIONER: Yes.

MR McBRIDE: They're low cost, it's nature, it's – I'm not trying – we've been asking Niall Blair and his office, please – for the last six 12 months to please  
45 consider – six months, please consider this. It wouldn't take much to put them in and – you know, this would work from Bourke down. So we would actually get 1,000

kilometres of river country with water in it which – at no great expense, but it should be done. It would take a very short amount of time and cost, so - - -

5 THE COMMISSIONER: Well, now, in that same paragraph, the Minister informs you that what he calls the Menindee Lakes reconfiguration project, which is perhaps a better title than the tendentious water savings, is, as he puts it there, in the early stage of development and that there remains a lot of detail to be resolved in consultation with local communities. I've, I must say, not formed that impression from what you've told me about these consultations.

10 MR McBRIDE: Totally the opposite to the reality of the situation. The New South Wales Government and the people we've had to deal with, there hasn't been consultation, so it's nice that a Federal Minister might report there was consultations, but it hasn't happened.

15 THE COMMISSIONER: Well, to be fair to the Minister, it may be that he has been told by New South Wales that the project was in early stage of - - -

20 MR McBRIDE: Quite conceivable.

MS McBRIDE: So this is what we kept on – keep on being told, that the project is in the early stages and there will be consultation at a later stage, and we've been told that for two years.

25 THE COMMISSIONER: Right. So I suppose a deal of what you've told me this morning and written that I've read can be boiled down to this: that the sooner we get the detail in a form and manner that allows us to be consulted, the better.

30 MS McBRIDE: Yes, given that we only had more than 11 pages of information a month and a half ago.

35 THE COMMISSIONER: In the next paragraph, the Minister looks forward at the date he was writing this to the MDBA delivering its first annual technical workshop on the package of measures that form part of the SDL Adjustment Mechanism and expresses confidence, no doubt on advice, that those workshops will build confidence in the scientific integrity of the projects while ensuring that there is increased transparency and engagement with communities and stakeholders. Now, what is your experience of, and since 30 June 2018 MDBA, first annual technical workshop as members of the community and, I think, as stakeholders?

40 MS McBRIDE: Yes, so my - - -

45 THE COMMISSIONER: With respect to obtaining material about the scientific integrity of the projects.

MS McBRIDE: Yes, so we haven't received anything from MDBA.

THE COMMISSIONER: Have you asked the MDBA for the material that the – apparently the Minister had been advised - - -

MR O’FLAHERTY: Well – this - - -

5

MS McBRIDE: No.

THE COMMISSIONER: - - - would be available?

10 MR O’FLAHERTY: It might assist in the SDL core adjustment folder - - -

THE COMMISSIONER: Yes.

MR O’FLAHERTY: - - - if you just bring – take that up.

15

THE COMMISSIONER: I’ve got it here.

MR O’FLAHERTY: Behind tab 13, Commissioner - - -

20 THE COMMISSIONER: Yes.

MR O’FLAHERTY: - - - these have been released on the – I believe the MDBA website.

25 THE COMMISSIONER: Yes.

MR O’FLAHERTY: It looks like to be a PowerPoint presentation.

THE COMMISSIONER: Yes, it does.

30

MR O’FLAHERTY: And – but there is no – I’m not aware of to whom this PowerPoint presentation was made but maybe if the witness could be shown that document.

35 THE COMMISSIONER: Well, we are familiar, aren’t we, with – it’s pages 8 and 9.

MR O’FLAHERTY: Yes.

THE COMMISSIONER: Which - - -

40

MR O’FLAHERTY: So just in terms for the witness, have you seen this document before?

MS McBRIDE: No.

45

MR O’FLAHERTY: So I take it from that, it certainly wasn’t a presentation given to the residents of Pooncarie.

MR McBRIDE: No.

MS McBRIDE: No, unless it was given yesterday, I don't know, given that we weren't - - -

5

MR O'FLAHERTY: No, this is the – got a subheading 'MDBA Technical Workshop 28 June 2018' which - - -

MS McBRIDE: Yes.

10

MR O'FLAHERTY: - - - seems to suggest it predates that. Going to pages 8 and 9, there's a heading – somewhat unfortunately titled 'Menindee Project With It All' with - - -

15 THE COMMISSIONER: Well, the whole thing is unfortunately entitled: 'New South Wales SDL Adjustment Projects, a Teaser.'

MR O'FLAHERTY: Indeed.

20 THE COMMISSIONER: I presume that's meant to be witty by somebody or other. It's not - - -

MR O'FLAHERTY: Look, I'm sure there's an internal joke there somewhere, but I fail to see it.

25

MR McBRIDE: The words "farcical" come to hand.

THE COMMISSIONER: I'd go further. I think it's disrespectful.

30 MR O'FLAHERTY: Indeed.

MR McBRIDE: Sir, we have been living in this region for hundreds of years and the Barkandji for tens of thousands of years. None of us has been consulted; we've been treated like dirt and this is just another example of the total disregard by the Murray-Darling Basin Authority to undermine the integrity of the Murray-Darling Basin Plan which we are thoroughly in support of.

35

THE COMMISSIONER: If I look at page 8, the last of those dot points contemplates, I think, doesn't it, that the faster drawdown of water will produce what are called the higher managed flows in the Lower Darling.

40

MS McBRIDE: Yes. So - - -

THE COMMISSIONER: So that's – so for a shorter period, there will be higher flows, so much higher that that is an accommodation, so-called, required by works to limit breakouts onto the floodplain.

45

MR O'FLAHERTY: I have to be honest, that's not a concern I've heard before.

MS McBRIDE: No, it's not. Our concern is not the fact that we may get water onto a flood plain. We actually quite like water on a floodplain when it floods naturally.

5

MR O'FLAHERTY: Yes.

MS McBRIDE: Our concern is the extended periods of dry which will result after the flood out.

10

MR O'FLAHERTY: It's the opposite problem.

MS McBRIDE: Yes.

15 MR McBRIDE: Well, you're decommissioning 80 per cent of the Lakes and you're afraid of floods. You push – you know, with that 20 per cent that you have, you push a hell of a lot of water out of that 20 per cent really quickly, how long will that water last for? How many months? So we could get a really big flow for two months and then have no water for five years.

20

THE COMMISSIONER: That's the intention of the project, isn't it?

MS McBRIDE: Yes, it is, which is our concern, but it is our concern about the lack of water for five years, not the substantial amount of water for a short period of time.

25

THE COMMISSIONER: Could you help me, on page 8, I'm not sure I can see a reference to stock and domestic?

MR McBRIDE: Yes.

30

THE COMMISSIONER: Would it be included in one of those - - -

MR McBRIDE: You wouldn't - - -

35 THE COMMISSIONER: That's not high security irrigation and that's not town water supply.

MS McBRIDE: Correct.

40 MR McBRIDE: No, that's right and, conceivably, it's at the top of the pops like, literally, under the Water Act, stock and domestic is the highest - - -

THE COMMISSIONER: No, I'm just asking, this project - - -

45 MR McBRIDE: Yes – no.

THE COMMISSIONER: - - - which is explained in one slide in a PowerPoint, so  
- - -

MR O'FLAHERTY: Well, two.

5

THE COMMISSIONER: - - - I don't ..... well, no.

MR O'FLAHERTY: If we include page 9, but, yes.

10 THE COMMISSIONER: No, well, I don't include the next – page 9 is the next  
steps which include something called 'detailed design and environmental  
assessment,' but I mean, alas, it does appear the Commonwealth Minister may have  
been misled because his letter expresses confidence

15 MR O'FLAHERTY: Yes.

THE COMMISSIONER: - - - that the workshops would build confidence in the  
scientific integrity of the projects while ensuring there is increased transparency and  
engagement with the communities and stakeholders.

20

MR O'FLAHERTY: Not sure how this contributes to that.

THE COMMISSIONER: So far as we can judge from this – and to be fair, the  
PowerPoint might have been the least important part of it, who knows, but so far as  
25 we can tell from the PowerPoint, I would have thought that the Commonwealth  
Minister would be rather disappointed to think that this was the demonstration of  
scientific integrity.

MR McBRIDE: Disappointed to be – not even in the calculations after 200 years of  
30 being there, it is disappointing, but, look, to follow on from another point, you know,  
when the meetings were at Menindee about a week and a half ago for the meeting to  
say they were going to decommission 80 per cent of the Menindee Lakes, we caught  
up with Phillip Glyde that day, I was with Maryanne Slattery and a few other ladies  
and gentlemen from – who know a bit about the river, and Phillip was there  
35 investigating the integrity of the weirs. That is to say, apparently, there is an award  
giving for the best-kept weir.

So instead of turning up to the meeting that afternoon, he was going around looking  
at empty weirs on the empty Menindee Lakes, rather than paying the locals the time  
40 due to them to hear that 80 per cent of their lake system was going to be  
decommissioned. Why would you bother looking at weirs if the lake system is going  
to be decommissioned? It was just a farcical situation, so to answer the  
Commissioner's points, there is no faith left in the Murray-Darling Basin Authority  
in the senior management. We've been asking for them to step down for years now  
45 because it's just – they're just treating us like goldfish hoping that we will go away,  
but we're still in the goldfish bowl going around.

THE COMMISSIONER: Page 4 of this document from the New South Wales Government summarises as part of the key mechanism of the Menindee project as follows:

5           *New environmental water arising from evaporative savings.*

That's what - - -

MR O'FLAHERTY: Yes.

10

THE COMMISSIONER: - - - Mr O'Flaherty and I were earlier trying to nut out under the measures.

MR McBRIDE: So what they're going to do is close up – instead of having four big lakes ..... they were effectively going to dig out one of the lakes like Wetherell or Pamamaroo.

THE COMMISSIONER: In the sense that we discussed earlier, the – you can talk about evaporative savings, although, I do stress it's all about relativity, the – what do you understand by the expression “new environmental water”?

20

MS McBRIDE: Well, I don't know how you can gather that. If you're saving water, you're not going to create water from - - -

THE COMMISSIONER: Well, it would suggest that water that is not evaporated is going to be available for the environment.

25

MR McBRIDE: Maybe it has come up on the new pipeline that is invisibly going to be put there.

30

MR O'FLAHERTY: Yes. I think - - -

MR McBRIDE: I don't know. I can't – we can't answer the question because we're not privy to actually having any discussions with the Murray-Darling Basin Authority of any value.

35

MR O'FLAHERTY: Yes. I think, with respect, Commissioner, that you're right. That it's – if one were to take an example that the idea being that under the current regime, one would have to store 100 gicalitres of water in order to deliver, at some stage, 50 because, say, for argument's sake, 50 is lost through evaporation, where the project would envisage being able to deliver more of that 100 gicalitres with less being evaporated off, that, I think, is the reference to “new environmental water”. But as is often the case, there's very little in the way of details.

40

MR McBRIDE: Consultation hasn't been a strong point.

45

MR O'FLAHERTY: Yes. I wanted just to touch upon the – in these teleconference meetings, there's a reference to operating rules. If – might – the first reference I've seen is we go to the McBride brief which – behind tab 9.

5 MR McBRIDE: Thank you. Thank you.

MS McBRIDE: Yes.

10 MR O'FLAHERTY: On page – so that should be the meeting, 7 December 2017.

MS McBRIDE: Yes.

15 MR O'FLAHERTY: On page 4, there's a reference to a draft operations plan for the Lower Darling.

MS McBRIDE: Yes.

20 MR O'FLAHERTY: Is that an operations plan of the Menindee Lakes, or is that something else?

MS McBRIDE: So this is the operations plan for – actually, I will just – yes, so this was December. So this was a draft operations plan for New South Wales management of the Menindee Lakes and Lower Darling, given that the 480 trigger had been hit or was just about to be hit in early December.

25 MR O'FLAHERTY: I see. So this is the – right.

MS McBRIDE: And so it's short-term operations for the Lower Darling in their drought management.

30 MR O'FLAHERTY: Drought management phase. Now, because at that stage - - -

MS McBRIDE: Yes, it doesn't relate.

35 MR O'FLAHERTY: - - - the storage volume is on page 1 of that document. It was 496.

MS McBRIDE: Yes.

40 MR O'FLAHERTY: So we're reaching the 480 - - -

MS McBRIDE: It was imminent.

45 MR O'FLAHERTY: - - - handover to New South Wales Government.

MS McBRIDE: Yes.

MR O'FLAHERTY: Right. Okay.

MS McBRIDE: So the – so this relates to that operations plan - - -

5 MR O'FLAHERTY: Right. Okay. Not - - -

MS McBRIDE: - - - not any operations plan around Menindee Lakes water saving project.

10 MR O'FLAHERTY: No. Well, it's – yes, so it's not in relation to the project; it's more of a current operation plan.

MR McBRIDE: Short-term survival.

15 MR O'FLAHERTY: Yes. All right. Now, I said I was going to touch on the issue of block banks, and that's, to my reckoning, first raised in these minutes in annexed meetings behind tab 8, which is a teleconference on 4 January 2018. On page 3 of that document, there's a discussion about block banks upstream of Pooncarie. I take it, though, that the block banks were probably a – were more likely a topic discussed  
20 prior to this.

MS McBRIDE: Yes, so I recall the first meeting that I attended. I was actually on the phone driving, and, therefore, I remember it well.

25 MR McBRIDE: Yes, hands free.

MS McBRIDE: Hands free, and, therefore, I remember the discussion because I remember exactly where I was when I was doing it.

30 MR O'FLAHERTY: Yes.

MS McBRIDE: And there was discussion about block banks then and the need for action on the block banks to commence then so that we didn't get to a situation where we currently are now - - -

35

MR O'FLAHERTY: Yes.

MS McBRIDE: - - - which is we still don't have block banks. We still don't have a certainty of block banks being constructed and, therefore, a cease to flow looming  
40 suddenly in December.

MR O'FLAHERTY: So this is late 2017, early 2018 where the prospect of a cease to flow in December of year was a very real prospect - - -

45 MS McBRIDE: Yes.

MR O'FLAHERTY: - - - is a very real prospect, and what happened the last time in terms of the construction of block banks needed to be considered.

MS McBRIDE: Yes.

5

MR O'FLAHERTY: And am I right in thinking that the last time, in terms of the '15/16 no flow, block banks were constructed south of Pooncarie - - -

MS McBRIDE: Correct.

10

MR O'FLAHERTY: - - - but not north.

MS McBRIDE: Correct.

15

MR O'FLAHERTY: Right.

MS McBRIDE: And they were constructed predominantly for use by permanent planning irrigators.

20

MR O'FLAHERTY: Yes. Yes. Yes. So in terms of your water sources during that time, you were down to - - -

MS McBRIDE: Remaining stagnant pools.

25

MR O'FLAHERTY: - - - what you could take from your dams and bores.

MS McBRIDE: And some small remaining stagnant pool water which were - - -

MR O'FLAHERTY: And ponds in the actual riverbed, itself.

30

MS McBRIDE: - - - fast running dry. Right.

MR McBRIDE: But – but we lost a couple hundred thousand acres as well, because just - - -

35

MR O'FLAHERTY: Yes.

MR McBRIDE: - - - there was no stagnant water to kind of pull upon.

40

MR O'FLAHERTY: Yes.

MR McBRIDE: And so even if, under the laws of Australia, if there's a stagnant pool of water maybe half a kilometre down from your stagnant pool of water and your stagnant pool of water goes dry, then you can't run a hundred-metre pipe down the pipeline for that stagnant pool of water to take. Also, obviously, because the aquifer is - - -

45

MR O'FLAHERTY: Because you would need a construction licence or - - -

MR McBRIDE: Well, no it's – yes, it's – no, exactly. Apparently.

5 MR McBRIDE: Yes. Need some sort of approval for that, yes.

MR McBRIDE: And with underground water, as I said, it's fed by the Darling River, so what you're doing is effectively drawing vast amounts of salt out of the system. So the way it's – the topography underground is, effectively, you were on  
10 the edge of an inland sea 50-odd million years ago, so vast amounts of stored underground salt water to our east. To our west is a river aquifer recharged. So without a river aquifer recharging, then you're pulling water, but it can't come from the riverside, so, therefore, you start drawing vast amounts of salt water three times  
15 saltier than the sea into your pipeline system, and sheep can only drink up to 13,000 parts per million. And when you're putting about 16,000 parts per million, that just means they will die.

MR O'FLAHERTY: Yes.

20 MR McBRIDE: It's pretty simple. And, also, there's native animals as well. So we don't – obviously, just – you know, feed our own sheep. Obviously, there's tens of thousands of other animals that would die, too. They just kind of – they can't – their body can't absorb it, so they just die. It's pretty simple, sadly.

25 MR O'FLAHERTY: Then the next meeting in these minutes is behind tab 7. That's a teleconference of 1 March 2018. I take it – well, the January meeting talks about a meeting on 1 February, but do I take it there wasn't a meeting on 1 February?

30 MS McBRIDE: There may well have been. Unfortunately, I can't recollect without looking at a diary.

MR O'FLAHERTY: Sure.

35 MS McBRIDE: Some – I don't – I am aware that I don't have a complete set of minutes, so to speak.

MR O'FLAHERTY: Right. No. But - - -

40 MS McBRIDE: So there are some that are missing.

MR O'FLAHERTY: Yes.

MS McBRIDE: So there may – I can't remember if there was one in February.

45 MR O'FLAHERTY: No.

MS McBRIDE: But I suspect there was. I seem to recall doing one.

MR O'FLAHERTY: That's right. You're not a government department. The obligation of record-keeping is not upon you. Just in terms of this March meeting, on page 2, there's a discussion of – considerable discussion, by the looks of it, of block banks. And there's a reference to a body called the Critical Water Advisory Panel.

MS McBRIDE: Yes.

MR O'FLAHERTY: What's that?

MS McBRIDE: So the Critical Water Advisory Panel is set up when New South Wales Government take control - - -

MR O'FLAHERTY: Right.

MS McBRIDE: - - - when the 480 trigger is hit, from my understanding.

MR O'FLAHERTY: Yes.

MS McBRIDE: This is, from my understanding, one of the first times these have been set up, but they are – the development of them is supposed to be when water is running critically low.

MR O'FLAHERTY: Yes.

MS McBRIDE: But they are set up for a region, and this is the region for Lower Darling.

MR O'FLAHERTY: Yes.

MS McBRIDE: And it is an intergovernmental – sorry, internal New South Wales Government group from what we have been told. We have asked for Lower Darling consumers to be on that group, and we have been told that we will not be on there.

MR O'FLAHERTY: So when you say it's a government group, it's made up of representatives of various government departments in New South Wales Government?

MS McBRIDE: Yes, from my understanding.

MR O'FLAHERTY: And you've asked to be a part of that panel, and it's – and that has been declined.

MS McBRIDE: Yes.

MR O'FLAHERTY: Was there a reason for which was given for that – that not being granted?

MS McBRIDE: Yes. So we were told that this is – government – internal government discussions and that there wasn't particularly a role for consumers to be on it and that Water New South Wales would be the voice of Lower Darling consumers within that forum. We subsequently asked for a formal set of minutes to  
5 be provided two ways so that we could see what the advisory group or advisory panel were discussing, and that we could have formal input into that. My understanding is that that has not happened. I think it's also worth noting that the advisory panel was supposed to be, you know, triggered in December when the 480 was hit, and it didn't get set up until the end of March which doesn't sound particularly critical.

10 MR O'FLAHERTY: Yes, just do I – do I understand the impetus behind wanting representation or at the very least access to this panel is two-fold: (1) the broader concern about what's going to happen with water management in the area and that the community needs to be properly informed about that, but there's also a reference  
15 I think, is there not, about the – this is the panel which approves – so in terms of the fourth dot point starting:

*Water New South Wales informed customers there is a need to take the proposal for block banks to that panel to secure funding.*

20 That seems to be the decision-making body at least or at least the advisory body that informs the decision-maker, the decision-making being perhaps the Minister as to who in terms of determining the requirement for block banks.

25 MS McBRIDE: Correct.

MR O'FLAHERTY: It's on that particular issue as well that community representation you say is required.

30 MS McBRIDE: Yes. So there are a number of reasons why we're seeking community representation. One is that we're concerned that the in-depth understanding of what is happening and the impacts of living on the Lower Darling are not understood by people in government.

35 MR O'FLAHERTY: And it's due to the turnover that you've mentioned.

MS McBRIDE: Turnover, but also people on the ground – there are some great people on the ground, but they don't – from our own understanding, they don't sit on this. No one quite knows what it's like to be told that you've been swimming in  
40 blue-green algae water a month afterwards because it takes them a month for them to give you the report. And you find out that you were swimming in the river a week before the blue-green algae was confirmed positive. Those sorts of implications around this is actually what it's like to live on a river when we're dealing with this situation is not understood because people don't live on – the people on this group do  
45 not live on the ground and do not live it and breathe it every day.

MR O'FLAHERTY: You mentioned there are some good people on the ground. Is that – so there are some local - - -

5 MR McBRIDE: Lower level management within the New South Wales Water - - -

MS McBRIDE: Water New South Wales.

MR McBRIDE: Water New South Wales who do a great job, but, you know, they're not the decision-makers, but they're exceptionally good staff at the lower  
10 levels.

MR O'FLAHERTY: Whereas this advisory panel is more higher level executive, is it?

15 MS McBRIDE: From our understanding, yes.

MR McBRIDE: Also with the block banks, it has taken so long to get anywhere. It really was the 11th hour that they've said reluctantly yes, we will give you the block banks. I mean, this is the survival of the river system. This is – you know, to give  
20 people who don't understand – if the waters fall in the northern Basin where they're supposed to, it can take up to six months before the water actually gets to Menindee Lakes and maybe seven months down to us. So we're talking about vast amounts of area so block banks are critically important because it's not whether we're going to run out of water. It's going to be running out of water for maybe years.

25 MR O'FLAHERTY: Just going forward in terms of the concerns being repeatedly raised about block banks, the following minutes that we've got is that, behind tab 6 on 9 April 2018 on page 2 of that document.

30 MS McBRIDE: Yes.

MR O'FLAHERTY: Following on to page 3, there's a discussion about block banks and in particular the block bank upstream of Pooncarie. One of these dot points' talks about planning being commenced with the bottom two block banks. That's the  
35 ones south of Pooncarie.

MR McBRIDE: They are already in place.

MR O'FLAHERTY: So those had at this stage in April been approved.

40 MS McBRIDE: Yes.

MR O'FLAHERTY: And had been planned.

45 MS McBRIDE: My understanding is they were approved at the first meeting of the river water advisory panel.

MR O'FLAHERTY: And so that's the March meeting of that panel.

MS McBRIDE: Yes.

5 MR O'FLAHERTY: That was referred to in those other minutes, but that, at least at this stage – there was no such approval for block banks north of - - -

MR McBRIDE: North.

10 MR O'FLAHERTY: North of that.

MR McBRIDE: So literally say the permanent plantings are more important than anything else, but – and that's not - - -

15 MR O'FLAHERTY: Well, I just – I – yes. I wanted to - - -

MR McBRIDE: That's not denigrating anybody, but it's effectively saying they're putting them in, and they put them in about three weeks ago.

20 MR O'FLAHERTY: Was there an explanation behind the decision-making given as to why approval hadn't been given for the ones north of Pooncarie?

MS McBRIDE: Yes. So in previous times, the block banks have been built below Pooncarie for supply of stock and domestic. As I said earlier, the 2015/16 event was  
25 unprecedented.

MR O'FLAHERTY: Yes.

MS McBRIDE: In terms of the length of dry, and, therefore, there had never been a  
30 need prior to have block banks for stock and domestic use.

MR O'FLAHERTY: It wasn't envisaged it would be needed for block banks north of Pooncarie. So that's why there was only one south of Pooncarie constructed.

35 MS McBRIDE: Yes. We had never had a need prior to 2015/16 because the river had never gone dry for that long.

THE COMMISSIONER: I'm sorry. Can you just remind me if I've missed  
40 something? When did the State Minister, that is, Minister Blair reply to this letter of 11 May?

MR O'FLAHERTY: I haven't got to that one yet, Commissioner. Is that the one that's behind tab 14?

45 THE COMMISSIONER: Is it?

MR O'FLAHERTY: I'm slowly getting there. I'm in April at the moment.

THE COMMISSIONER: Sorry, 14 is - - -

MR O'FLAHERTY: 14 is a letter from the Minister.

5 THE COMMISSIONER: Mrs McBride's letter. Yes.

MR O'FLAHERTY: I'm currently at a meeting in April.

10 THE COMMISSIONER: I know that, but I'm the Commissioner. So I'm asking the question.

MR O'FLAHERTY: You're speeding ahead of me. Certainly. You may need permission from senior counsel, but not from me.

15 THE COMMISSIONER: Could you tell me when the Minister replied to your letter of 11 May?

20 MS McBRIDE: Yes, so we have not had a written reply to this letter. We had – the language that was coming out of the department including at the meeting held on 27 June was that the department did not support and would not recommend to the – or hadn't recommended to the Minister that block banks above Pooncarie not be constructed. I have not had - - -

25 THE COMMISSIONER: Sorry, you've lost me. They have not recommended that they not be constructed?

30 MS McBRIDE: So they – so the department – so Rachel Connell on 27 June said to me in meeting that the department had recommended to the Minister that the block banks not – above Pooncarie not be constructed.

THE COMMISSIONER: Right.

MS McBRIDE: Sorry, I think I went into double negatives there.

35 THE COMMISSIONER: And was there a reason given for that?

40 MS McBRIDE: Yes. The reason given was that this would set a precedent across the State for the construction of block banks in – I use inverted comma – 'drought scenarios' because this isn't a drought scenario, and, therefore, they would not fund – they would not recommend the funding of block banks for stock and domestic use because it would set a precedent across the State.

45 THE COMMISSIONER: Thank you. Maybe it's just a provocation to a lawyer to use this expression that comes from the law, setting a precedent, but setting a precedent can't be a reason because if it's a good precedent then it should be set and followed. Is that – did you understand that as simply saying, "We don't want to fund this kind of thing"?

MS McBRIDE: Yes, and a concern that if they funded it on the Lower Darling for stock and domestic use, that they would have to fund it in other areas where they are understandably facing actual drought conditions. Now, as you can see from the letter, we outlined that the reasons that we're going to have a cease to flow is not  
5 because of drought. It is because of management decisions. So in terms – in response to your original answer, in terms of when did we get a response, I have not have any written or formal communication from the Minister. I received – there was a media release put out by our local member, or one of our local members, Austin Evans and on 7 July, a number of landholders, excluding ourselves, received a call  
10 from Austin Evans saying that the block banks above Pooncarie would be built. So from 28 June, from the message – the very clear message we got from – sorry, 27 June, from the very clear message we got from the department, to 7 July there was an apparent exchange of heart from the Minister.

15 MR McBRIDE: And just – and just – sorry. Just to follow on - - -

THE COMMISSIONER: Now, I may be – there are two proposed below Pooncarie.

MS McBRIDE: Yes.  
20

THE COMMISSIONER: And the two that you're interested in are the two above Pooncarie.

MS McBRIDE: Correct, which supply - - -  
25

THE COMMISSIONER: And what was the - - -

MS McBRIDE: - - - predominantly stock and domestic, whereas the two below Pooncarie supply - - -  
30

THE COMMISSIONER: Have the permanent plantings, yes.

MS McBRIDE: - - - predominantly permanent plantings.

35 THE COMMISSIONER: Yes. Now, what was the information from Mr Austin Evans to the other landholders?

MS McBRIDE: That the two block banks – that the Minister had approved expenditure for the construction of two block banks above Pooncarie. The two  
40 below Pooncarie were already approved.

THE COMMISSIONER: So that's information that suggests that the Minister has made a decision in accordance with your request.

45 MS McBRIDE: Yes.

THE COMMISSIONER: And that is how recent?

MS McBRIDE: That was on 7 July.

THE COMMISSIONER: Right. I see.

5 MR McBRIDE: So literally we are talking about 46 families, \$40 million worth of  
production and restocking that would have been lost to the region if these block  
banks potentially hadn't been put in. So it really was at the eleventh hour. I think a  
bit of pressure fell to bear and they've actually put the two block banks in, but, as I  
said, they're not actually in yet. So we're gravely concerned, and we're in contact  
10 with them every couple of weeks saying we would like the block banks in before all  
the water runs out.

MR O'FLAHERTY: What progress has been made - - -

15 MR McBRIDE: None.

MS McBRIDE: So – so they - - -

MR O'FLAHERTY: So since that – since you advised that – since you heard - - -  
20

MS McBRIDE: Yes.

MR O'FLAHERTY: - - - not advised, but heard that they were being put in, have  
there been people coming up to scope locations?  
25

MS McBRIDE: So we were told by Water New South Wales that the construction  
of the block banks had been approved and they were now responsible for the  
construction.

30 MR O'FLAHERTY: Sure.

MS McBRIDE: They have done some consultation with the community – or  
landholders around where those block banks should be. I understand last Friday they  
were in the region actually doing measuring on levels and stuff.  
35

MR O'FLAHERTY: Right.

MS McBRIDE: But we still don't have - - -

40 THE COMMISSIONER: I take it there's not much controversy about where they  
should go.

MS McBRIDE: No.

45 THE COMMISSIONER: Yes.

MS McBRIDE: But we still don't have a final decision – unless it's what's being discussed in the teleconference right now that we are not on. But as far as I know, there has been not been a final decision on where they will be located or - - -

5 MR O'FLAHERTY: How high they will be, yes.

MS McBRIDE: - - - how high they will be, which are interconnected, and obviously the height of them depends – or affects how much water they will hold back, how far they will bank back and how long that water will last given that we can't expect that  
10 there will be a flood next August like we had in 2016, because that is not traditionally how our rivers flow.

THE COMMISSIONER: By the way, what happens to these block banks in a flood? Are they destroyed or - - -  
15

MS McBRIDE: They're removed. They're removed prior to the water reaching.

THE COMMISSIONER: And if they weren't removed, would they be destroyed or not?  
20

MR McBRIDE: They just get blown away if there's a flood.

MS McBRIDE: Yes. They just get washed down.

25 MR McBRIDE: And also to give people some sort of perspective – so there's two block banks. One is proposed to be 30-odd kilometres down the river and one is about 20 kilometres up the river. So of the 600 - - -

MR O'FLAHERTY: From Tolarno?  
30

MR McBRIDE: From Tolarno.

MR O'FLAHERTY: Yes.

35 MR McBRIDE: So out of a 600-kilometre journey, you're probably going to have 500 – three to five hundred kilometres without any water in it. So - - -

MS McBRIDE: No. Sorry. You need to clarify that because there will be connectivity from Wentworth to Pooncarie. So the 500 kilometres is from  
40 Wentworth to Menindee. There will be connectivity, from my understanding, pretty much from Pooncarie down to Wentworth because, obviously, part of the Murray banks up. However, there will be a loss of connectivity from Pooncarie to Menindee. Only certain parts of the river will have water in it and other parts will be dry.

45 THE COMMISSIONER: But they wouldn't have as much water in it without the block banks is what you're - - -

MR McBRIDE: Or they would have nothing in it at all.

MS McBRIDE: Yes.

5 MR McBRIDE: But it's just to show that – just to get people to understand that it's not – it's not a great panacea that's going to fix up all the problems. There is still going to be vast amounts – probably 80 per cent of the country, from Pooncarie to Menindee that will not have water in it. So those trees – everything will suffer, but it's – it's no – no golden bullet, but it's a vast improvement on .....

10 THE COMMISSIONER: Now, these - - -

MR O'FLAHERTY: And we've heard evidence that the water quality is pretty low with the block banks in there.

15 MR McBRIDE: It gets worse than this.

MR O'FLAHERTY: Yes.

20 MR McBRIDE: And – and when you try and have a shower, it's just impossible. Last time when the river went low, we had staff travelling 200 kilometres once a week to have a shower. They would go to Mildura to have a shower. We've become a third world nation. You don't understand. We lived on a river system, and we've become third world - - -

25 THE COMMISSIONER: Well, I don't mean it unkindly, but there would be few third world nations where people can travel 200 kilometres for a shower, but - - -

30 MR McBRIDE: But that's what we had to do because it's just - - -

THE COMMISSIONER: Tell me, the restoration of what I will call the natural weirs that you were telling me about earlier – you have in mind that those structures would survive floods? Presumably they would be altered by floods, as they must have been.

35 MR McBRIDE: I – I guess I – I – it was effectively rock – I guess granite, like, the most famous or biggest one was actually Wilcannia, so in the 1950s - - -

40 THE COMMISSIONER: It's not an impermeable wall, is it?

MR McBRIDE: Well, it must be pretty solid because it has been there 30 million years and – and - - -

45 THE COMMISSIONER: I know, but it's been – so have rapids.

MR McBRIDE: Yes, yes.

THE COMMISSIONER: Rapids stay in place, although they've changed, obviously.

5 MR O'FLAHERTY: There are some helpful photographs attached to the submission by Mr Bates that we will be hearing from.

THE COMMISSIONER: Yes.

10 MR O'FLAHERTY: With those – back to those - - -

THE COMMISSIONER: Well, now - - -

MR O'FLAHERTY: - - - weirs, yes.

15 MR McBRIDE: Badgers .....

THE COMMISSIONER: So if those were restored, but the works and operational change to the Menindee Lakes went ahead, what would be the combined outcome, from your point of view?  
20

MR McBRIDE: I – I would have thought it was just insurance. It was nature's insurance that there would be some water all the time. So - - -

25 THE COMMISSIONER: It would be - - -

MR McBRIDE: So to destroy the – destroy the lake system as this is going to solve a problem, I think it was just there as a backup. So to put these in is just going to reinstate the lowest ebb of the worst droughts in - - -

30 THE COMMISSIONER: So it's better than nothing.

MR McBRIDE: Better – vastly better than nothing, and – without a doubt.

35 MS McBRIDE: But it is dependent on small flows coming down the river, which we have not had since 2005.

THE COMMISSIONER: No, quite. I understand. Thank you.

40 MR O'FLAHERTY: The last topic I wanted to briefly discuss is, Ms McBride, I understand you're on what's called a consumer advisory group.

MS McBRIDE: Yes.

45 MR O'FLAHERTY: Is that the same as a stakeholder adviser panel for those water resource plans or - - -

MS McBRIDE: No.

MR O'FLAHERTY: That's - - -

MS McBRIDE: So the - - -

5 THE COMMISSIONER: Consumers of what?

MS McBRIDE: - - - aptly named CAG.

THE COMMISSIONER: Consumers of what?

10

MS McBRIDE: So consumers of water, so you must hold a licence to be on it.

MR O'FLAHERTY: Okay.

15 MS McBRIDE: And this is a New South Wales – Water New South Wales consumer group.

MR O'FLAHERTY: Yes.

20 MS McBRIDE: We sit on the Murray Lower Darling group.

MR O'FLAHERTY: Yes.

MS McBRIDE: There's one other representative from the Lower Darling.

25

MR O'FLAHERTY: That's Ms Strong.

MS McBRIDE: Ms Strong, yes. And a number of people from the Murray, obviously. And you then have the SAPs, which are the departments of industry stakeholder groups. And they don't – never shall the two twines meet.

30

MR O'FLAHERTY: Right.

MS McBRIDE: So – so you have a – an operational group which is the, you know, receiving feedback from the consumer advisory groups, the CAGs.

35

MR O'FLAHERTY: Yes.

MS McBRIDE: And then you have a policy level group, which is done by New South Wales Department of Industry.

40

MR O'FLAHERTY: Okay. So the function of the consumer advisory group is essentially a community feedback function to, what, New South Wales; is that a fair summary?

45

MS McBRIDE: Yes, I think that's – that's a - - -

MR O'FLAHERTY: And whereas the stakeholders advisory panel is more closely related to the policy of Water Sharing Plans and their progression to Water Resource Plans.

5 MS McBRIDE: Yes, so it's my understanding that the SAPs have input into the water resource plans - - -

MR O'FLAHERTY: Yes.

10 MS McBRIDE: - - - whereas we don't have input into that at a consumer advisory group level.

MR O'FLAHERTY: And in terms of consumer advisory, that covers the Murray as well.

15

MS McBRIDE: Yes.

MR O'FLAHERTY: And you said there's one other representative, the Lower Darling. How many representatives are there in full, roughly?

20

MS McBRIDE: About 20, I would say.

MR O'FLAHERTY: Right. That is the extent of the questions I had. Don't take from that that the topics we haven't discussed that have been raised in your submission are not important. We – as the Commissioner has noted, he has read all the materials you have provided him and so have I, but was there any aspects or issues that you wanted to raise with the Commissioner yourself that we haven't discussed this morning.

25

30 MR McBRIDE: I guess we have a few alternate ones, backwards and forwards a little bit. I guess – we were at the last Water Minister's meeting in Albury, Wodonga. That was in 18 December last year. I caught up with Niall Blair at that point in time and we said good day to each other, have a nice day and how's things going, and he informed me that, "Look, I just want you to know that we're not watching what you're doing Rob", and I said that's okay. He said, "We're watching everything you're doing. We're monitoring you on a daily basis. I get a report each day on what you do and who you speak to." Now, he also mentioned that he'd – at the opportunity, he might avail himself to sue me. Now, I'm just a farmer in outback New South Wales, and I don't know how government resources can be channelled into having such a Stalinist approach of a veiled threat to say, on a daily basis, I get a report because we get a lot of people on Facebook, Tolarno Station Facebook – that is a real vile threat from my perspective that needs to be looked at.

35

40

45 THE COMMISSIONER: Has Mr Blair ever caused a solicitor's letter to be sent to you with respect to defamation?

MR McBRIDE: Not at this juncture in time, not before today.

THE COMMISSIONER: When do you say this conversation took place?

MR McBRIDE: That was at the – what it’s called, the Water Minister’s meeting on 18 December last year. Was it Micra or Macra?

5

MR O’FLAHERTY: The Ministerial Council Meeting?

MS McBRIDE: MINCo.

10 MR McBRIDE: MINCo. Sorry, MINCo council meeting. We were invited to go along to that meeting and caught up with the other Water Ministers at that juncture in time. Also just one other little lovely bit of intimidation you get. I was on one of the radio stations up around Bourke. We were talking about embargoes. I rang up a week later and I provided the gentleman’s name and details. I rang up a week later  
15 and said how did I go and he said, “You’re still alive”, and I said to my knowledge, “Yes, I think I am. Why?” He said, “The day after you got on radio, you were on for 25 minutes ..... don’t know their names, but the two most powerful cotton growers of Australia took the owner of the station and myself out, sat us down and said we’re going to get McBride”. They played the audio back for 25 minutes.  
20 Apparently, the owner of the station said, “On what basis?” The two gentlemen who I don’t know and don’t care to know, stood up and turned around and said, “We’re going to get him. Don’t worry about that”. So that’s the type of intimidation that we’re getting in the bush for actually standing up for ourselves, and it shouldn’t be that way. Other issue .....

25

MS McBRIDE: Yes. In terms of other matters I think one of our greatest concerns is the Barwon-Darling Water Sharing Plan, the changes that were made to that by the New South Wales Government in late 2011. These have still not been reversed, and they are one of – there are many issues that are resulting in over-extraction in the northern basin, but some of the greatest issue that is we have seen on Menindee  
30 Lakes since 2012 we connect to the changes in that Barwon-Darling water sharing plan.

THE COMMISSIONER: In general terms, is the – your main concern there the  
35 capacity to pump more at lower levels?

MS McBRIDE: Yes. Yes. So it’s particularly the fact that the small or medium flows that is have traditionally always been able to come down the system and have maintained an ongoing flow, even through the Millennium Drought, are no longer  
40 there.

MR McBRIDE: But also the classification. So literally, there used to be A, B and C. Just for the people who don’t know.

45 THE COMMISSIONER: It’s a function of the classification change that there can be more pumping at lower levels.

MR McBRIDE: Just filling in for the people who don't understand, it's just that there used to be higher classifications, lots of rain, lower crops gets covered, everybody gets lots of water, and then it all got sullied up into one. So everybody got top billing, and then you were able to take three times the amount of water in advance, destroy the integrity of the river system overnight.

MS McBRIDE: So it is of particular concern to us in the changes that were made to that Water Sharing Plan were the ability for individuals to pump low flows out of the river which has meant they haven't been able to come down to Menindee Lakes and maintain a flow down the Lower Darling.

THE COMMISSIONER: Do you understand that will be addressed during the WRP process?

MS McBRIDE: I do not – we've been told that they will be, but I don't understand how. We've been told by MDBA that, "Don't worry. It will be fixed". However, the Water Sharing Plan still sits under the cap. However, it's the ability to pump low flows that is the concern, in particular. Therefore, having cap.

THE COMMISSIONER: In other words, volume is all well and good, but it's time and river condition that is critical.

MS McBRIDE: Yes. And, therefore, saying, 'Well, they've got to be under the cap. It's all fine'.

THE COMMISSIONER: I understand.

MS McBRIDE: Does not address the issue.

THE COMMISSIONER: The converse of just a water being wrong is presumably not a cap is not enough.

MS McBRIDE: Yes. Our other concern is that given the – so, obviously, we had the Matthews report in New South Wales which was actioned following the allegations on Four Corners. The water reform consultation that was undertaken in early this year, we have significant concerns that they fall far short of the recommendations of the Matthews report and will not achieve or meet the recommendations of the Matthews report which shows, you know, systemic issues within the New South Wales Government, and we have significant concerns that there is no impetus within the government to address the systemic cultural issues within the department. We've seen nothing to suggest that they are being addressed.

MR O'FLAHERTY: And for your benefit we do – I haven't taken you to it today, but there are – we have included the submissions you have made to the Water Reform Task Force in respect of those.

MS McBRIDE: Yes.

MR O'FLAHERTY: So they will certainly be considered.

MS McBRIDE: Yes, which do outline, you know, in – in greater detail - - -

5 THE COMMISSIONER: Yes.

MR McBRIDE: - - - particularly the areas where we're concerned - - -

MR O'FLAHERTY: Yes.

10

MS McBRIDE: - - - that it's falling short of the Matthews report.

THE COMMISSIONER: Yes, I've studied that. Yes.

15 MR McBRIDE: Other points, if I may. I guess we're just one station of many. It's about community, Barkindji, Broken Hill, Louth ..... Broken Hill, Pooncarie, Wentworth. We're all in the same boat. We respect our country and we're getting absolutely crucified for it. It does – when I was a kid, 27, I kind of decided to buy a sheep station. It was – it's on the Darling River ..... no longer here, it's man-made  
20 and if I told the kid, 27, that there would be three levels of government, my wife tells me there's only two, but State, federal, and the Murray-Darling Basin Authority trying to kill your business, I would take that really personally and say you're in Disneyland, that will never happen. So we're just one of many people who come from Broken Hill who are getting crucified.

25

The pipeline that ran from Menindee to Broken Hill, there's 28 families on that. The New South Wales Government is promising that we're looked after. They're not going to be looked after. They're gone, and this is – these are the cases of communities that are being absolutely destroyed. Menindee was the oldest town on the Darling River. It used to produce millions of table grapes, boxes, had two or  
30 3,000 people working on it at its peak. People respected the river and respected the Menindee Lakes. Burke and Wills came through our place in 1860 looking for the inland sea. They never found it, but with bulldozers, the northern basin has been transformed into that utopia that Burke and Wills were looking for.

35

So we just hope – and just – Four Corners was 12 months ago. You know, as I spoke to the Prime Minister, what have you done since then? How many bad guys have you caught? Are you actually looking? Both on a state and federal level, they should know there's still people pumping out of the catchments up north. There's no  
40 meters, broken meters, environmental water. Well, that – what's that? That's something that you can steal because nobody is actually monitoring it. So have we improved the scenario in the last 12 months since Four Corners? I know there has been a lot of inquiries and you guys more than anybody, you're doing an amazing job, and people in the outback do appreciate it, but, yes, look, it's interesting times  
45 we live in. We've got to protect our heartland because we who live out there know that there's no second chance.

MS McBRIDE: Yes. But mental and physical impact and social impact of having no river is devastating, and you can't quantify it. You can't – you can't, you know, you can't put a structural adjustment in to buy that back. These – we're the newcomers in the region, and we've been there since the 1940s. Many of the  
5 families in the region along the Lower Darling date back to the 1850s. You know, this is their heritage in Australia. This is what their fore-bearers came out and developed, and they continue that. And this is the impact, you know, and having no river is killing us as a community. Not only our businesses, but as a community. And it's when you can't get to sleep at night because you don't know what's going to  
10 happen because your sheep aren't drinking the water, and you can't quantify that and you can't remunerate for that.

MR McBRIDE: You know, the government is spending lots of money on supposedly mental health, but I know a mate down the river, you know, his family is  
15 in town working, his wife's on the road working, he's working the sheep station by himself watching it die. It isn't fair.

MS McBRIDE: And it isn't drought.

MR McBRIDE: Yes, but please don't let anybody touch on the drought. The drought's another issue. This is total deliberate mismanagement of our river system. And once the Darling River collapses, we were just easy pickings. The Murray and the Murrumbidgee are next, and the bad guys are actually winning, and you guys – I  
20 thought we had the – the bad guys pretty well cornered up until recently, but there has been changes and we will fight very much with all Australians to keep this Royal  
25 Commission going as long as it can because you're getting to the truth, and that's all we've asked for in the bush, just the truth.

MS McBRIDE: Okay. That's it.  
30

MR O'FLAHERTY: Thank you very much for spending time to speak to the Commission.

THE COMMISSIONER: I'm sorry for the pressures that produce your emotion. I'm very grateful for your now, both of you, repeated bouts of assistance to my  
35 Commission. There is more work to be done by this Commission in relation to not only the northern Basin but also that part of the southern Basin which encompasses the Darling up to the northern reaches of Menindee. A major theme is that which is summed up in the word "connectivity" and so I'm very, very grateful for your  
40 assistance, and again I'm sorry for the understandable emotion.

MS McBRIDE: Thank you.

THE COMMISSIONER: Not that you feel it or display it, but I'm sorry for the  
45 position that produces it.

MS McBRIDE: Thank you.

MR McBRIDE: Thank you so much for your time.

THE COMMISSIONER: Thank you. We will adjourn till 2 o'clock.

5 MR O'FLAHERTY: Thank you.

MR McBRIDE: Sorry about that.

10 THE COMMISSIONER: No need to apologise at all.

**<THE WITNESSES WITHDREW**

15 **ADJOURNED** [1.00 pm]

**RESUMED** [1.59 pm]

20

MR O'FLAHERTY: Commissioner, the commission staff is as much on my back about tendering documents as they are senior counsel. So given the fact that I didn't tender anything earlier, I will tender tabs 1 through 17 of the Rob and Katharine McBride brief.

25

THE COMMISSIONER: Thank you.

30 MR O'FLAHERTY: This afternoon, a very different story, but – or very different concerns with respect to constraints, this evidence may well cover. So I will call Ms Louise Burge.

THE COMMISSIONER: Thank you.

35 **<LOUISE JANE BURGE, SWORN** [2.00 pm]

**<EXAMINATION-IN-CHIEF BY MR O'FLAHERTY**

40

THE COMMISSIONER: Please sit down.

45 MR O'FLAHERTY: Ms Burge, you're a – predominantly a sheep farmer on the Murray River in southern New South Wales?

MS BURGE: Yes, sheep and cereal growers.

MR O'FLAHERTY: Yes. So you've got a – it's a mixed farm of sheep, I think the cereal and other crops.

5 MS BURGE: Yes, we just grow a range as - - -

MR O'FLAHERTY: As you see fit.

MS BURGE: Yes. Yes.

10 MR O'FLAHERTY: And do I understand you've got a small irrigation licence as well?

MS BURGE: Yes, we have an irrigation – small irrigation licence and a deep – a deep bore as well, yes, deep.

15 MR O'FLAHERTY: Yes. Just so I can place where you're situated, I might – if you've got a folder in front of you perhaps of – which has your name on it. If we go to tab 3 – there's a reason why I'm going to this document which will become readily apparent, page 5, there's a map.

20 MS BURGE: Yes.

MR O'FLAHERTY: Whereabouts is your property situated? I'm assuming it's within this - - -

25 MS BURGE: Yes.

MR O'FLAHERTY: - - - for reasons which will become apparent.

30 MS BURGE: Yes.

MR O'FLAHERTY: But whereabouts are you?

35 MS BURGE: If you see Deniliquin.

MR O'FLAHERTY: Yes.

MS BURGE: And if you go to the east of the Edward River, see Toonalook, on the left on that – the river, the Edward River and Gulpa Creek - - -

40 MR O'FLAHERTY: Yes. Yes.

MS BURGE: - - - we are on the eastern side of Toonalook.

45 MR O'FLAHERTY: Right. And so your property borders the Edward River.

MS BURGE: Yes.

MR O'FLAHERTY: Yes, and so that's the relevant flood plain on which your property is partly situated on. It's not all flood plain, is that correct, or is it?

5 MS BURGE: Well, it's been in – you know, cropping production for over 100 years.

MR O'FLAHERTY: Yes, but in terms of natural floods, would it be fair to say that your property is - - -

10 MS BURGE: It does get affected by floods, yes.

MR O'FLAHERTY: - - - part and part, yes. Yes. All right. Now, you have - - -

15 THE COMMISSIONER: It's not mountainous, is it? It's pretty - - -

MR O'FLAHERTY: Pretty flat.

20 MS BURGE: No, many of the properties below Albury all the way through that area and, in fact, any river country, if you look at the city of Wagga on the Murrumbidgee River, every river is subject to some level of floods.

MR O'FLAHERTY: Yes. Now, you've provided the Commission with two submissions: one is in your personal name.

25 MS BURGE: Yes.

30 MR O'FLAHERTY: That's behind tab 1 of the document – of the folder, and you've also forwarded a submission made on behalf of Murray Valley Private Diverters, that submission had originally been a product made to the Productivity Commission.

MS BURGE: That's correct.

35 MR O'FLAHERTY: I was wondering if you can just explain what the Murray Valley Private Diverters are?

MS BURGE: Murray Valley Private Diverters represents small irrigation sector, farms - - -

40 MR O'FLAHERTY: Yes.

MS BURGE: - - - individuals, say small creeks, systems or small trusts, irrigation trusts, say from Tocumwal to towards Swan Hill.

45 MR O'FLAHERTY: Yes, so in terms of the coverage of farms with that map, it's from as far east as your property and as far west as Swan Hill?

MS BURGE: A little bit further east - - -

MR O'FLAHERTY: A little bit further east from your property?

5 MS BURGE: - - - but not much and then all the way through to Carlisle, that sort of area.

MR O'FLAHERTY: Sure.

10 MS BURGE: So I think that map's a fairly good description, on the New South Wales side.

MR O'FLAHERTY: Yes, yes, and when did the Murray Valley Private Diverters form?

15

MS BURGE: They had been in existence for, I think, over 35, 40 years.

MR O'FLAHERTY: Right. And am I right in assuming it's mainly smaller - - -

20 MS BURGE: Probably longer than that, actually, because I think - - -

MR O'FLAHERTY: Right.

25 MS BURGE: - - - that my association with - I've known about them, so it's probably longer.

MR O'FLAHERTY: Okay. Yes.

30 MS BURGE: I think it's actually much longer.

MR O'FLAHERTY: Sure. And am I right in thinking it's largely smaller enterprises that form the membership group?

35 MS BURGE: Yes. Family - mainly family based irrigation. Small, you know, not corporates and not large.

MR O'FLAHERTY: Yes, and we've come across a number of these groups. It's designed to give those smaller groups a voice - - -

40 MS BURGE: That's correct.

MR O'FLAHERTY: - - - which they may not have been heard individually.

45 MS BURGE: Yes. Yes.

MR O'FLAHERTY: All right. I will come to each of those submissions in turn. A lot of my questions will relate to the issue of constraints. That doesn't mean that

other issues you've raised in these submissions are not important. It's just that that particular topic, we haven't heard much evidence on and necessarily lends itself to a bit of further discussion. In terms of the constraints issue, I can take you to your submission behind tab 1.

5

MS BURGE: Yes.

MR O'FLAHERTY: You raise the topic of constraints on page 13 of that submission. This is under the broader heading of 'Delivery of Environmental Flow Targets to the South Australian Border' and you raise, on page 13, the concerns that were raised with respect to property – private property impacts around late 2010, and the need to prepare a constraints management strategy.

10

MS BURGE: We didn't ask for the preparation of a constraints management strategy.

15

MR O'FLAHERTY: No. No.

MS BURGE: The Government responded to our concerns eventually.

20

MR O'FLAHERTY: Yes. Yes.

MS BURGE: And then they asked the MDBA to do that.

MR O'FLAHERTY: No, I certainly understand that. Okay. Then in terms of the sequence of events, if I could – if we could have the constraints and management strategy core folder made handy, tab 1 to start with – seems like a logical place to start with. So if you've got your submission open, you talk about a 2013 report. The large bundle that has just been placed in front of you, behind tab 1, Constraints Management Strategy 2013 to 2024 is dated across the page 2013. I take it that's the report you're referring to in your submission?

25

30

MS BURGE: There has been a number – yes, that is one of the reports, but - - -

MR O'FLAHERTY: Yes, and there's – I know there has been a number of reports. We will get to some of those.

35

MS BURGE: May I also ask - - -

MR O'FLAHERTY: Sure.

40

MS BURGE: - - - that there was some – a number of events leading up to the formation of the report - - -

MR O'FLAHERTY: Sure.

45

MS BURGE: - - - and that's the important part, as well as just you can't look at the report in isolation from the events leading up.

5 MR O'FLAHERTY: No, no, no, and I was – the purpose of going to this report is it does, at least, to some extent relate to some of that, and you foreshadowed my next query. There's a reference to concerns being raised around 2010 and before then, and a report in 2013. From a community perspective what happened in the intervening years in terms of any consultation, discussion, studies done by the – by the relevant governments?

10 MS BURGE: I tendered my first Murray-Darling Basin Authority workshop – I think it was in late – late 2009.

15 MR O'FLAHERTY: Yes.

MS BURGE: At that time, I and a number of other people stressed the importance of working with local communities and incorporating local knowledge. And in any – I've got a background in natural resource management areas, and one of the critical components in – in engaging communities and working with them in environmental outcomes is partnerships with communities, and we have found over the years that that is the most successful mechanism - - -

MR O'FLAHERTY: Yes.

25 MS BURGE: - - - in looking and achieving at and designing environmental outcomes, and that was what I stressed in two thousand – late 2009.

MR O'FLAHERTY: Yes.

30 MS BURGE: Subsequent to that process, the Murray-Darling Basin Authority developed its first guide to the Basin Plan which was released – Guide to the proposed Murray-Darling Basin Plan released in October 2010.

35 MR O'FLAHERTY: Yes.

MS BURGE: We felt that that Plan was – Guide was developed in isolation of the communities and - - -

40 MR O'FLAHERTY: You didn't feel like you were properly part of the development of it.

MS BURGE: No, we weren't.

45 MR O'FLAHERTY: Yes.

MS BURGE: When the guide was released, a number of people put in, you know, meeting requests, submissions, a lot of submissions. I myself have spent enormous

amount of time writing and researching, doing literature reviews researching information, looking at issues so that I ensure when I do make a submission, it is based on proper evidence, it's based on as much fact as I can find and talking to a lot of different people. I do that both in a personal sense and if I'm doing it as a  
5 submission on behalf of, say, Murray Darling Private Diverters or another organisation.

MR O'FLAHERTY: Sure.

10 MS BURGE: So in – we had – when the guide was released, there was a lot of upset by the New South Wales Murray communities. I should say that the Murray communities – New South Wales mid-Murray community is a mix of irrigation and dry land farming systems.

15 MR O'FLAHERTY: Yes.

MS BURGE: There are – there is an irrigation – broader irrigation scheme. We only have a very small property in that.

20 MR O'FLAHERTY: Sure.

MS BURGE: We are outside of that scheme. We're not in – we're along the river system. Our main property is along the river system - - -

25 MR O'FLAHERTY: Yes.

MS BURGE: - - - where we've discussed. Now, in response to concerns with the Guide and proposed flow targets to South Australia, I looked at – I spent a lot of time looking at the basis for that and the reasoning for that, and this week, I presented – I  
30 wrote this on behalf of another organisation - - -

MR O'FLAHERTY: Sure.

MS BURGE: - - - and I did it under that banner. It was specific three months.  
35

MR O'FLAHERTY: Yes.

MS BURGE: And I spent three months researching and writing this, and that was, as I said, to make inform – make sure that we were fully informed, etcetera, in which  
40 to make proper comment. Now, in late – so we were aware as a result of the guide that the – and the MDBA approached that, that a lot of the decision-making around the MDBA was based on politics, and in my view and my experience with environmental issues, it was a political plan developed in haste, based on a set of  
45 numbers.

MR O'FLAHERTY: Sure.

MS BURGE: And I think the set of numbers is the measure for success, the number, and in my experience with environmental outcomes, that is not a robust way to look at how you measure environmental success and, often, as we've seen with this particular Basin Plan type approach, numbers don't equate to environmental  
5 outcomes, and they certainly can head the direction of decision-making in not the most ideal framework, put it that way.

MR O'FLAHERTY: Sure.

10 THE COMMISSIONER: As I understand the relation of numbers and environmental outcomes, desirable environmental outcomes are a starting point for the ascertainment of hydrologic and hydraulic parameters which are sometimes called environmental watering requirements, but that the statute reduces everything to a single figure, relevantly, the ESLT or the SDL that depends on it. But that the  
15 Act requires eventual and I think, thereafter, periodic checking with actual environmental outcomes which are very variously described from bird reproduction achievements through to the flourishing of various forms of plant life and everything in between and beyond. So I must say you are surely right in saying you can't just  
20 look at a figure particularly, an annual discharge figure and treat its achievement as indicating a successful environmental outcome. Is it your understanding that there will have to be science and observations performed in order to see whether the Plan has delivered environmental outcomes?

MS BURGE: I think there's already evidence that the Plan is not going to deliver  
25 those outcomes.

THE COMMISSIONER: That may well be right, but that's something – that's one of the reasons, surely, to require the science and the observations and what I will call the monitoring and the reporting because to do something to achieve a purpose is a  
30 terrible waste of money if you don't find out whether you've achieved the purpose, or whether you could achieve the purpose, say, in a better way.

MS BURGE: I agree that monitoring and evaluation is a very important component of it. In our experience and, certainly, in my – my direct experience, I have seen not  
35 the most robust science underpinning the decisions, and what has been a common feature of the development of the basin plan has been a process of justification with the original numbers. And there is no framework for adaptive management for incorporating new knowledge, learning by experience and learning by the success or otherwise. So in the field of monitoring and evaluation and reporting, it tends to  
40 have an element of spin and we are - - -

THE COMMISSIONER: By "spin", you mean suppressing the unfavourable - - -

MS BURGE: Yes.  
45

THE COMMISSIONER: - - - and boosting the favourable.

MS BURGE: Yes, and so there's not a lot of community confidence in the whole framework of monitoring and evaluation, and I think, you know, it goes back to my comment about community participation.

5 THE COMMISSIONER: Yes.

MS BURGE: If you take the community with you, and I've been involved in catchment management, I've been involved in natural heritage trust programs, working with communities, and I've been on both sides of policy and the farming  
10 side, so I've always looked at things through quite wide – you know, eyes wide open, but there is a common theme for success, and the Murray-Darling Basin process is contrary to everything that should and would achieve success.

MR O'FLAHERTY: Yes, and in terms of the – particularly of – with respect to the  
15 Guide, it's a common thread that we've heard that the – that that level of local engagement simply wasn't there prior to its publication or in subsequent to it, and that you could have the best science in the world, but if – in terms of implementing it, you're not going to get very far without that local input and that local engagement  
- - -

20

MS BURGE: I think it's - - -

MR O'FLAHERTY: - - - because its implementation requires that local  
25 engagement.

25

MS BURGE: Yes, I think it's worthwhile remembering what the timeframe was for the development of the Murray Darling Basin Authority itself.

MR O'FLAHERTY: Yes.

30

MS BURGE: The timeframe in which it had to develop a Basin Plan and how it obtained its core information. So it was a short political timeframe from the regional development of the Water Act 2007 which was a political response to the Millennium Drought in the heat of an election campaign. And political – you know,  
35 election cycles aren't the best mechanisms for producing, you know, sustainable decisions - - -

MR O'FLAHERTY: Solutions for long-term problems, no.

MS BURGE: - - - of anything, really. So we had a new Murray-Darling Basin  
40 Authority which didn't have a lot of direct on ground experience in water management, design – required to develop a Basin Plan over a very short timeframe. So it relied pretty much on available information, information supplied to it from groups such as the Wentworth Group or - - -

45

MR O'FLAHERTY: State governments and the like.

MS BURGE: - - - state governments or various bits of information.

MR O'FLAHERTY: Yes.

5 MS BURGE: And one of the foundation pieces of science, of course, was the Sustainable Rivers Audit which was done – first commissioned by the former Murray-Darling Basin Commission Ministerial Council and they were meant – they produced the first of three reports and the Sustainable Rivers Audit identified, I think it was 23 rivers and only conclude that had one - - -

10 MR O'FLAHERTY: One was in good condition.

MS BURGE: - - - which was in good health, but the extraordinary thing about that process it was – that's – apparently scientific estimate or assessment was done in the peak of the Millennium Drought, and it was based on three components: macro invertebrates, fish and hydrology. Now, if you look at the case of the Ovens River, which is a fairly pristine river coming straight out of the Victorian catchments, it scored low on macro invertebrates and fish, high on hydrology, as in volume of water, but it scored overall in poor health. Again, it reinforces, you know, is the plan based on robust science.

THE COMMISSIONER: So you are sceptical of that as being a proper description of the Ovens. Is that right?

25 MS BURGE: I think – yes, I do, yes. I think that there's a lot – I think that has only one component of a much broader suite of targets, if you like, that one would expect given the volume of taxpayers' funds being spent on this, that robust science should accompany the decisions, and I have yet to see that, and I probably more than most other people have gone into these issues at great length.

30 THE COMMISSIONER: Could I just go back a bit to the matters I was asking about earlier. Do you understand the intended effect of the Basin Plan in relation to adjustments that you – you start with this notion that happens to be called benchmark environmental outcomes that means the environmental outcomes that you get from a model which is – to which what's called an applicable method which is set out, is to be followed, and that gives you modelled environmental outcomes if the sustainable diversion limits, the SDLs, were at the original levels when the Basin Plan commenced.

40 And there can then be proposed adjustments, and if there's supply measures, then it's required that they achieve what are called equivalent environmental outcomes. I suppose that means the same or better as those benchmark outcomes. And then there's a reconciliation in 2024 which precedes on the basis that the Authority is meant to ask itself has experience borne out the projection carried out by the original use of the model? And if it hasn't, there's a requirement to propose an appropriate adjustment, hence the word 'reconciliation.'

MS BURGE: I suspect the reconciliation is not about environmental outcomes. I think it's about meeting target numbers.

5 THE COMMISSIONER: What do you mean by the numbers there? Do you just mean the SDL?

MS BURGE: No.

10 THE COMMISSIONER: What do you mean?

MS BURGE: It can be partly that. If you look at the Basin Plan itself, it started with a number of – a desired number to flow out the Murray Mouth and that was, if you like – they have worked backwards, had a set of flow target and then worked backwards in how to achieve that flow target, and I think that is over-influencing a lot of the decisions.

THE COMMISSIONER: You're right that the discharge at the Mouth is a very noteworthy aspect of it all, but there's a lot of – there's a lot else besides, isn't there?

20 MS BURGE: That's right. I think you look – it's important to look at the cause and effect. If we are achieving environmental targets, then we have to look at cause and effect, and, in fact, I think even in the objects of the Act, that is specified that you have to look at the – I will find the wording. I've got the wording here. But we have started with a very crude tool of success, and that is a number, and we have this –  
25 you know, as I said, this framework of building the decisions around this number and then having no flexibility to – to pick up new knowledge, learn from experience and, you know, be flexible, and that is contrary to everything in terms of environmental outcomes. And also, the measure of success, if it's purely based on a volume of water going down the river – that is the complete reversal of the whole principle  
30 Australia has been down in the past, which is total catchment management. And, you know, environmental outcomes are not achieved by one thing, whether it be a bird breeding event or - - -

THE COMMISSIONER: Don't mistake me. I don't find any of what you're saying difficult to accept. I'm simply wondering – how do I put this – are you being too harsh on at least the theory that you see in the Act and the plan because doesn't it positively require that they have to revisit, that is, check to see whether what the adjusted SDLs have produced include, for example, for supply measures equivalent environmental outcomes?

40 MS BURGE: Yes, they will have to do that but the - - -

THE COMMISSIONER: Much more than discharge them out.

45 MS BURGE: My question will be have they met – in my experience with the MDBA which is quite, you know, I've been involved in this for a very long time – my experience will be – suggests to me that this will be about an accounting

framework based on the modelled outcome, and it will be assessed against that model framework and the model of numbers.

5 THE COMMISSIONER: You mean after the - - -

MS BURGE: 2024. Yes .

THE COMMISSIONER: At 2024.

10 MS BURGE: Yes.

THE COMMISSIONER: You mean you fear that it is just by the application of a model that achievement will be measured?

15 MS BURGE: A modelled outcome or desired outcome. If you look at where we are right this moment within the Basin Plan framework, already evidence is there that some of the decision-making of the MDBA within the Basin Plan framework is not conducive to achieving environmental outcomes across the Basin.

20 THE COMMISSIONER: So come 2024 won't that be the subject of observation and report?

MS BURGE: It – it - - -

25 MR O'FLAHERTY: With respect to this.

THE COMMISSIONER: I'm not saying that's a desirably - - -

30 MS BURGE: Yes.

THE COMMISSIONER: - - - proximate date, it may be too far off. It may be terrible degradation caused, but at the moment, at least – I'm not trying to persuade you of something. I'm trying to understand what your criticism is. You accept I think that at 2024, at least in theory, there is intended to be - - -

35 MS BURGE: A reconciliation.

40 THE COMMISSIONER: - - - a check to see whether the adjustments that were carried into effect were such as if we had known then what we know now, would have been carried out.

45 MS BURGE: I still stand by my decision that on my – my opinion that I suspect that by 2024, there will be an assessment against the success of the Plan based on a number and a model set of scenarios.

THE COMMISSIONER: But you can't test the success of a modelled outcome by modelling it.

MS BURGE: Well, could I draw your attention to what we do know today?

THE COMMISSIONER: Yes.

5 MS BURGE: If we look at the targets say for the Murray Mouth and the Coorong and also a number of the 18 indicator sites - - -

THE COMMISSIONER: Yes.

10 MS BURGE: - - - that are expressed in the Basin Plan, a number of those 18 indicator sites are on the northern base – on the northern Darling or the Murrumbidgee system.

THE COMMISSIONER: Yes.

15 MS BURGE: And there is nothing in the Basin Plan that suggests to date that those numbers will be effectively met. And while they may be met under other environmental programs.

20 THE COMMISSIONER: You had better tell me what you mean by numbers there.

MS BURGE: Well - - -

25 MR O’FLAHERTY: That these three, is that the indication where the 2750 number will only achieve, I think, about the 11 of the 18.

MS BURGE: Yes.

30 MR O’FLAHERTY: And - - -

THE COMMISSIONER: Sorry. So numbers there refers to the - - -

MR O’FLAHERTY: Hydrological indicator sites.

35 MS BURGE: Not only that though.

THE COMMISSIONER: The number of ticks in boxes, all of which are meant to get ticks.

40 MS BURGE: All are meant to get ticks, and it’s not just the 18 indicator sites I’m talking about.

MR O’FLAHERTY: No. It’s the other - - -

45 MS BURGE: It’s about the flow targets, the - - -

MR O’FLAHERTY: Flow indicators as well. Yes.

MS BURGE: Etcetera. To me, the evidence that I've seen today suggests that the Basin Plan is – is – we're going to spend over – well over \$13 billion because nobody really knows how much this is going to cost to date. That's what we know to date. And to me, there should be a process of mid-term review that actually allows  
5 an adaptive decision-making framework to revisit what have we learnt already to date.

MR O'FLAHERTY: Yes.

10 MS BURGE: What do we need to get the best outcomes, and were some of the original assumptions made by the MDBA, based on, you know, hydrological information that may or may not have been correct, and that, you know, with benefit of hindsight, the MDBA, you know, may – may wish to change, or may not wish to change, but whatever the case is, the legislation, the Water Act 2007 and the basin's  
15 plan is so restrictive in its framework for current decisions and future decisions that my concern is that by 2024, we will have spent all this money, and the environmental outcomes will not be addressed.

20 There will be a lot of hurt to a lot of communities. There will be significant benefits to other communities and at the end of the day I'm – I would – if I was a betting person I would bet that the information that I – I believe will be the case in 2024 will come to fruition. And one such example is – and I've made a note in this – in my submission, if you look at, say, whether the reliance on flows down the Murray River itself will be sufficient to clear the Murray mouth of sand deposits. Already  
25 historical evidence, photographic evidence which I've got and a number of other people have got will show you that it will not work. In 2016, we had catastrophic flooding that went, and it was an absolute disaster, wrote our business off. We – we've gone now into the drought with no feed, huge financial loss. So if we look at  
- - -

30 THE COMMISSIONER: That big flood didn't clear the mouth is what you're saying.

35 MS BURGE: Well, to give you an example, 204,000 megalitres went under the Tugamore Bridge. By the time – that was in early October. By the time that got to the South Australian border in December, it was equated to about 94,000 megs, and that's because of natural distribution into flood plains, wetlands, swamps, etcetera.

40 MR O'FLAHERTY: Into floodplains, wetlands, yes.

THE COMMISSIONER: That's what a river does.

MR O'FLAHERTY: Yes.

45 MS BURGE: And then it got to the barrages in late December. Three weeks after that event - - -

MR O'FLAHERTY: Dredging had to start again.

MS BURGE: - - - the dredging had to resume, and that is exactly the scenario.

5 THE COMMISSIONER: I think I understand all of that. I'm really anxious to understand your point. What point do you then make about that in relation to the likelihood of the plan with its SDL adjustments achieving the environmental outcomes that they've been paid for?

10 MS BURGE: Well, the same thing will happen. If we just look at the Murray Mouth, the same thing will be continuing to happen for the next 50 years unless there is localised solutions – local infrastructure solutions, or a range of other solutions. The Coorong will still be – the southern lagoon of the Coorong will still be hypersaline because no matter how much water is pushed down the Murray, it will  
15 not address the problems unless the MDBA looks at cause and effect. And you have to consider the impacts of the south-east drainage scheme and the upper south-east drainage and flood mitigation scheme, how that has affected the natural historic flows to the southern lagoon of the Coorong.

20 MR O'FLAHERTY: Going back to your point that there needs to be a proper scientific review, is that based on your – I think I understand – correct me if I'm wrong – your concern is that there is being placed too much emphasis on the modelled numbers and not enough review or emphasis on what has happened during the early stages of implementation of the Basin Plan, and there is a provision in the  
25 Act which requires at least a 10 year review of the Basin Plan. So by 2026, the Authority is required to review the Basin Plan, but you would be pushing for a more regular scientific review - - -

MS BURGE: Yes.

30 MR O'FLAHERTY: - - - of the figures so that they can be assessed that they are properly representing the environmental outcomes that are desired to be achieved.

MS BURGE: If we waited till 2024 or 2026 - - -

35 MR O'FLAHERTY: Yes.

MS BURGE: - - - all the decisions are done and dusted.

40 MR O'FLAHERTY: You feel that would be too late.

MS BURGE: Absolutely, yes.

THE COMMISSIONER: Too late for?

45 MS BURGE: Too late for the adoption and incorporation of better information, new knowledge, more strategic approaches to achieving the environmental outcomes

because it's a bit like we are using a very crude methodology in supposedly achieving environmental outcomes, and – and then we're just simply going to measure against using the same crude methodology, and the reconciliation that will occur is not actually going to change the decisions. It's not going to – you can't  
5 wind back the decisions and say “whoops”.

MR O'FLAHERTY: In theory, it - - -

10 THE COMMISSIONER: I'm still struggling to understand fully your point which I have a distinct feeling is an important one for me to understand. In sufficient time, apparently, for any reconciliation amendments to commence by 30 June 2024 – there, I'm reading– from one of these notes that you find in the Basin Plan in 7.11, and so presumably starting well before mid-2024. It's understood that the MDBA has to ask itself the question: “in light of what is known and will – is projected to be  
15 the case as at 30 June 2024, are the adjustments that were made appropriate?”

I'm trying to paraphrase the provisions of the plan in this regard, but I think the wording is such that it means they've got to ask themselves, for example, about a supply measure. Has it proved – has it produced the equivalent in environmental  
20 outcomes? And you don't do that by saying, “Well, we ran a model that said it would. We just run the model again. It still says it would. Bob's your uncle”. And that's – obviously, that would be a derisory approach. I don't think anyone is going to interpret it that way. It's surely saying, well, here was the modelled outcome, equivalency, but we've now actually run the river with that adjusted SDL and on this  
25 site or on this – in this region, this reach, however it's defined, described, I can now see that we have not achieved the environmental outcomes that had originally informed the SDL adjustment.

30 MS BURGE: My experience in government decision-making, it is very unwise for career purposes to admit any errors and it is - - -

35 THE COMMISSIONER: Alas, I can see the credibility of all of that, but we've got to, I think, distinguish between what in theory should happen and what you understandably fear will happen. So I think your last answer you're really saying is even if the theory is sound, you are pessimistic about whether it will be practiced because it may require individuals to take unpopular steps.

MS BURGE: And admit that perhaps some of the original - - -

40 THE COMMISSIONER: Is that right? Is that what you're telling me?

MS BURGE: Yes, some of the – our experience to date with the MDBA is when you raise issues of concern that some of their assumptions may not be correct, the general response from the MDBA is either to just ignore you, cover it up or, as we've  
45 experienced, send in an alternate report and - - -

THE COMMISSIONER: What do you mean by that, “send in an” - - -

MS BURGE: Well, we've been warning for – since 2010 that the flow targets that the MDBA was setting for the Murray River were going to cause both damage to personal property and communities, but it also was going to be damaging to the river itself.

5

THE COMMISSIONER: Now, this includes, particularly for the region that you're concerned with the – is it the 50,000 megalitre target?

MS BURGE: We had – the MDBA has set – if you look at the flow targets and then work backwards, in my experience, the MDBA looked at the target at the end and then worked out what's the easiest way to get the target, and the easiest way was to just simply look at the major storages on the Murray and say that's the best opportunity to get the water. That is why the – we look at why they set such high flow targets. Now - - -

15

THE COMMISSIONER: Am I – I'm right recalling it, is this 50,000 - - -

MS BURGE: The – the – through - - -

MR O'FLAHERTY: 77, I think, is a figure that's - - -

MS BURGE: 77 was the 70 – through the downstream of Yarrawonga and through downstream of Tocumwal, the river downstream of Tocumwal, the river in the middle of choke area which is just the natural banks of the river, that runs about 10,600 megs a day. The Murray-Darling Basin Authority wanted to run that part of the river at 77,000 megs a day and - - -

25

THE COMMISSIONER: Now, what does that mean?

MS BURGE: Well, if you think of the river at 10,600 and then you think of 77, it's - - -

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THE COMMISSIONER: I mean, crudely speaking, it means it will - - -

MS BURGE: Seven times the volume.

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THE COMMISSIONER: It will break its banks.

MS BURGE: No. Well over.

40

THE COMMISSIONER: Quite.

MS BURGE: Yes.

THE COMMISSIONER: So have I understood correctly from the material that the Authority has published that the intention is to bring about some inundation, supposedly in more desirable times of the year such as winter/spring?

45

MS BURGE: That's correct, but - - -

THE COMMISSIONER: I see. And what you're pressing me to appreciate I think is that over and above that, that might be called a sort of a local environmental effect,  
5 there's also the really simple hydrological flow which is sort of a whole of river end point analysis. That's the one that you say - - -

MS BURGE: Primarily using the Murray River alone.

10 THE COMMISSIONER: I see. That's - - -

MS BURGE: And that's because they set – the MDBA set a flow target of 80,000 megs at the South Australian border. Now, to quote the former Jody Swirepik in her response to the Senate Standing Committee on Rural and Regional Affairs, Hansard records that – Ms Swirepik was the Executive Director of Environmental  
15 Management of the Murray-Darling Basin Authority at the time and she's now the Commonwealth Water Holder. She said:

*We knew right at the very beginning that some of the flow regimes we were  
20 identifying which we know are good for the environment are actually quite large floods. Within our full suite of indicators for instance, 125 on the river lands at Chowilla Floodplain is a big flood in that part of the world. The floods in 2010/11 got up to 93,000 and they flooded some towns on the way.*

25 Now, the question is in the MDBA's decisions, the – there is a lot of environmental management programs that have preceded the Murray-Darling Basin Plan.

THE COMMISSIONER: Yes.

30 MS BURGE: And one of the notable ones is the Living Murray works. So that looked at the six icon sites on the Living Murray – on the Murray itself and determined what is the best way to water those both efficiently, effectively - - -

THE COMMISSIONER: One of those examples is the Chowilla Regulator which is  
35 a - - -

MS BURGE: Yes, and the Barmah-Millewa and the Hattah Lakes and Coorong - - -

THE COMMISSIONER: Yes.

40 MS BURGE: - - - Lower Murray Mouth, etcetera. So the first step in recovering water under that program was – the recommendation was 500GL and the total was 1500GL and the scientific reference panel at the time said, with infrastructure and some river operations, it would deliver a healthy working river.

45

THE COMMISSIONER: The idea generally being that with that engineering, some of the environmental benefits understood to come from occasional inundation could be achieved by a partial simulation of that inundation.

5 MS BURGE: It could be - - -

THE COMMISSIONER: For example, instead of waiting for enough flow for the river to break its banks, actually pump water over the banks.

10 MS BURGE: Yes, or you can create a regulator into a swamp - - -

MR O'FLAHERTY: To hold back - - -

15 MS BURGE: - - - into – which can open - - -

THE COMMISSIONER: Which, again, is artificial, so it simulates, at least, in part what's thought to be the patterns of inundation of environmental significance.

20 MS BURGE: Yes, it enables efficient watering of areas in need and – and that - - -

THE COMMISSIONER: By “efficient”, you mean without taking as much water as in nature would, in fact - - -

25 MS BURGE: Well, it allows more effective water given that, you know, we've got a human dominated landscape and a whole lot of - - -

THE COMMISSIONER: But using less water overall for the - - -

30 MS BURGE: Yes, it – yes, yes, but it also allows water to get from A to B. So let's say there was a road or, say, a town in the road that you didn't want to flood the town - - -

MR O'FLAHERTY: Yes.

35 MS BURGE: - - - you could run the river and then through infrastructure works, say below the town, you could still water that particular wetland by having the infrastructure.

40 THE COMMISSIONER: Again, by artificial methods of achieving the inundation in that desired location without inundation in the undesired location, namely, the town.

MS BURGE: Yes. Yes.

45 THE COMMISSIONER: Whereas, in nature, it would all just let it rip.

MS BURGE: Yes, but – that’s right. We live in a – most of our towns are along the river systems.

THE COMMISSIONER: We’re part of the environment.

5

MS BURGE: We are – we are part. So, you know, we seem to have, under the Basin Plan, departed from sort of looking at a range of solutions, and we’ve simply gone back to this – a theorised approach.

10 THE COMMISSIONER: Or modelled in particular.

MS BURGE: A modelled approach to just – well, let’s – you know, we’re starting at the bottom with a number. We’re working back. Can we get it from here, here, here? Who’s got the biggest political voice?

15

THE COMMISSIONER: Who does have the biggest political voice?

MS BURGE: I think you might have heard that this morning.

20 THE COMMISSIONER: Who do you think has the biggest political voice?

MS BURGE: I think there are – and I made this comment in my personal submission, I think there are two – there has been a range of issues: (1) the heat of the election cycle in 2007, political opportunity. I think with the South Australian

25

- - -

THE COMMISSIONER: I will break this up, if you don’t mind.

MS BURGE: Yes. Minister - - -

30

THE COMMISSIONER: Can you explain, in what sense, it was an electoral issue?

MS BURGE: John Howard and Malcolm Turnbull were looking – at the time, were looking for an environmental strategy as part of their election campaign, and at the time, the Murray-Darling Basin was in the peak of the, you know, Millennium Drought, and it was an opportunity to showcase environmental credentials. They subsequently lost the election and then the Labor Government came into power, and they then took over and implemented the Murray-Darling Basin Authority and the subsequent Basin Plan, and so we - - -

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THE COMMISSIONER: What I haven’t – I’m not aware of – I’m not going to spend too much in this Commission worrying about it either. I’m not aware that this was anywhere near the top of any common understanding of critical issues in the electorate.

40

MS BURGE: It wasn’t - - -

THE COMMISSIONER: Perhaps more's the pity, but - - -

MR O'FLAHERTY: Maybe in some areas more than others, but - - -

5 THE COMMISSIONER: Yes, but - - -

MS BURGE: Yes, if you look at, say, some of the political drivers even within South Australia, one of the drivers was the decline of the Lower Lakes during the drought and, yes, it was horrible, and I'm sure for the people living there, it was  
10 awful, but, equally, we had no house water, we had no creek and most of the – 81 per cent of New South Wales was in dire drought which didn't break until February 2010. Now, you know, droughts happen and they're shocking, but the – the concern and the South Australian irrigators, at the time, were very angry that they didn't have irrigation supplies to water their permanent trees, and I understand that – that risk  
15 and that damage, but, equally, we were on zero per cent as well.

THE COMMISSIONER: That's why I'm asking - - -

MS BURGE: So they actually had an allocation. We were on zero.  
20

THE COMMISSIONER: Fortunately, I don't think any of us have yet experienced a politician promising to break the drought. So that doesn't become an electoral issue, any more than we will ever find a politician - - -

25 MS BURGE: They do - - -

THE COMMISSIONER: - - - promising to maintain a drought. So remember I – just started off by asking what is your perception of who the loudest voices are. Who are the loudest voices because - - -  
30

MS BURGE: There's been a - - -

THE COMMISSIONER: - - - I don't think you can point to the body of voters and say - - -  
35

MS BURGE: No, not the voters.

THE COMMISSIONER: - - - they have one or more voices. We – no, like you, I'm putting them to one side at the moment – or us to one side.  
40

MS BURGE: There's two – two key things: what was the driver and then who drove the outcome? Now, if we look at the driver, one of the drivers, key drivers, was the impact on the Lower Lakes during the millennium drought, but - - -

45 THE COMMISSIONER: And that's a generalised concern for environmental degradation, isn't it?

MS BURGE: Yes, yes, but – but it was, if we looked at – going back to 2002, before that, under river regulation, the Lower Lakes are kept at .75 metres above sea level, and in regards to when the barrages went in, that – it took – obviously impacted the Murray Mouth estuary, etcetera. As far back as 1902, it was predicted  
5 then that if a construction was put in a tidal compartment of an estuary, sedimentation would occur. Now, that was predicted way back in 1902, and that’s exactly what has happened. That has been compounded by when South Australia is limited to its 1,850GL minimum entitlement flow under the River Murray Agreement, it becomes incredibly difficult to keep the Lower Lakes at .75 metres  
10 above sea level, and in those circumstances – and – and - - -

THE COMMISSIONER: You mean they don’t – it’s not brimful at the barrage is what you mean.

15 MS BURGE: Yes, and so what happens to keep it brimful, they close the gates for an extended period. So you’ve got a combination of 90 per cent loss of the tidal prism, you’ve got then a limited release out of the barrages in order to keep the lake at a fairly static level above sea level, and you’ve got the incoming tide depositing sand, and that combination is – you know, is – and the photos that I think in the  
20 submission that I sent yesterday - - -

MR O’FLAHERTY: Yes. Yes.

MS BURGE: - - - will show you that. So there’s a - - -  
25

THE COMMISSIONER: So what does that tell us or tell – what does that lead you to tell me about the Basin Plan and its prospects?

MS BURGE: That I think it needs to be some more holistic approach to looking at a  
30 range of infrastructure solutions. It can be environmental flows, but my point about that environmental flows on its own without local infrastructure as evidenced by the flood and historic flooders is not going to be a sustainable solution. So in regards to the question about influence, in 2002, the Murray-Darling Basin Commission at the time which David Dreadman had joined in 2000 – he was the River Operator for the  
35 MDBA and also provided all the hydrological information to the Basin Authority. He said that in a meeting at Deniliquin, so, you know, I feel confident in making that statement.

40 Back in 2002, the former Murray-Darling Basin Commission looked – instructed a fellow called Andy Close to look at – to do a technical report how to look at getting additional flows, in theory, to create a note outward flow over the barrages against the incoming tide, and the theory was to push the sand out. And at that time, they looked at – there were five options presented, one was selected and that was an  
45 additional 2,000 megs per day to – which would cover the evaporative losses on the lake, but 2,000 megs a day times 365 days equals 730,000 megalitres, and that was considered – you know, that would create a net outflow against the incoming tide.

That figure under the Basin Authority then went to 2,000 gigalitres over a three-year rolling average. The scientific justification for that, I'm still struggling with.

5 So then when it comes to points of influence and who's got the biggest voice, it came  
back to I think – well, it really came back to this was the target set under the Basin  
Plan, and then there was a range of people struggling to say, well, South Australia  
didn't want it to come from anywhere there; northern Basin didn't want it to come  
from anywhere there, Murrumbidgee didn't; Goulburn – whatever. Unfortunately,  
10 where we've landed is, I think, the Northern Basin political voice was fairly strong  
and won the day in that respect. I think South Australia has won the day in some  
respects. Murrumbidgee has pretty much - - -

15 THE COMMISSIONER: When you say “won the day”, I think it will come as a  
surprise to a lot of people to say that South Australia had won the day, bearing in  
mind what the politics of what's sometimes called the upwater, the 450 gigalitre  
upwater suggests which doesn't suggest South Australia is in a dominant position at  
all.

20 MS BURGE: Well, the 2,000 – the 2,750 Basin Plan set very specific targets for the  
Coorong, Lower Lakes, Murray Mouth. The 450 upwater reinforced those same  
targets.

MR O'FLAHERTY: Or those targets were linked to the 450 upwater.

25 MS BURGE: They were also linked to the Basin Plan before the 450.

THE COMMISSIONER: The 450 upwater hasn't happened and may never happen.

30 MS BURGE: There is a political deal that was done with David Littleproud and  
Tony Burke and - - -

MR O'FLAHERTY: We're aware of that, I think.

35 MS BURGE: Yes.

MR O'FLAHERTY: Irrespective of a party political deal - - -

THE COMMISSIONER: I don't think it's unconditional, to put it mildly.

40 MS BURGE: But it also linked funding.

MR O'FLAHERTY: From a lawyer's perspective – well, it - - -

45 MS BURGE: Links funding to the SDL projects, so it's going to be pretty  
challenging. So – so, in my view, that's why - - -

THE COMMISSIONER: So what does this amount to, bottom line? That too much water goes to South Australia or - - -

MS BURGE: No.

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THE COMMISSIONER: - - - too much of the water that goes to South Australia comes from the Murray?

MS BURGE: I think under the Basin Plan, the additional water that is going to be provided to South Australia – because, at the moment, it’s going to come primarily from the Murray, and that will primarily be coming down from – from the major storages of Hume and Dartmouth.

10

MR O’FLAHERTY: Hume and Dartmouth. Yes.

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THE COMMISSIONER: Sure, I understand. So is it your point that that is a disproportionate contribution by the Murray or that more science must be done in order to know whether it is disproportionate?

MS BURGE: I think it should be both.

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THE COMMISSIONER: Well, you can’t know something in advance of finding it out, can you?

MS BURGE: Well, if I go back to cause and effect.

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THE COMMISSIONER: Yes.

MS BURGE: If we know already today, and we have known through the photos and other information, that pushing the large volumes of the water down purely into the Murray are going to damage the banks of the Murray, they are going to blow the Barmah Choke out and they are going to flood people and also decimate local communities in terms of irrigation dependent communities - - -

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THE COMMISSIONER: Knowing all of that, then?

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MS BURGE: Then if that water gets down and does not deliver its intended objectives - - -

THE COMMISSIONER: We will have spent a lot of money to do collateral damage and not achieve the desired benefit - - -

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MS BURGE: Exactly.

THE COMMISSIONER: - - - which is not a successful project, I agree.

45

MS BURGE: No.

THE COMMISSIONER: So - - -

MS BURGE: And that - - -

5 THE COMMISSIONER: Do I gather – I’ve studied your written material which  
I’m grateful, do I gather that quite apart from what I’m going to call constraints  
management issues, quite apart from them, just in terms of running the river, you are  
– you think that mistakes have been made and are continuing to be made by aiming  
to put more water than is (a) appropriate and (b) effective down the Murray into  
10 South Australia; is that correct?

MS BURGE: Because - - -

15 THE COMMISSIONER: Have I got that correct? Is that - - -

MS BURGE: There’s a target – yes – set for end of system, but also for the border.

THE COMMISSIONER: You think the target should be lower.

20 MS BURGE: I think the target should make sense.

THE COMMISSIONER: Is that – do you think it should be lower?

25 MS BURGE: I think that the - - -

THE COMMISSIONER: Or higher?

MS BURGE: No, I think that we - - -

30 MR O’FLAHERTY: Or the method of delivery.

MS BURGE: - - - shouldn’t be actually focused on a target, we should be focused  
on environmental outcomes and then design the plan around the environmental – the  
best methodology for the environmental outcomes.  
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MR O’FLAHERTY: But in - - -

THE COMMISSIONER: Sooner or later, even if it’s done dynamically and  
adaptively, against which it’s always difficult to argue ..... sooner or later, though,  
40 some river operator needs to be told you are to release, or you are to ensure flows of  
the following magnitude at the following sites.

MS BURGE: Yes.

45 THE COMMISSIONER: During the following period.

MS BURGE: Yes.

THE COMMISSIONER: So sooner or later it becomes hydrology.

MS BURGE: It does. And – but achieving environmental outcomes will not be achieved by hydrology alone. And – yes.

5

THE COMMISSIONER: And, again, you're pushing an open door there. If there's anybody that thinks it is, let me, in defiance of proper method in Royal Commission, say I will not believe him or her. All right. It's just impossible. People occasionally have given evidence here sneering at some strawman notion that the problems are fixed by just adding water. I've not actually heard anybody say just add water, nobody. But if anybody says just add water, and you're fixed, then they're plainly wrong for all the reasons that you've put persuasively both in writing and here today. But at the end of the day, you do have to have water.

15 MS BURGE: Yes.

THE COMMISSIONER: And I, with respect, agree with you that if we're trying to achieve environmental outcomes as I think all the scientists unite in saying, it needs a lot of observation, open mind as to the need to correct and improve and adjust.

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MS BURGE: Yes.

THE COMMISSIONER: And it ultimately is not the measurement of volumes. That's absurd. It is the measurement of those things which the water, along with many other aspects of the world, achieve with respect mostly to living things, plants, animals and other things. That being so, do I gather, then, that a criticism you have systemically is that there is not enough provision made for what I will call intellectual scientific feedback, a continuous monitoring of how things are going so as to be able to adjust? Is that one of your criticisms?

30

MS BURGE: I'm – don't have the confidence that the monitoring and feedback will enable or be adopted by the MDBA that would result in a shift of decision-making.

THE COMMISSIONER: So you think that there should be better people?

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MS BURGE: I do. I – I have yet to see any evidence that any information that has been provided to the MDBA would result in a change of direction, attitude or – or, you know, an adaptive management framework. And I will give you an example. If we look at the restrictive framework around the SDL adjustment mechanism.

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THE COMMISSIONER: When you say the restrictive framework, do you mean the criteria that have to be met?

MS BURGE: Yes, and also that the SDL projects had to be developed by 30 June 2016. That was a political timeframe, and the political framework has been, you know – I would describe it as being appalling in terms of, you know, making good decisions and making – you know, developing robust science to underpin decisions

45

and being responsible with tax payers' funds. I think there has been a gross mismanagement of the whole process politically and by various advocacy groups, by the MDBA itself. So just picking up that one example of the SDL adjustment mechanism, originally all the States had to put their projects in by 30 June 2016.

5 They did not have the capacity.

Victoria had some shovel ready but I know New South Wales didn't. It was a late signatory to the Basin Plan as well, so that added to, you know, their time frames not having projects ready. But also, a lot of the works on the Murray system had already been accounted for and developed under the Living Murray project. So when it came to developing a whole lot of other SDL projects within a very short political timeframe, then there was a lot of pressure on people to come up with projects. Now, those projects may or may not have undergone due diligence, and they may or may not have delivered the best environmental outcome, and it goes back to the question. They might tick a target or a box number, and they might be reported on in 2024.

But in reality, you know, are the business cases sound? Are the environmental outcomes sound? Should we be looking at the whole system and saying, look, if we know already that something is not working, should we have included other things in the mix? So I called in 2016 for instead of having a framework, well, we've got to find 650 gigalitres worth of offset projects, now some contributed from Victoria, some from New South Wales and a smaller number from South Australia. But instead of looking and saying, "Well, we may not have all the information", the MDBA itself was saying, "We will learn as we go".

So instead of having a more flexible approach, it was let's grab as many projects as we can to tick the box on the number. And so those businesses cases were developed not with due diligence. They haven't been developed in consultation with the community and I think, you know, the McBride family said the same thing on the northern, you know, on the Menindee. We on the Murray who also are directly affected by Menindee because of our flow commitments to South Australia, we haven't been consulted at all.

In relation to the business cases, we – sorry, before I get there, so I argued for an adaptive process. So let's say the states had a number of projects by 30 June 2016 but they didn't have the full suite of the numbers that added up to 650, why not have an adaptive framework where we say, look, we don't have all the answers on day one. We will keep a pot of money and a pot of decision-making to say we can – we will evolve the rest of the projects as new information as we learn, as we go, etcetera, etcetera.

THE COMMISSIONER: Why can't that be a continuous process?

45 MS BURGE: It should be but the politics and the MDBA did not allow that process.

THE COMMISSIONER: Well, the MDBA does what the law requires. What are the politics – what should I understand the politics to be?

MS BURGE: Well, the politics set the political timeframes.

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MR O'FLAHERTY: And the number, I think you – you placed a – the emphasis on the amount.

MS BURGE: And the number. The MDBA set the number, but - - -

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THE COMMISSIONER: The timeframe that you're referring to, is that the 2017, 2024 timeframe or what?

MS BURGE: It relates to that. All SDL projects had to be submitted by 30 June 2016. I argued strongly for an extension of time which I think eventually the politicians did accept. They needed another year. But in reality, not much improved in that 12 month period. So the time frame was extended to 30 June 2017. But no projects could be put in after that date.

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20

THE COMMISSIONER: This may not matter: what's your understanding of why these adjustments had to be done as a package, as it's called, by the end of 2017?

MS BURGE: Because it – it – if – it goes back to environmental, how do you achieve the environment. Is it all about hydrology, or could it be a range of other measures or given that the impacts on the irrigation-dependent community was going to be so significant in certain valleys, the argument at the time was, well, let's look at other opportunities for achieving environmental outcomes. But that process in itself, if I put my personal hat on, that means that people like us, the riparian people on the Murray are simply going to be collateral damage, and the Lower Darling people are also collateral damage because you've got two different extremes. You've got projects that tick the box in terms of numbers.

25

30

THE COMMISSIONER: When you say "numbers", I'm sorry to insist - - -

35

MS BURGE: Adding up to the 650 gigalitres of offset which is now referred to as 605 gigalitres of value of projects. It's a scoring mechanism, that if the states put forward projects, they were scored by the MDBA on a range of processes and - - -

THE COMMISSIONER: Closing the so-called gap, that is, the gap between benchmark consumption and the environmentally sustainable level of take, taking into account that which had already been recovered as the jargon has it, by buybacks. That's the gap we're talking about, isn't it?

40

45

MS BURGE: Buyback and acquisitions through – on farm efficiency program would achieve X and then the gap.

MR O'FLAHERTY: Approximately 2100.

MS BURGE: 2750 - - -

MR O'FLAHERTY: Yes.

5 MS BURGE: - - - for the southern Basin was going to be 650. To date, that number adds up to 605 worth of projects.

THE COMMISSIONER: Sorry, what gap is 650?

10 MS BURGE: The difference between what the government had purchased or required - - -

THE COMMISSIONER: Yes.

15 MS BURGE: - - - up to a certain point the number of entitlements, megalitres recovered, and then the gap between that and the figure of 2750 was – could be achieved by environmental projects.

20 THE COMMISSIONER: By increasing – I've forgotten. I will rephrase it. By reducing the amount of so-called recovery water.

MS BURGE: Yes.

25 THE COMMISSIONER: On the theory under a supply measure, the equivalent environmental outcomes could be achieved with less water.

MS BURGE: That's correct, that was the theory.

30 THE COMMISSIONER: Okay. Well, it's enacted.

MS BURGE: Yes.

35 THE COMMISSIONER: I'm not saying all laws are obeyed simply because they're enacted, but they are more than just theory. They're law. Now, the numbers you refer to, are they the results of running models, are they?

MS BURGE: They are.

40 THE COMMISSIONER: As opposed to what you think is desirable which is continuous observation of what's actually happening.

45 MS BURGE: It's still based on model scenarios and model numbers, yes, but you originally asked the question about, you know, the drivers of, you know – I suppose we're going towards collateral damage. Even with the SDL process and projects process, we have a lot of what I call political influence, influencing where the majority of decisions will be on the projects. So if you look at where a lot of the projects, the SDL projects lie, again, they lie in the Murray. So and - - -

THE COMMISSIONER: To take the mixture of works and operating rules that affects your reach of the river, it's a combination of what's called constraints relaxation and really quite considerably increased flow; is that right?

5 MS BURGE: Yes. There's a range of – there's a whole list of projects and in – for the southern Basin, the majority of them will affect changes to dam operations, releases down – down the Murray, changing the height of the way the Murray is run, and the Goulburn as well.

10 THE COMMISSIONER: Your reaches .....

MS BURGE: Yes.

15 THE COMMISSIONER: And New South Wales Government summarises it as involving a target flow of up to 30,000 megalitres a day with what they call a buffer to 50,000 megalitres a day.

MS BURGE: That buffer was put in, the wording was put in to achieve a higher score.  
20

THE COMMISSIONER: What does "buffer" mean? I know what "buffer" means, what does it mean there?

MS BURGE: We had – this was a particularly challenging time for us in relation to  
25 the events leading up to that. We – as a result of the Basin Plan decision when they released the Guide and they proposed to run the river at 77,000 megs and in late December 2010, the MDBA, together with the Commonwealth Water Holder released environmental flows during the harvest period. That – so they ran the river above its normal – Murray River above its normal regulated height.

30 So that meant all corresponding creeks and rivers also ran at a higher height. Unbeknownst to us, we weren't advised of the flows, and those flows dissected our property in half. We couldn't get to half our property. All our wheat was on the other side of the creek, and by the time we could get our header across the creek, we  
35 had – my husband stripped two header loads, and then we got five – five days of rain, and we lost the lot. Hundreds and hundreds and hundreds of thousands of dollars. And that was after the 10-year drought.

40 THE COMMISSIONER: Was there any explanation ever provided to you?

MS BURGE: No, they didn't tell us. The only reason we found out about it, I was making a documentary on the Basin Plan with South Australians, and I happened to call in to Mildura at a public meeting of the Murray-Darling Basin Authority, and they were espousing what wonderful things they had done in releasing environmental  
45 flows, and they had big charts on the walls and – and that was how we – the first and only time that we knew that environmental flows had artificially raised the Murray

River during our harvest and which is why we couldn't get our header across the river.

5 THE COMMISSIONER: Has anybody ever explained to you whether that was something that could be done better?

MS BURGE: That was what led – it was our property which led to the constraints management property, what happened to us.

10 THE COMMISSIONER: Well, let me ask you about that. Unless I'm misreading these facetiously entitled teaser slides by Mitchell Isaacs and Janine Murray for the MDBA technical workshop of 28 June 2018 about the New South Wales SDL adjustment projects - - -

15 MS BURGE: Yes.

THE COMMISSIONER: Unless I'm misreading them, in relation to what's called constraint relaxation which does include the Yarrawonga to Wakool reach - - -

20 MS BURGE: Yes.

THE COMMISSIONER: The point is made on page 5 that it will require infrastructure and landholder agreements to implement.

25 MS BURGE: Yes, and that sounds good in theory.

30 THE COMMISSIONER: Yes. And also will require apparently a coordinated – either requires or exhibits – I'm not sure which – a coordinated approach along the Murray River. Now, these – they also say all the targeted flows – and those are up to 30,000 megalitres a day with a ..... 50,000 megalitres a day are below minor flood level. Is that correct?

35 MS BURGE: Yes, technically on the theory of minor flood level through that is 77,000 megs, but that doesn't mean that it's necessarily minor, and in that part of – people often assume - - -

MR O'FLAHERTY: Is a flow rate of 10,600 which I understand is in channel.

40 MS BURGE: The river height. So 77 is still - - -

MR O'FLAHERTY: Quite significantly higher than that.

45 MS BURGE: Yes. And so what happens a lot of people only think about the Barmah Choke in terms of the Barmah Choke. The Barmah Choke is just a narrow section of the river.

THE COMMISSIONER: You can forgive them for that, I think. Yes, yes, yes.

MS BURGE: And upstream of that is the Millewa Choke.

THE COMMISSIONER: Yes, yes.

5 MS BURGE: But the main controlling mechanism for water flows through the area  
is what we call the Cadell Tilt, and that's a geological uprising which forces the  
Murray to go that way and the Edward River to go that way. There is a lot of  
connectivity between when the Murray is in major flood, and if the Goulburn River  
10 is in major flood in Victoria, up to 83 per cent of flows can – from the Murray is  
pushed back through the Edward-Wakool system. Now, the MDBA say 50. We've  
gone – I've gone through all the figures with an experienced surveyor, and we came  
up with that figure, but in relation to the – that meeting that you said and you quoted  
30 – up to 30,000 megs, when the SDL project was developed we had specifically  
said we were trying to be cooperative, and we still are trying to be cooperative, and  
15 we are happy to look at flows up to 30,000 megs. But that doesn't mean 50. When  
the – when the SDL project was put in, it was worded as buffers for 50. But 50  
becomes 70.

THE COMMISSIONER: Buffer in what sense?

20

MS BURGE: The – the flow buffer was – is not a flow buffer. It's a – it's a - - -

THE COMMISSIONER: Is that because - - -

25 MS BURGE: - - - construct of saying that you need a – in the absence of any other  
information, it was purely for accounting purposes to say, “Look, if we build a  
bridge, we will make it sort of sound like 50 because, you know, we really don't  
know what it's going to cost.” And - - -

30 MR O'FLAHERTY: But in terms of a – from a hydrology perspective is, in order to  
maintain a flow at 30,000, you may need to go above that in order to top it up.

MS BURGE: No, that's not correct.

35 MR O'FLAHERTY: That's not - - -

MS BURGE: No. No.

MR O'FLAHERTY: - - - your understanding?

40

MS BURGE: They can easily maintain a flow at 30,000 megs.

MR O'FLAHERTY: Right.

45 MS BURGE: But if you say, “Like, our crossings all go under at 18 to 30,000  
megs” - - -

MR O'FLAHERTY: Yes.

MS BURGE: - - - so we have a buffer – a buffer – like a window. There's no point  
5 in them running the river at, say – like, let's say they built a bridge for 30,000 megs  
and ran the levels like that.

MR O'FLAHERTY: Yes.

MS BURGE: 1,000 megs more puts that bridge under the water.  
10

MR O'FLAHERTY: Puts the bridge, so you would build the bridge a little bit  
higher than is strictly necessary in order to cater for any spillage above the target  
you're actually trying to reach.

MS BURGE: Yes, the target is still 30 - - -  
15

MR O'FLAHERTY: Because you can't be precise, of course.

MS BURGE: - - - is still 30, but in a lot of - - -  
20

MR O'FLAHERTY: Yes, it may overshoot a bit.

MS BURGE: There is a lot of – it is worth pointing out that the Hume to  
Yarrowonga business case which the Hume to Yarrowonga landholders have never  
25 seen, never been consulted on.

THE COMMISSIONER: How could that possibly be?

MS BURGE: Because this is standard approach under MDBA strategies. So – and  
30 New South Wales – and, remember, everyone is scrambling to try and - - -

THE COMMISSIONER: To be fair to the MDBA, it's not their business case, is it?

MS BURGE: The MDBA are driving the target, so New South Wales has to abide  
35 by a certain set of criteria that the MDBA require. For example, the prerequisite  
policy measures which is about piggybacking environmental flows on top of  
unregulated flows is a mandatory condition and that relates to constraints as well.

MR O'FLAHERTY: Yes.  
40

MS BURGE: There's a lot of interlinked objectives of which the New South Wales  
Government has to meet. Now, the Hume to Yarrowonga business case, it describes  
our stretch of the river, which is below Yarrowonga, as up to 65,000 megs. This  
business case describes it as 30,000 megs. So who are we to believe? Now, when –  
45 when we had – in – we sat – after that event that I described that had happened to our  
property, the State Governments and the Federal Government instructed the MDBA  
to develop a constraints management strategy.

MR O'FLAHERTY: Yes.

MS BURGE: We paid – we formed – a group was formed under the MDBA. We provided that advice for about an 18-month period.

5

THE COMMISSIONER: Is that the Yarrowonga to Wakool - - -

MS BURGE: Yes.

10 THE COMMISSIONER: - - - Landholder Reference Group?

MS BURGE: Yes – no.

THE COMMISSIONER: No?

15

MS BURGE: It was – at that time, it was the called the Yarrowonga to Wakool Junction Reference Group.

20 THE COMMISSIONER: And what's its relationship to the Landholder Reference Group.

MS BURGE: Well, that was what – it's now called that under the New South Wales banner.

25 MR O'FLAHERTY: Yes, was that a – that's a group that was – was that a group that was formed or, at least, adopted by the New South Wales Government when they took over the consultation process around 2015?

30 MS BURGE: Yes, yes, yes, and we were promised that the same group would be reformed under the New South Wales banner

MR O'FLAHERTY: Yes, different name, same group of people.

35 THE COMMISSIONER: In the folder before you with your name on it, could you just turn to tab 3, please.

MS BURGE: Yes.

40 THE COMMISSIONER: The pages numbered (vii) and (viii) of that document comprise a communique from the Yarrowonga to Wakool Landholder Reference Group.

MS BURGE: Yes. Yes. Yes.

45 THE COMMISSIONER: What if any relation do you have to anything on those pages?

MS BURGE: I – I was part of this committee. When the committee was – can I just take you back one minute. It’s really important.

THE COMMISSIONER: Absolutely. You do it your way. Yes.

5

MS BURGE: Really important.

THE COMMISSIONER: That’s all right.

10 MS BURGE: When the MDBA set up the original Yarrowonga to Wakool Junction Advisory Group, we sat for 18 months providing as much advice and local knowledge as we could.

MR O’FLAHERTY: And was this in the formulation of the strategy itself?

15

MS BURGE: That was – remember the States had instructed the MDBA to - - -

MR O’FLAHERTY: Yes, so this is prior to the - - -

20 MS BURGE: - - - to prepare a – prior to that - - -

MR O’FLAHERTY: - - - report that I began to take you to.

25 MS BURGE: Yes. So in that time, we kept asking the MDBA, “Could you give us details on the frequency, timing and duration?”

MR O’FLAHERTY: Yes.

30 MS BURGE: They couldn’t provide that information. We asked for accurate - - -

THE COMMISSIONER: What was it they couldn’t provide?

MS BURGE: The timing, frequency and duration.

35 THE COMMISSIONER: Of?

MS BURGE: Of a proposed higher flow.

40 MR O’FLAHERTY: And to - - -

THE COMMISSIONER: Is that because it was going to be adaptive, that is, you wouldn’t know in advance - - -

45 MS BURGE: They – they really hadn’t – they hadn’t sort of worked it out.

MR O’FLAHERTY: To place that into context, if we take up that 2013 report which is to your right there.

MS BURGE: Yes.

MR O'FLAHERTY: Yes, page 47. This is in the constraints management strategy core brief.

5

MS BURGE: Yes.

THE COMMISSIONER: Which one?

10 MR O'FLAHERTY: Under tab 1.

THE COMMISSIONER: Yes, thanks.

MR O'FLAHERTY: You will see under the heading Priority Actions for 2014.

15

MS BURGE: Yes.

MR O'FLAHERTY:

20 *Further work is required to understand the range of third party impact as a result of changes in the frequency, timing, duration and predictability of proposed environmental flows.*

MS BURGE: That's correct.

25

MR O'FLAHERTY: That's what it's referring to.

MS BURGE: Because, at the time, when we asked the MDBA for mapping - - -

30 MR O'FLAHERTY: Yes.

MS BURGE: - - - the only mapping we were provided, we repeatedly asked this question, was mapping based on what a few of us sitting around the table knew where some of the difficulties and where some bridges would be required, etcetera, etcetera.

35

MR O'FLAHERTY: This is a mapping of the actual effects of any proposed flows.

MS BURGE: Yes.

40

MR O'FLAHERTY: You will see in the dot points above that heading about four or five down, there's talking about examining flows of up to 80,000 through to Coorong.

45 MS BURGE: That's right. So - - -

MR O'FLAHERTY: It's evident the process that it envisaged at that stage, I think if you scoot a couple of pages before that on page 31 - - -

MS BURGE: Yes.

5

MR O'FLAHERTY: - - - they – you see that there's phase 1, and then over the page, phase 2.

MS BURGE: Yes.

10

MR O'FLAHERTY: Phase 1 is a more broader – seemed like a desktop survey of a feasibility of these projects as a whole, but in phase 2 appears to be more along that mapping that you were just referring to. Was that your understanding that that's - - -

15 MS BURGE: They were – they were meant to go through – business cases were meant to go through three stages: pre-feasibility - - -

MR O'FLAHERTY: Yes, feasibility and then - - -

20 MS BURGE: - - - feasibility, business case.

MR O'FLAHERTY: - - - planning and implementation.

MS BURGE: They have indeed – they have actually been lodged as business cases.

25

MR O'FLAHERTY: Yes.

MS BURGE: And – so we didn't go through, necessarily – when we asked the question at the time for some timing, frequency and duration issues, we weren't provided.

30

MR O'FLAHERTY: Yes.

MS BURGE: We also asked for some accurate mapping, and the MDBA itself at the time said that their standard of mapping was back at the envelope quality. Now, it is very hard for us to make decisions – sorry, we weren't a decision-making organise - - -

35

MR O'FLAHERTY: No.

40

MS BURGE: We were providing feedback.

THE COMMISSIONER: But you can't decide what you think about something, you mean, unless you know about it.

45

MS BURGE: Yes, that's correct.

THE COMMISSIONER: Yes, I agree.

MS BURGE: The disappointing thing out of that very process about community  
consultation, and I know it has been said on numerous occasions in my last seven  
5 years, which is tick and flick. Consultation does not mean proper consultation as we  
the community understand it, or it certainly doesn't mean informing or amending  
decisions. It's simply tick the box exercise, so that they can tick and report the box  
that they've had consultation, and I don't care whether – which government it is;  
that's the way governments do business. So at the end of the 18-month period of the  
10 Edward Wakool Constraints Advisory Group, the - - -

MR O'FLAHERTY: Sorry, just – this 18-month period is – at what point is this - - -

MS BURGE: This is pre the - - -  
15

MR O'FLAHERTY: The end – so - - -

MS BURGE: - - - constraints management report in 2014.

20 MR O'FLAHERTY: End, so – this is end of 2013, is it?

MS BURGE: Yes.

MR O'FLAHERTY: Yes.  
25

MS BURGE: So the very flows that we had rejected which was up to 77,000, the 40  
to 77,000, then appears in the constraints management strategy annual progress  
report 2013/14 - - -

30 MR O'FLAHERTY: Yes, and I can - - -

MS BURGE: - - - as being flows that appear feasible. These were the ones that we  
had just rejected over the 18-month period.

35 MR O'FLAHERTY: And to assist, I – we'll take you to that.

MS BURGE: Sorry.

MR O'FLAHERTY: We've got a copy of that before you as well. If I take you  
40 behind tab 3.

MS BURGE: Here?

MR O'FLAHERTY: Of that folder that you've got your right hand on.  
45

MS BURGE: Yes.

MR O'FLAHERTY: Page 55, I think, of that report - - -

THE COMMISSIONER: This is the constraints management strategy annual - - -

5 MS BURGE: Annual progress report.

THE COMMISSIONER: - - - progress report of 2015 by the MDBA; is that right?

10 MR O'FLAHERTY: It should be – no, it should be behind tab 3.

MS BURGE: It only goes up to page 23. I have got the tab here.

MR O'FLAHERTY: No, tab 3. We're under tab 3. I think you're not on – no, you're on tab 1 there.

15 MS BURGE: Sorry.

THE COMMISSIONER: Well, behind tab 3, I've got the Constraints Management Strategy Annual Progress Report 2015 of the MDBA.

20 MR O'FLAHERTY: No, it's the next one which is Progress Report 2013/14.

MS BURGE: I think that I - - -

25 MR O'FLAHERTY: No, three. It's - - -

THE COMMISSIONER: That would be tab 2.

MR O'FLAHERTY: Okay. I'm - - -

30 THE COMMISSIONER: That's all right.

MR O'FLAHERTY: - - - coming across the same situation I've unfortunately come across where – more than once.

35 THE COMMISSIONER: I assume you're just checking that I'm filing. Right.

MR O'FLAHERTY: Well, we're just making sure.

40 MS BURGE: Page - - -

MR O'FLAHERTY: If we're all on the same document, hopefully - - -

MS BURGE: Okay. Page 55.

45 MR O'FLAHERTY: Page 55 of that one.

MS BURGE: Yes. Yes.

MR O'FLAHERTY: I did – mine is in reverse chronological order. Yours is in probably a more sensible order, but we were all on the same document I think.

5

THE COMMISSIONER: Right. So - - -

MR O'FLAHERTY: And that's the table 2.

10 MS BURGE: Yes.

MR O'FLAHERTY: And that's what you're referring to there, isn't it, that - - -

MS BURGE: I am.

15

MR O'FLAHERTY: Under that column below that appears feasible.

MS BURGE: Yes.

20 MR O'FLAHERTY: The second row - - -

MS BURGE: Yarrawonga.

MR O'FLAHERTY: - - - Yarrawonga to Wakool.

25

MS BURGE: Yes.

MR O'FLAHERTY: 40,000 to 77,000.

30 MS BURGE: Yes, that's correct.

MR O'FLAHERTY: And in the last column headed 'Community Acceptance With Continued Investigations,' the commentary for Yarrawonga to Wakool is:

35 *Okay at midrange flows; concerns at upper end of flow range.*

MS BURGE: And midrange between 40 to 77 is about 60, 65 - - -

40 THE COMMISSIONER: Was about to say, by mid – by midrange, it's about 60, is it? Well, from what you've told me, they must have been going to different meetings from the ones that you were attending - - -

MS BURGE: I think it's more - - -

45 THE COMMISSIONER: - - - because nobody said it was okay.

MS BURGE: We didn't - - -

MR O'FLAHERTY: No.

MS BURGE: - - - and we still don't, and – but this is – this is how we - - -

5 MR O'FLAHERTY: It's what - - -

MS BURGE: What our experience has been like for seven years.

MR O'FLAHERTY: Yes.

10

MS BURGE: This is no different. This is just repeat. So when - - -

THE COMMISSIONER: Right. Well, I think - - -

15 MR O'FLAHERTY: And then - - -

THE COMMISSIONER: And you've written a lot of detail about this, and I certainly understand - - -

20 MS BURGE: Yes, it actually - - -

THE COMMISSIONER: - - - the point about defective or counterproductive so-called consultation. Yes, I understand that.

25 MS BURGE: Yes.

THE COMMISSIONER: Could I just ask, however, about these flow levels?

MS BURGE: Yes.

30

THE COMMISSIONER: It appears, eventually, the Authority or the New South Wales authorities or maybe both accepted that there needed to be better mapping; is that right? Or at least said they did.

35 MS BURGE: Yes, they – they do, I think, accept that, but nevertheless - - -

THE COMMISSIONER: Has it happened, is what I want to know?

MS BURGE: No.

40

THE COMMISSIONER: All right. Thank you. The next thing as I understand it is that the purpose to which better mapping would be put is so that there is reliable information about the infrastructure and other aspects of your working properties which would be damaged or put beyond your immediate use by certain flows.

45

MS BURGE: Correct.

THE COMMISSIONER: And as I understand it, the whole project with its rather Mork-ish title 'Constraints Relaxation' is intended to be a project whereby those inundations can be artificially produced so as to simulate something thought desirable for the environment, but the clear detriment to working landowners by interference with their infrastructure or access can be mitigated. That's the whole idea of the project, isn't it?

MS BURGE: Yes, but it depends what flow we're talking about - - -

10 THE COMMISSIONER: Absolutely.

MS BURGE: - - - and no one has taken into account.

MR O'FLAHERTY: And when, etcetera, that you were saying, yes.

15 THE COMMISSIONER: I appreciate that. Yes, just trying to – I'm trying to compress this, frankly.

MS BURGE: Yes.

20 THE COMMISSIONER: And, of course, in order to know what you have to mitigate because public money will be spent, you need to know the effect that certain levels of inundation will have.

25 MS BURGE: Yes.

THE COMMISSIONER: And so, in a sense, it's not a startling insight that a community or locally affected stakeholder group sought to know, chapter and verse, of how their properties would be affected at certain specified levels of flow.

30 MS BURGE: But I don't believe - - -

THE COMMISSIONER: Is that right, please?

35 MS BURGE: Yes, yes, that is correct.

THE COMMISSIONER: I'm trying to compress things. I need to know whether I've got it correct. Right. Do I understand that, to date, you still haven't got that information?

40 MS BURGE: Yes, and – and what makes it worse is that we are being – well, I gave you an example of two business cases. The – the – the below Albury business case also refers to our section below Yarrawonga at one figure which is 65,000 megs and, yet, our business case is talking about 30. Now, which figure are we talking about?  
45 But what is also of concern is that there is a much bigger picture in this, and that is we are not being told exactly what's going to happen because the framework for how

this is going to work, they're going to release flows out of Hume, match that with unregulated flows, ie, natural rivers and creek systems - - -

MR O'FLAHERTY: Yes.

5

MS BURGE: - - - that come out of the Victorian, the Ovens and Corowa - - -

MR O'FLAHERTY: This is the piggy-backing – yes.

10 MS BURGE: - - - Corowa, and then they're going to time those flows to create this magical 80,000 megs at the South Australian border primarily using the Murray. Now there's huge risks in that, and we have said this, that if you prefill the Barmah-Millewa forest system and the river system and you've got the Cadell Tilt and you're pushing the same water down the Goulburn system, which is what they're going to  
15 try to do, it is in the lap of the gods or poor management where somebody is going to make the wrong decision and they're not going to be accountable.

New South Wales has just put through, in the Water Management Act Amendment Bill – which arose out of some need to do some, you know, meters and all sorts of  
20 things in response to the Four Corners program on the northern Basin – has also included a clause that they're removing themselves from any liability from – from liability from any matters arising out of the release of environmental flows. So not only do we – we've managed to get that halted and it will be – it's just sitting in limbo and it will be proclaimed. So it's not going away; it's definitely going to  
25 happen.

So not only do we face an MDBA that we have no confidence in terms of managing risk, we have a New South Wales Government that knows full well there's risks and they have walked away from their liability. The Federal Government says they're  
30 not liable. The MDBA says they're not liable and Commonwealth Water Holder's not liable. So who is liable? And how can you not have a duty of care to examine these things? And I - - -

THE COMMISSIONER: No, I do understand. Believe me. Could I ask you to  
35 look at – in the document behind what I think is our tab 3.

MS BURGE: Yes.

THE COMMISSIONER: Page 14.  
40

MR O'FLAHERTY: Which document are you on, sorry, Commissioner? I'm on tab 201.

MS BURGE: Sorry.  
45

THE COMMISSIONER: This is the annual progress report 2015.

MS BURGE: Sorry. Yes. Yes.

MR O'FLAHERTY: Yes.

5 THE COMMISSIONER: Now, that last paragraph commencing, "Improving the understanding", can you just read that to yourself

MS BURGE:

10 *Improving the - - -*

THE COMMISSIONER: No, not aloud. Just read it to yourself. Sounds right, doesn't it?

15 MS BURGE: Could I respond to that - - -

THE COMMISSIONER: You – I take it you agree with what they say there.

MS BURGE: Could I respond to - - -

20

THE COMMISSIONER: Please.

MS BURGE: - - - their response after the catastrophic 2016 flood.

25 THE COMMISSIONER: Just take it a step at a time, though.

MS BURGE: It's very important.

THE COMMISSIONER: Just - - -

30

MR O'FLAHERTY: Yes. Yes, don't worry. We're getting to that.

THE COMMISSIONER: Obviously, you can do - - -

35 MS BURGE: Right.

THE COMMISSIONER: Let me take a step at a – first of all, I take it you agree with the sentiments in those three lines.

40 MS BURGE: Yes, yes.

THE COMMISSIONER: But from what I've read and heard from you, your response is, I think, a bit like Gandhi's apocryphal response to being asked about British civilisation, you said it would be a good idea. You – so you think this would  
45 be a good idea were it to happen, but you don't think it has happened.

MS BURGE: It definitely won't happen, and the reason - - -

MR O'FLAHERTY: Yes.

MS BURGE: - - - I say that is because the evidence is already there and there's no -  
no evidence of any change in direction. After the 2016 flood, we had a flood in  
5 September which mimicked the flows of 77,000 megs.

MR O'FLAHERTY: Yes.

MS BURGE: That first flood - that September flood in 2016 went from about  
10 77,000 megs to about 84,000 or 85,000 megs a day measure the at Tocumwal. After  
that flood - and we - the MDBA reduced the releases out of Hume aiming to fill the  
dam as high as possible, according to their operating protocols. So they did that.  
The Bureau of Meteorology had forecast rain, and we knew it was going to rain in  
terms of - just all the risk factors. It was one of the highest, wettest years on record.

15 MR O'FLAHERTY: And at this point, the Hume Dam was almost at capacity,  
wasn't it?

MS BURGE: It was.  
20

MR O'FLAHERTY: About 98 per cent, I think.

MS BURGE: Yes. And so the MDBA reduced the releases, and then the 100 mill  
happened and then they dumped 20 per cent of the Hume Dam out in one week.  
25 Now, at a meeting in Corowa - public meeting in Corowa of which 200 people were  
there, the MDBA denied all, you know, responsibility etcetera, and had said - the  
head River Operator who had provided all the hydrological information to the Basin  
Plan said that he ignored the BOM forecast. His words were also, "They don't  
always get it right". So he ignored the 100 mill rain forecast.

30 MR O'FLAHERTY: Right.

MS BURGE: They then panicked and opened the gates at night and dumped 20 per  
cent of the Hume Dam in one week. The whole central Murray floodplain plan  
35 failed in - between Tocumwal and Deniliquin. There were over 50 levy breaches. It  
was a wall of water. We lost 75 per cent of our property. Again, hundreds and  
hundreds and hundreds of thousands of dollars. And the MDBAs response was in  
the December minutes, "Landholders were irresponsible with their infrastructure".

40 THE COMMISSIONER: What does that - what am I meant to understand that as  
meaning, irresponsible with infrastructure?

MS BURGE: In other words - - -

45 THE COMMISSIONER: The original location of them or what?

MS BURGE: He was – no. He – they are all licensed levies, according to the Central Murray Floodplain Plan which is the same as towns that have levy banks, etcetera, all licensed based on the 75 flood levels. When they released 20 per cent of the Hume Dam that overtopped the levies. It just went straight over the top.

5

THE COMMISSIONER: The levy's desired function – the intended function is to keep water.

MS BURGE: Flood risk management. Within parts of the floodplain, not damaging other parts.

10

THE COMMISSIONER: It's not to hold water back on your land, to keep water entering your land.

MS BURGE: No, no, no. I think it's really critically important - - -

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THE COMMISSIONER: Is that right?

MS BURGE: Yes, that we – in the southern Murray – southern base in the Murray system, for example, we are not – we don't have floodplain harvesting or banks that are allowed to be put up to capture water like that. We are not allowed to do that.

20

MR O'FLAHERTY: No. So levies are flood mitigation, not harvesting.

MS BURGE: Yes. For example, before the flood, we all knew there was going to be a flood because local knowledge. We know what the signs are. We know - - -

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MR O'FLAHERTY: Sorry. Was this before the September flood? Yes.

MS BURGE: Yes.

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MR O'FLAHERTY: The natural one.

THE COMMISSIONER: We've got to try and keep on track here. Where does this end up? I've certainly got the message that you are no admirer of the MDBA and its staff. I don't mean that facetiously. It's a very brief summary of material I've read and heard. I understand that point. I'm interested in this - - -

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MS BURGE: Yes.

40

THE COMMISSIONER: - - - constraints project because it is said to be a project whereby it's part of the package, I should say, for the SDL adjustment.

MS BURGE: Yes.

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THE COMMISSIONER: So I'm bound to look at it.

MS BURGE: Yes.

MS BURGE: So at lower levels, at the 30,000, yes. It can be part of - - -

5 MR O'FLAHERTY: Yes.

MS BURGE: - - - an SDL business case.

10 MR O'FLAHERTY: And I imagine you would need - - -

THE COMMISSIONER: What is the level?

MR O'FLAHERTY: - - - not only certainty of levels and time, but warning.

15 THE COMMISSIONER: What's the level I should understand for the SDL be?

MS BURGE: That's the question we're asking, when we have two business cases at two different levels - - -

20 MR O'FLAHERTY: Well, at the risk of - - -

MS BURGE: - - - for the same stretch of river.

25 THE COMMISSIONER: I get that point. Believe me.

MR O'FLAHERTY: - - - confusing things even more, at the Constraints Management Strategy report itself - - -

30 THE COMMISSIONER: Yes.

MR O'FLAHERTY: The appendix to that talk about what was modelled in the relaxed constraints model.

35 THE COMMISSIONER: No. I've read it, and suffice it to say the thing that you want me to take home about that is unless there is specificity and openness about what is proposed, it is quite impossible meaningfully to be consulted.

40 MS BURGE: Yes. And a good example of that is if, for example, we just had suddenly staff either from the MDBA or consultants from whoever, New South Wales or MDBA or a combination of both, coming to individual farmers and saying, "Look, we're here to build you a bridge", or, "We want to know how this is going to impact you" – that person will be so disadvantaged – someone like me – I've got an advantage because I understand what their direction is. It's not going to make me get anywhere, but at least I've got an advantage in actually understanding the totality of  
45 the risks. These individual people will be approached, and they will be told a figure, "How does that impact you?" And that's - - -

THE COMMISSIONER: When you say “a figure” you mean - - -

MS BURGE: Like 30,000, for example. Right.

5 THE COMMISSIONER: And this is where mapping is critical surely.

MS BURGE: It’s mapping and the total decision framework because if that person is approached and said, “Look, we want to put 30,000. How does 30,000 affect your farm?” And the farmer might say, “Well, with a bridge, I might be able to maintain  
10 access, or I might” – you know, west of Deniliquin, it might say, “Well, my property goes under at certain areas”.

MR O’FLAHERTY: Yes. Well, you would expect, would you not, that that process would entail not just saying 30,000, but saying 30,000 means, according to our  
15 mapping, this on your property, does that sound right? And then start the conversation. It’s – surely it would involve that, wouldn’t it?

MS BURGE: Yes, but what happens if 30,000 doesn’t actually mean 30,000?

20 THE COMMISSIONER: That’s what I’m trying to get to the bottom of.

MS BURGE: 30,000 could mean 70,000, 50,000, 80,000.

MR O’FLAHERTY: Yes. We obviously need certainty about that figure.  
25

THE COMMISSIONER: The 30,000 in the example we’re using is ideally intended to be the combination of the pre-existing flow, any release, and run-off; is that correct? Is that correct?

30 MS BURGE: Yes, what they will do.

THE COMMISSIONER: That’s all I wanted to know.

MS BURGE: They will run the river at 30,000.  
35

THE COMMISSIONER: But running the river at 30,000 doesn’t mean they release it after generating 30,000. It means they release enough which they project will top up to 30,000.

40 MS BURGE: Yes, and then what will happen – exactly what happened in 2016. They will time that – they are planning to do them in the wet years, so the flood risk years. They will release that water. They will release it out of Hume, time it with the Ovens and Kiewa, and we will be told it’s 30,000, but there is a high chance that  
45 will end up way exceeding 30,000.

THE COMMISSIONER: So the rain only has to be considerably more than they were expecting for a timing phenomenon to mean that it could be a lot more than 30,000.

5 MS BURGE: Yes.

THE COMMISSIONER: Thank you, I understand that point.

MS BURGE: Also there is another critical factor.

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THE COMMISSIONER: So that is a risk that needs to be understood for anything like intelligent decision-making by an individual landowner. Is that correct?

MS BURGE: Also - - -

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THE COMMISSIONER: Is that correct?

MS BURGE: Yes.

20 THE COMMISSIONER: Thank you.

MS BURGE: Also, the Barmah-Millewa Forests and all the forest systems around, if it is dry, the release of that type of flow can be absorbed and may not be as risky, but we're talking about their desire to release in wet years. So if they're going to release in wet years - - -

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MR O'FLAHERTY: The ground isn't going to soak it up as much.

MS BURGE: They will be wet already or they - - -

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THE COMMISSIONER: I gather that you don't think I should proceed on the basis of the MDBA are experts in this case. Is that what you're telling me?

MS BURGE: They aren't.

35

THE COMMISSIONER: Is that what you're telling me?

MS BURGE: Yes. I am telling you that I - - -

40 THE COMMISSIONER: There must be experts within their staff, surely.

MS BURGE: That is the problem. There hasn't been. There is very limited – staffing changes in all government departments seems to be a bit like a revolving door and you – you try and educate people, you talk to people, and then they're gone and another one comes, or you can't get to the actual decision makers. So we – we – we just cannot seem to get the levels of risk, and if you look at that meeting in June

45

on the SDL projects in Canberra, there was no riparian stakeholders there. We're not classed as a stakeholder.

5 THE COMMISSIONER: Why is that?

MS BURGE: Because we are an impediment. We are an inconvenient impediment to the objectives of the MDBA.

10 THE COMMISSIONER: Isn't the approach to this as you graphically put it, impediment status – is one approach that you are owners of land which apparently it's proposed in the – for the public benefit should be inundated more than it might otherwise be, and that, accordingly, there ought to be by analogy with easements - - -

15 MS BURGE: If they want to put easements to flood.

THE COMMISSIONER: Payments to you calculated by reference to, among other things, lost production. Is that one way of doing it?

20 MS BURGE: They will do that, yes, but what it will mean - - -

THE COMMISSIONER: When you say they will do that, where do you see - - -

MS BURGE: That's what their intention is.

25 MR O'FLAHERTY: That's part of the business case at the moment.

THE COMMISSIONER: By reference loss to production?

30 MS BURGE: They will make it – their processes in my view have not been fair to date, nor has New South Wales, and it is highly unlikely that their processes going forward will be fair, nor will we be told the totality of risk. So we will – may have assessments done based on the assessment of what risk. Is it the risk of 30, is it the risk of 60, is it the risk of their timing not being right and suddenly it's 100 or 150?

35 MR O'FLAHERTY: Yes. Because your losses are not just area as well. It's timing, isn't it, because you made the point in 2010 the releases were during harvest.

MS BURGE: Yes.

40 MR O'FLAHERTY: And also I think you've exhibited – you provided the Commission which we've exhibited to your statement photographs of the sheep in water. The lack of warning of these releases also produces losses or potential losses.

45 MS BURGE: But it's the damaging, people think floods. On the Darling, it's a different system. In our – when we get floods and the '96 flood was an example when the Hume Dam wall moved, and they had to extend the flood longer because they had to release water quickly.

MR O'FLAHERTY: Yes.

MS BURGE: So we had lost production out of areas that – because it's often hot when it floods. So it cooks the soil.

5

MR O'FLAHERTY: Right.

MS BURGE: And cooks the vegetation.

10 MR O'FLAHERTY: Yes.

MS BURGE: We can see now after the 2016, the land is sterile. So we've gone into a drought with no grass, where the water was, because it deoxygenates the soil. So we talk about meeting the objectives of the Act, environmental outcomes. After, in the releases of environmental flows in the Edward-Wakool system during the drought, local knowledge was ignored, and when they did put environmental flows which were most welcome by the people – and I'm not against environmental flows as long as they're safe, practical, realistic and developed with local communities, but in that period during the drought, there were thousands of Murray Cod and native fish killed, and there's some photos there.

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In 2016, the same thing happened and there are thousands of Murray Cod killed. So if we're talking about environmental outcomes, what are we actually measuring? Do we just ignore that these things happen? And do we ignore the fact that overbank flows cause proliferation of carp to the detriment of the native species? And then it comes back to the question, have we met the objectives of the Act, or are we looking through a very narrow tunnel, saying, well, we will only look at these measure points and just pretend the other ones aren't there.

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30 MR O'FLAHERTY: In terms of a way forward, I take it you said that you are willing – the landowners are willing to participate so long as you get that relevant information and get that engagement happening.

MS BURGE: Realistic. Realistic flows, not – not unrealistic where everybody walks away from the flooding risks.

35

MR O'FLAHERTY: Yes.

MS BURGE: And, you know, we haven't seen any evidence to date that there is any intention to do anything other than put the flows and everybody walks away from their responsibilities.

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THE COMMISSIONER: That's what I was asking you earlier. I'm not sure I've seen any proposal that the public should compensate you for lost production.

45

MR O'FLAHERTY: Commissioner, in terms of the mitigation measures as part of the Constraints Measure Business Case – this is tab 3 of Ms Burge's volume.

THE COMMISSIONER: Yes.

MR O'FLAHERTY: If I could take you to page 16 of that document.

5 THE COMMISSIONER: Please. Yes.

MR O'FLAHERTY: And I think Ms Burge has concerns about how these figures were arrived at given the lack of intimation.

10 THE COMMISSIONER: Where's lost production?

MR O'FLAHERTY: I don't think it necessarily – it talks about easements and associated negotiation costs for private agricultural, and the footnote talks about 'interrupted access.' That's the only detail I can find, and I use the word 'detail' in  
15 the loosest sense possible.

MS BURGE: I - - -

MR O'FLAHERTY: And that seems to envisage amounts of money associated to  
20 certain flows.

THE COMMISSIONER: I don't know about you. The first sentence of footnote 3 is gobbledegook.

25 MR O'FLAHERTY: And that's why I said detailed in as loose a sense as possible. I don't think I follow what they're talking about there.

MS BURGE: These figures were done. There was a promise when New South  
30 Wales took it back over that a more comprehensive investigations would be done.

MR O'FLAHERTY: Yes.

MS BURGE: And then a consultant was engaged, and, in our view, that consultant had a conflict of interest because that consultant was a Director of Murrumbidgee  
35 Irrigation who was going to derive a benefit out of an SDL project in the Murray, i.e., there was less risk of water being required in the Murrumbidgee valley if there were more SDL projects in the Murray. Now, when that consultant did the figures and we don't know on what – really what basis these costings were done, at one  
40 stage, there was an allowance for \$2,000 for legal advice for the landholders, and out of a \$50 million supposed package, 20 million was going to consultancies. And we had initially proposed \$2,000 to go and get legal advice - - -

THE COMMISSIONER: No, I can understand why.

45 MS BURGE: - - - on how to defend our .....

THE COMMISSIONER: No. I can understand why that is extremely upsetting.

MS BURGE: And - - -

THE COMMISSIONER: Can I ask this: apart from what may or may not be included within the grossly inadequately described easements in that table 3?

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MS BURGE: Yes.

THE COMMISSIONER: Can you see anything else where I'm meant to understand that compensation for lost production is included?

10

MS BURGE: And/or increased flooding risk. It's not.

THE COMMISSIONER: Yes. That's what I thought.

15 MR O'FLAHERTY: Sorry, over the page - - -

MS BURGE: And even if it was - - -

THE COMMISSIONER: Over the page.

20

MR O'FLAHERTY: There is a cost category of additional contingency for landholder agreements.

25 THE COMMISSIONER: No. That's the problem. It's a contingency for landholder agreements. So what is that, capitalising all possible – is it a one-off payment or what? And I don't know.

30 MR O'FLAHERTY: I don't think it is. That is envisaged as a one-off payment as being part of the overall costs of the program.

30

THE COMMISSIONER: It's odd, isn't it? It's very odd.

35 MS BURGE: Could I draw your attention to how this whole thing sort of came about. When the then Prime Minister Julia Gillard and Tony Burke went to the Lower Lakes and announced the extra 450 - - -

MR O'FLAHERTY: Yes.

40 MS BURGE: - - - that package took the 10 billion John Howard package – it was added to by another 1.77 billion – billion.

MR O'FLAHERTY: Yes.

45 MS BURGE: And they then announced well, 200 million will be available for constraints. There was no basis for that 200 million, and that was across the entire catchment. But this – this – it was just a figure plucked out of the air. So I mean this - - -

THE COMMISSIONER: You've got no doubt that it's grossly inadequate even just for capital works; is that right?

MS BURGE: Yes, but - - -

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MR O'FLAHERTY: Or even on this very broad and vague cost estimate, this one is 262 million itself.

MS BURGE: But even if – if we do do all this - - -

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MR O'FLAHERTY: Yes.

MS BURGE: - - - and we spend all these money closing down businesses, I mean, we'll have to – you know, that'll be the end of us. Is it going to achieve the objectives as stated in the Basin Plan? And David Dreadman's response, that Head River Operator that provided the information, the hydrological information that underpins the Basin Plan, when he realised that the catastrophic 2016 flood did not clear the Murray Mouth, he said he was surprised. Well, we all knew it wouldn't because it can't, because unless you look at the actual reasoning why, you know, cause and effect on a range – it doesn't matter whether it's the Murray Mouth or northern Basin or whichever part of the Basin or environment you're talking about, you can't take this simplistic crude form that the MDBA has taken.

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MR O'FLAHERTY: No. And - - -

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THE COMMISSIONER: Just turn to page 23 of the document. The second cell there describes the nature of the risk in question as:

*Ecological outcomes not achieved.*

30

Do you see that?

MS BURGE: Nature of risks.

THE COMMISSIONER: Page 23.

35

MS BURGE: Yes.

MR O'FLAHERTY: Page 23.

40

MS BURGE: Sorry.

THE COMMISSIONER:

*Ecological outcomes not achieved.*

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MS BURGE: Yes.

THE COMMISSIONER: In evaluating that risk, the next columns are, first of all, the mitigation strategies and then the final column residual risk, which is to understand as meaning what's the status of the risk if the mitigation strategies are carried out.

5

MS BURGE: Yes.

THE COMMISSIONER: And we will all be delighted to know that the residual risk is low of ecological outcomes not being achieved because of the mitigation strategy. Now, I gather that contained within those – that mitigation strategy is a deal of the message that you've been trying to make me understand. That is, you would want the objectives to be explicit and measurable, you would want to maintain and strengthen effective governance arrangements around the planning, implementation and evaluation of environmental flows.

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15

MS BURGE: Yes.

THE COMMISSIONER: You would want to investigate alternative complimentary, physical and operational strategies to multiply the effectiveness of environmental ..... events. And finally, you would want to provide transparent reporting and review. You would agree with all of that, wouldn't you?

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MS BURGE: I – you know, in theory, they sound fine.

25

THE COMMISSIONER: That's what I mean. You'd agree with the statements.

MS BURGE: Yes.

THE COMMISSIONER: But what you're telling me is you haven't observed anything - - -

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MS BURGE: No.

THE COMMISSIONER: - - - that gives you any confidence at all that that will happen. Is that correct?

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MS BURGE: No. No.

THE COMMISSIONER: Well, if you are right, then that would mean that the low residual risk - - -

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MS BURGE: Is wrong.

THE COMMISSIONER: - - - is probably wrong and it should be high.

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MS BURGE: And particularly in – that in 2016 we've already identified a number of targets that have already been proven not to be fixed by hydrological flows

pushing water down the Murray. But, you know, to make matters worse with these business cases, when – see, everybody is being held over a barrel. It doesn't matter, you know – Victoria is being held over a barrel. New South Wales is, except the northern Basin – well, and probably the Murrumbidgee is not at risk like the Murray, but we are – we are being – New South Wales is – has probably taken a strategic direction that says, “We have to comply with XYZ, so we'll find out – you know, we'll make a decision on collateral damage”, and we are the collateral damage.

But then – and I suppose that's why when we look at when they did a risk management workshop, which is a criteria of federal funding for the business cases, there was a joint mismanagement workshop, and remember the majority of the SDL projects are actually affecting the Murray River, not the Darling and not the Murrumbidgee. And so the risk management workshop that we were attending – another day out of our work – we were not allowed to discuss any risks on Murray projects in a formal risk management workshop.

THE COMMISSIONER: Who thought that laid within their capacity to forbid you from raising that?

MS BURGE: The lady that told us – the girl that told us that was Monica Morona.

THE COMMISSIONER: And she holds what position, or held what position?

MS BURGE: She was Director of Stakeholder Relations at the time for the New South Wales DPI.

THE COMMISSIONER: And she told you what?

MS BURGE: We could not discuss any risks on Murray projects in a risk management workshop.

THE COMMISSIONER: Why?

MS BURGE: Because they wanted the SDL projects to go through in order to achieve the targets, in which case less water would be recovered for irrigators.

MR O'FLAHERTY: What was the reason that she gave?

THE COMMISSIONER: She was trying to falsify the demonstration of community support or otherwise; is that right?

MS BURGE: I am presuming – and I think it's probably fair to say – that there was a lot of emphasis from the northern Basin cotton growers, there was a lot of emphasis on Murrumbidgee – from Murrumbidgee big corporates there that, you know, if these projects went through on the Murray, then that ticked the box under the Basin Plan figures, targets. And that is why we have had such a – an incredibly

challenging time, not only in getting our issues of concern heard but also getting them changed and indeed - - -

5 MR O'FLAHERTY: Getting them to effect change, yes.

MS BURGE: - - - being considered as stakeholders. We are not considered as stakeholders because it's inconvenient if we are.

10 THE COMMISSIONER: Have you formally protested at that conduct?

MS BURGE: I have done more than probably anyone in relation to this Basin Plan. Yes. No, I have - - -

15 THE COMMISSIONER: This is – don't mistake my question.

MS BURGE: I know. I've made - - -

20 THE COMMISSIONER: I'm not challenging. I'm inquiring, have you formally - - -

MS BURGE: Yes.

THE COMMISSIONER: - - - protested about that? And to whom did you protest?

25 MS BURGE: I've protested to the Ministers, I've protested to the - - -

THE COMMISSIONER: Has anyone given you any response to explain - - -

30 MS BURGE: No.

THE COMMISSIONER: - - - why that should be so?

MS BURGE: No.

35 THE COMMISSIONER: I gather that's also experience that you draw upon in assuring me of your pessimism about the MDBA's ..... capacity.

40 MS BURGE: How we've been treated. And the same to the Hume to Yarrawonga people. They've got the – they're the ones with the legal easements in place now. They're being told through this MDBA and interstate agreement – so doesn't matter whether it's Victoria, New South Wales, South Australia – they're all agreeing that all these things are going to happen, but they haven't consulted with us. They haven't talked to us about risks. They're just deals are being done. And that's why we can't get traction because, you know – I was listening to the McBrides. I've been  
45 aware of what's happening with a number of people on the Lower Darling, and it is exactly the same scenario because they, like us, are two components at opposite ends of the spectrum that are expected to be collateral damage.

Now, it then comes back to, well, if we didn't do all this, if we do find cost-effective mechanisms to achieve environmental outcomes, number 1, why aren't we even looking at it? Number 2, if we can already identify a range of measures today, why are these off the table? Now, to give you an example, you know, the lack of low  
5 flows on the Darling, and I think I – you know, I've mentioned that in one of my – the submissions, that's not a secret. You know, I've been involved in these issues, you know, looking at farmers and I've been – travelled all through that area, and I know – I knew what was – I didn't know all the details, but I knew a fair bit about it. And I've also taken – because I – I've also done a lot of research down here so that I  
10 do make informed comments and I look at – well, let's look at the 450, for example. What could be done with the 450 instead of saying more water has to come down the Murray? Again, it's going to erode the banks of the Murray, it's going to sediment up the Murray, it's going to flood people out along the Murray and the Goulburn, so what could be done with this extra 450 targeted figure under the Basin Plan?

15 Well, you could completely meter floodplain harvesting in the north. You could return some of the south-east drainage water to the Coorong because currently it's only proposed to return, I think it was about 29.7 gigs of flows from the Upper South-east Drainage and Flood Mitigation Scheme but nothing from the main South-east Drainage Scheme. So, you know, for example, in 2000, 450 gigalitres was the  
20 put out to the seas, the ocean from the main south-east drainage water. Surely there's opportunities. And it's not for me to tell them what you should – but it should be – if we're looking at cause and effect on decline of the Coorong, well, let's look at some of the strategies.

25 But see, the MDBA, unfortunately, started with a premise that the Lower Lakes were always fresh and that the Coorong was always fed by the Murray River, and they based that premise on some work done, and it is referenced through the Murray-Darling Basin original documents. Work by, I think it was Kerry Mueller, who – and  
30 Terry Sims, who wrote a document for the catchment board down there at the time and it was called 'A Fresh History of the Lower Lakes,' and it went from about the late 1800s to about 1935. And they based it on an interpretation of some explorers' records. Now, Professor Peter Gell has just released a scientific publication which I'm happy to table, which I think I did actually send to you.

35 MR O'FLAHERTY: Yes, you've provided us with that. Yes.

MS BURGE: And that was a CSIRO-published document and – making some serious questions about some of the scientific assumptions in relation to that.

40 THE COMMISSIONER: Now, where this leads is that what you would urge to be a proper concentration on an appropriate environmental outcome at the mouth of the Lower Lakes could very well produce less perceived need to place you and people in your position at risk.

45 MS BURGE: I think there needs to be multiple solutions that can't - - -

THE COMMISSIONER: But am I right in what I've just said?

MS BURGE: Yes, because I think - - -

5 THE COMMISSIONER: If - - -

MS BURGE: Yes.

10 THE COMMISSIONER: - - - there are other ways - - -

MS BURGE: Yes.

15 THE COMMISSIONER: - - - of attending to that, then the notion of increasing relatively higher flows in your part of the country becomes less important.

MS BURGE: It also brings benefit to - - -

THE COMMISSIONER: I'm sorry, you have to tell me, do you agree or not?

20 MS BURGE: Yes, I do.

THE COMMISSIONER: Thank you. Right.

25 MS BURGE: But it also brings benefit to the environment and also the taxpayers because it will be a more sustainable solution in the long term.

THE COMMISSIONER: Thanks.

30 MS BURGE: In relation to the northern Basin, how can we spend \$13 billion and get to this point and know that the outcome – you know, we're meant to be – have a holistic Basin Plan. It's not. And unfortunately, you know, I am not – I'm quite open in my experience, and I've had a lot of experience with a lot of Wentworth Group papers like the 'Blueprint for Living Landscapes and Water Reform,' etcetera, and I've seen a lot of the living landscapes processes rolled out, and I look at a  
35 number of them and they haven't been conducive to getting the best outcome. They might be very theoretical, and they're highly qualified gentlemen. I'm not suggesting they're not in high positions. But when it comes to actually taking the theory into practical outcomes, I have not seen that. And if I look at, say, you know, just – let's look at the salinity audit of 2000 – the Murray-Darling Basin  
40 Commission's Salinity Audit.

Now, I think they forecast that by 2050 it was going to be 17 million hectares impacted by dry land salinity. And one of the underpinning documents of that was that farmers would not be able to manage dry land salinity. Now, some of those – it  
45 was a model prediction. A lot of the modelling prediction was based on Western Australia, south-west of Western Australia, the southern part of – below Perth, and the assumption was that there was a report done by the CSIRO by – I know one of

the reports was done by Dr John Williams, and his report said that farmers wouldn't be able to manage dry land salinity. There's salinity risks as per model, didn't come to eventuate, and this is relevant because these salinity predictions all underpin the Basin Plan.

5

And also, farmers did manage dry land salinity very well with the help of science and departments and improved practices and a whole lot of things, and nature going from wet to dry. So there's a lot of core information that the MDBA picked up and has built into its documents that may or may not be valid today, and, unfortunately, instead of reviewing it, it's just – it's like a runaway train. We're just headlong into it regardless of the need for review.

MR O'FLAHERTY: Now, I know we've covered quite a fair bit of ground this afternoon, and you can rest assured that the Commissioner will certainly take it into account all of what you've written and what we've discussed today, of course. I don't have any further questions to raise by way of clarification. Were there any topics you wanted to point to in particular? I know you could probably speak for hours on these issues. But – and like I said, we have covered quite a fair bit of ground. Were there any aspects that you wanted to draw the Commission's particular attention to?

20

MS BURGE: I think our inability to get a fair hearing - - -

MR O'FLAHERTY: Yes.

25

MS BURGE: - - - because of the network of influence, of a range of key irrigator - - -

MR O'FLAHERTY: Yes.

30

MS BURGE: Large irrigator sectors. And also, I – and I know this is – might be offensive to South Australians, but also South Australian politics. There was – you know, we find ourselves caught between, you know, a political strategy within South Australia at the time and perhaps a lack of understanding on how the different parts of the river system run.

35

MR O'FLAHERTY: Yes.

MS BURGE: And I think that, you know, there has been a fairly extensive campaign in the Adelaide Advertiser which I think is very unfortunate because it is not always describing events as they actually are. And if we look at South Australia's water supply system, under the River Murray agreement they have 1850 GL. They do, in fact, receive an average flow of 4,000 GL, and that is in both the MDBA figures and South Australian figures.

45

MR O'FLAHERTY: Yes.

MS BURGE: And the long-term average is 5,100 GL. In relation to irrigation entitlements, yes, they suffered during the drought, primarily from 2006/7 onwards, but in the last 15 years – and that’s including the Millennium Drought – South Australian irrigators were on 82 per cent average allocation. Through that  
5 corresponding period, you will find Murray irrigators on zero or five or it might be 35, but at the moment we’re on zero again. So I think it’s important to realise that flow, yes, there is – there are times in an extreme drought situation where, unfortunately, high-security entitlements in South Australia might be not be fully deliverable, but please remember that every other person in that situation - - -

10 MR O’FLAHERTY: It’s a whole system is your point, isn’t it?

MS BURGE: - - - is – you know, it’s – a chronic drought is a chronic drought, and you can’t do anything about it. But the question is was that enough to drive a further  
15 political objective, to up-end the whole system and ruin X number of people’s lives based on a political strategy at both federal level and state levels and an MDBA that is just, you know, proceeding with not the most robust information to underpin its decisions?

20 THE COMMISSIONER: Thank you very much. I’m much obliged for the industry and care you’ve put into the presentation of written material and your evidence today. And I thank you again.

MS BURGE: And I would just like to thank you very much for the opportunity to  
25 present to you today. It’s very much appreciated.

THE COMMISSIONER: Not at all.

MS BURGE: And I sincerely hope that, you know, there are some processes that  
30 can be improved and we really can look at, you know, wise investment to get the best outcomes for everybody.

THE COMMISSIONER: Thank you very much.

35 MS BURGE: Thank you.

MR O’FLAHERTY: Before we – because I don’t like leaving things undone, I will tender tabs 1 through to 3 of the folder relating to Ms Burge, and I will also tender  
40 tabs 1 through 3 inclusive of the constraints management strategy folder, being reports I think covering the ones that we’ve referred to this afternoon.

MS BURGE: Could I ask also - - -

MR O’FLAHERTY: And I can assure you, Ms Burge, that there has been a number  
45 of materials you’ve sent through. I am not proposing to tender them just yet because I haven’t properly read them, but they will be read and considered in due course.

MS BURGE: Yes, if I could just draw your attention, there are some specific issues – this took me three months to write.

MR O’FLAHERTY: Yes.

5

MS BURGE: And - - -

THE COMMISSIONER: For the record, that document is?

10 MR O’FLAHERTY: That’s not currently before you, Commissioner.

THE COMMISSIONER: But what is it? What is it?

15 MR O’FLAHERTY: That is a submission that Ms Burge has provided to the Commission in relation to the - - -

MS BURGE: Guide.

20 MR O’FLAHERTY: - - - Guide to the proposed Basin Plan - - -

THE COMMISSIONER: Thank you.

MS BURGE: Which I raised in January 2011.

25 THE COMMISSIONER: Thank you.

MR O’FLAHERTY: - - - which I’m currently going through.

30 THE COMMISSIONER: After Counsel Assisting have evaluated, it could well be tendered.

MR O’FLAHERTY: Yes.

35 THE COMMISSIONER: Now, the hearing of the Commission will adjourn to 10 o’clock here on Thursday, 23 August.

MR O’FLAHERTY: Yes.

40 <THE WITNESS WITHDREW [4.21 pm]

**MATTER ADJOURNED at 4.21 pm UNTIL THURSDAY, 23 AUGUST 2018**

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