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TRANSCRIPT OF PROCEEDINGS

O/N H-927211

MR B. WALKER SC, Royal Commissioner

IN THE MATTER OF THE MURRAY-DARLING BASIN ROYAL COMMISSION

ADELAIDE

9.57 AM, FRIDAY, 24 AUGUST 2018

Continued from 23.8.18

DAY 20

MR S. O'FLAHERTY, Junior Counsel Assisting

MR O'FLAHERTY: Before I begin with the witnesses this morning, I just wanted to clear up one minor matter from yesterday where I was referring to the MDBA hydrological modelling report which was the subject of the question and answer from Mr Ed Fessey and there was a reference to an interim Water Sharing Plan as a
5 reference to the 2012 Barwon-Darling Water Sharing Plan. I now understand that
may have been actually a reference to an interim Water Resource Plan under the
Water Act. Section 242 provides that water management plans that are in operation
at the commencement of the Basin Plan and that had been entered into on or after 25
10 January 2007 are classified under the Basin Plan as interim Water Resource Plans.
That may well be the explanation for that terminology used.

THE COMMISSIONER: I think intended to be superseded by the mid-2019 WRP.

MR O'FLAHERTY: Indeed. Yes. There is a scheme of transitional Water
15 Resource Plans and interim Water Resource Plans up until that point.

THE COMMISSIONER: Thank you.

MR O'FLAHERTY: Commissioner, as I indicated yesterday, we have two sets of
20 witnesses today. The first we will be hearing evidence from are members of the
Australian Floodplain Association, followed by Mr Mark McKenzie of the New
South Wales Irrigators Council. So I call Mr Terry Korn, Mr Stuart Le Lievre and
Mr Justin McClure to give evidence.

25 THE COMMISSIONER: Thank you.

<STUART GREGORY LE LIEVRE, SWORN [9.59 am]

30 **<TERRENCE JOHN KORN, AFFIRMED [10.00 am]**

35 **<JUSTIN JAMES McCLURE, SWORN [10.00 am]**

MR O'FLAHERTY: Gentlemen, as a matter of protocol most of the questions that I
will be asking and the Commissioner will be asking we will treat as open to all three
of you to answer. However, for the sake of the transcription, perhaps best not answer
40 all three at the same time. And just so that to assist the transcription, we might just –
we have done it in the past where if you just identify who you are before you speak,
just so that the – our transcriber can take down who exactly is saying what. I'm sure
it won't be controversial, amongst the three of you as to who is saying, but just for
45 the sake of accuracy.

I just have a few background questions to ask each of you. Mr Korn, I understand you are the president of the Floodplain Association

5 MR KORN: That's correct.

MR O'FLAHERTY: And you were formally a public servant in the New South Wales Government.

10 MR KORN: That's correct.

MR O'FLAHERTY: Whereabouts – you no doubt had a long and illustrious career but where did you spend most of your time in the New South Wales public service?

15 MR KORN: I spent most of my time in two agencies, the Department of Agriculture and National Parks and Wildlife Service. I spent most of my time living and working out of Dubbo in state-wide roles and I did that for 37 years from Dubbo and for the last two years I've lived in Canberra.

20 MR O'FLAHERTY: And the Floodplain Association has provided a submission to this Commission. It's signed or at least indicated that authorship by yourself. Do I take it that you are the – well, the author of the submission?

MR KORN: I am.

25 MR O'FLAHERTY: Was it a collaborative effort or was it primarily penned by you?

30 MR KORN: It was primarily penned by me but I consulted the committee during the process.

MR O'FLAHERTY: Sure. Mr Le Lievre, you are a – mainly a wool grazier, is that correct?

35 MR LE LIEVRE: That's correct.

MR O'FLAHERTY: Whereabouts is your property?

MR LE LIEVRE: Between Louth and Tilpa on the Darling.

40 MR O'FLAHERTY: How long have you had that property?

MR LE LIEVRE: Our family have been involved there since 1869.

45 MR O'FLAHERTY: Right. Is it primarily wool or do you have other operations other than grazing?

MR LE LIEVRE: It is primarily grazing.

MR O'FLAHERTY: And Mr McClure, you are also a sheep grazier as well?

MR McCLURE: That's correct.

5 MR O'FLAHERTY: Do you have other crops or other operations?

MR McCLURE: We have other interests that based around farming practices and some tourism operations.

10 MR O'FLAHERTY: And in relation to – well, and whereabouts is your property?

MR McCLURE: Our property is located between Burke and Wilcannia on the west side of the river and our country spans the Darling River and the Paroo River.

15 MR O'FLAHERTY: And similar to the question I posed to Mr Le Lievre, how long has your family and yourself being in that area?

MR McCLURE: Our family has an association with the western division of New South Wales and the Darling River since 1880.

20

MR O'FLAHERTY: I just wanted to ask a few questions about the formation and the membership of the Floodplain Association. I understand that it was formed – at least initially formed in Dubbo in 2005.

25 MR McCLURE: It arose from that conference that was organised there by a group of concerned floodplain graziers from both the Murray-Darling and Lake Eyre basins. The association was formally incorporated and formed in 2006.

30 MR O'FLAHERTY: Mr Korn, or any one with of you, could you explain to me who makes up the membership of the association?

MR KORN: Terry Korn speaking. I will answer that question as I'm also membership secretary of the association.

35 MR O'FLAHERTY: Excellent.

MR KORN: It's comprised primarily of floodplain graziers throughout the Murray-Darling Basin. There are some small number of members in Queensland. But there are community members also, members of the Floodplain Association. People who
40 live both in the northern Basin and the southern Basin who are concerned about equity in the water debate and having healthy rivers and healthy communities. In addition to individual members, we have, I think, at the moment 13 group members which include six councils, ranging from Wentworth, Lower Darling – sorry, not Lower Darling – Central Darling Broken Hill. Cobar have yet to join this year.
45 They were members last year. Brewarrina are joining at the moment and Bogan is another one.

So we've got councils. We've got the Wilcannia Land Council, we've got the Wilcannia Tourism Association. We've got Tilpa community, the Louth Chamber of Commerce, groups like that along the northern river Basin who are concerned about the health of the system.

5

THE COMMISSIONER: What's the Central Darling, is it Bourke to Menindee?

MR KORN: The Central Darling is based in Wilcannia.

10 THE COMMISSIONER: What reach of the river are we talking about?

MR KORN: Well, I'm not sure how far they come up. Stuart may be able to answer that but - - -

15 MR McCLURE: I will answer that if you like. Justin. The Central Darling Shire encompasses Menindee to Tilpa and south to Ivanhoe which is down on the Lachlan and north to White Cliffs.

THE COMMISSIONER: Thank you.

20

MR O'FLAHERTY: And you mentioned that the Association was formed from – arising out of a conference in Dubbo. How did that come to be?

25 MR KORN: It came to be because there was concern or there was interest in the National Water Initiative when it was being developed at that stage.

MR O'FLAHERTY: Yes.

30 MR KORN: And how that was going to impact on water management in both the Lake Eyre and Murray-Darling Basins. Our membership at that stage included people from the Lake Eyre basin in particular, the Cooper Creek Protection Group, who were involved in the fight to prevent cotton being developed and grown on the Cooper Creek in the mid-nineties. And so we had some grazier members there, and we had grazier members who were trying to protect their organic beef industry, as it
35 was established in the Channel Country Rivers. So the Floodplain Association was formed to address both the health of rivers in the Lake Eyre Basin and the Murray-Darling Basin.

40 MR O'FLAHERTY: In terms of the nature of the agricultural operations that form your members, it is it fair to say that it is primarily floodplain grazing with smaller irrigation interests? Is it in terms of representative - - -

45 MR KORN: That's correct. We have – none of our members are big irrigators. We have quite a few of our members along the river system have small allocations.

MR O'FLAHERTY: Yes.

MR KORN: So they're small irrigators.

THE COMMISSIONER: What's the irrigation water mostly used for it? Is it stock watering or cropping?

5

MR KORN: Well, most of the water is used for fodder production. Small scale fodder production to supplement the grazing enterprise.

THE COMMISSIONER: Do you expect to be able to grow irrigated fodder every year?

10

MR KORN: Well, I know one of my members does, in the Macquarie Marshes who is going to present to this Commission later. He uses his water every year to produce fodder. Most of them have inactive or sleeper licences, I would suggest.

15

THE COMMISSIONER: That is, the seasons are usually good enough not to need the extra fodder?

MR KORN: Yes. Historically I'm not sure how they acquired the allocations, initially, the entitlements. And Justin may be able to answer that because he's one of the people who has an entitlement which he is trying to activate at the moment I understand?

20

MR McCLURE: Yes. Justin McClure. We do have an irrigation licence and we should be able to irrigate every year. Historically, we should have 200 days access to flows which will be sufficient for us to fill our storage of 600 megalitres. And which should give us enough water to water between 50 and 80 hectares annually to grow feed for stock.

25

THE COMMISSIONER: Yes. And is that – how are things looking at the moment?

30

MR McCLURE: Things at the moment are – we haven't had access to water for nearly 400 days. So we are right at the end of the spectrum in regard to access to average flows.

35

THE COMMISSIONER: Thanks. Did you have stored water that you were able to use to grow fodder during the period that you haven't been able to take water?

MR McCLURE: We have a storage currently.

40

THE COMMISSIONER: Yes.

MR McCLURE: But privy to the last 18 months we haven't had a storage.

MR O'FLAHERTY: And actually on that topic, how has the latest drought impacted on operations? Do you have any insights?

45

MR McCLURE: The situation at the moment in regard to the drought is that we have had 15 millimetres this year. We've had 150 millimetres in the 12 month period. We are definitely in – leading into a drought or a dry time. Droughts are part and parcel of operating where we do. This dry time has the potential to expand into a situation that mirrors a drought in the early nineties and a drought in early 2000. We are not there yet, but if it doesn't rain significantly in the next three months then not only will we have a cease-to-flow in the Darling River, which we haven't at Louth, Tilpa and Wilcannia now, or all but, it will be – circumstances will be dire.

10 MR O'FLAHERTY: You said there is currently a cease-to-flow at Wilcannia and Louth.

MR McCLURE: Correct. With – give or take four or five megalitres a day.

15 MR O'FLAHERTY: It is not a case of the tap being turned on and off immediately, is it? It is a gradual process of a trickle, isn't it?

MR McCLURE: That's correct.

20 MR O'FLAHERTY: Mr Le Lievre, do you have any other matters to add at all from your own experience?

MR LE LIEVRE: The problem we have got now is just with the 400 days without access is that some of the smaller fodder producers downstream of Bourke
25 downstream, see they haven't been able to grow fodder. Therefore they left a big hole as far as we are concerned, you know, feeding stock. So therefore we have got to go a long, long way to be able to get feed for stock.

MR O'FLAHERTY: Yes.

30 MR LE LIEVRE: So that lack of access, right, has not enabled them to grow anything.

MR O'FLAHERTY: All right. Now, as part of the materials you've provided this Commission you've provided – the Floodplain Association has provided us with minutes of the Stakeholder Advisory Panel meeting for the Barwon-Darling Water Resource Plan. Mr Le Lievre and Mr McClure, I understand you are both members or delegates to that Advisory Panel; is that correct?

40 MR McCLURE: That's correct.

MR LE LIEVRE: That's correct.

45 MR O'FLAHERTY: Mr McClure, in the description in brackets after your name – Mr Le Lievre has got Australian Floodplain Association – there is a description Western Local Land Services. I wonder if you can explain what that is?

MR McCLURE: Local Land Services in the western region manage biosecurity, emergency services, and natural resources. I'm a ministerial appointee for the Minister of Agriculture in New South Wales to – as a board member on the organisation called Local Land Services which manages 43 per cent of the state in those three silos.

MR O'FLAHERTY: Right. Okay. And turning to those minutes, you should have a folder with Australian Floodplain Association in front of you there?

10 MR KORN: Yes, we do.

MR O'FLAHERTY: Excellent. And behind tab 2 should be the minutes of a meeting, 10 April 2018. I understand there was a meeting after this – there has been one meeting between then and now. Is that correct?

15

MR KORN: Yes, that's correct. SAP 6 was held in June.

MR O'FLAHERTY: Yes.

20 MR KORN: Which we've got the minutes of it and yesterday coming down on the phone. And there are discrepancies, I might add, with those.

MR O'FLAHERTY: Okay. So these minutes are therefore SAP 5.

25 MR KORN: Yes.

MR O'FLAHERTY: Taking those, is it sort of once every three months or so that these meetings are held or is it – is there a particular timeframe these meetings are held?

30

MR McCLURE: Yes, that was the attempt to convene SAP roughly every quarterly to deliver SAPs as part of the Basin Plan objective.

THE COMMISSIONER: Forgive my ignorance. What is CL and W?

35

MR KORN: Crown land and water, I believe, Mr Commissioner.

THE COMMISSIONER: And who was there from Crown land and water. Was there any representation by them at this meeting number 5 of the SAP?

40

MR LE LIEVRE: Tim was there, wasn't he?

THE COMMISSIONER: Should I understand them as being among the delegation from the Department of Industry and Water?

45

MR LE LIEVRE: That will be my – Mr Commissioner that would be my take on it.

MR O'FLAHERTY: There is a reference to an Amy Burgess in those references.

THE COMMISSIONER: No. I was just – I'm looking at the first of the reports on actions from previous meetings.

5

MR O'FLAHERTY: Yes.

THE COMMISSIONER: So at that meeting, at number 5, in April, it was being reported to you that Crown lands and water had to clarify the process of the Northern Basin toolkit development. Does any – do you have a recollection of that occurring?

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MR McCLURE: Justin McClure. I have a vague recollection. And there was no such clarifications of the toolkit.

THE COMMISSIONER: I noticed the comment has the interesting character that that is action that is both complete and ongoing - - -

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MR O'FLAHERTY: Schrodinger's

THE COMMISSIONER: - - - which raises questions but leave that aside. And what is IGA? I know it's not Independent Grocers. So - - -

20

MR McCLURE: Intergovernmental agreement.

THE COMMISSIONER: They are talking about which IGA, though?

25

MR McCLURE: I would suggest a Queensland and New South Wales IGA.

THE COMMISSIONER: Right. And that's – so that's quite specific to a northern rivers?

30

MR O'FLAHERTY: Is that the agreement that is referred to, I think, in the Northern Basin Review about the fact that there must be a linkage with the three – the 70 gigitalitre reduction and the tool kit and that there has been references that the Federal Government and State Governments are working towards implementing that? Is that a reference to that?

35

MR McCLURE: I would suggest that

MR O'FLAHERTY: That you understand, at least.

40

MR McCLURE: Yes.

THE COMMISSIONER: Thank you.

45

MR O'FLAHERTY: Actually, and while we are – do you recall when SAP 4 was, the meeting prior to this April meeting?

MR McCLURE: February, I think.

MR O'FLAHERTY: February. I wanted just to ask you a few queries which will then no doubt develop into broader discussions arising from these minutes. If I could
5 take you all to page 3 of 13 of these minutes.

MR McCLURE: Yes.

MR O'FLAHERTY: There's – under the action number – agenda item 2,
10 Departmental Update, under the heading Northern Basin Tool Kit Update Disallowance Motion, there is a reference to a Marcus Finn.

MR McCLURE: Yes.

15 MR O'FLAHERTY: Is Mr Finn from the MDBA?

MR McCLURE: Correct.

20 THE COMMISSIONER: I can't see him on the attenders. I'm sorry.

MR O'FLAHERTY: No. And that's why I asked. He's not listed – there is a gentleman by the name of Gavin Pride listed as one of the members.

25 MR McCLURE: Gavin Pride and Marcus Finn work together for the MDBA.

MR O'FLAHERTY: Okay.

30 THE COMMISSIONER: There was a Mr Finn from the MDBA at the meeting, which the minute takers seem to have missed out on. Is that right?

MR LE LIEVRE: That's correct.

35 THE COMMISSIONER: And can any of you tell me what position in the MDBA Mr Finn occupied at the time of this meeting?

MR McCLURE: I can't, no.

40 THE COMMISSIONER: Because attributed to him is what's called the MDBA position. And it has the statement which is, at least in the context of my Commission, a very loaded statement indeed. It simply says this:

MDBA went through science to develop the Northern Basin Review.

45 And not to put too fine a point on it, that is a statement that is very, very difficult to accept at face value or indeed after looking into it a bit deeper even than that. Was there any detail provided or material made available to you to demonstrate this idea of the MDBA going through science to develop the Northern Basin Review?

MR McCLURE: I would say none at all.

MR LE LIEVRE: No.

5 THE COMMISSIONER: He then is recorded as using – and this is a minute rather than a transcript so I don't know whether these were his words as using this figure of speech. He says:

And it –

10

I presume that means science in the Northern Basin Review:

...is now hard wired into the Basin Plan.

15 MR LE LIEVRE: That's my recollection, Mr Commissioner.

THE COMMISSIONER: Yes. Was there any explanation as to what that meant? Sounds to me like it's in the nature of a threat, that is, there should be no interference with it or you will ruin the Basin Plan. That's what hard wiring seems to suggest, it's
20 a figure of speech. If you remove something, you will remove its working parts. Is that how you understood it?

MR LE LIEVRE: Yes. That's correct, Mr Commissioner, but he also said they stood by that science, which – whatever science that was.

25

MR O'FLAHERTY: Yes, the last sentence in that paragraph.

MR LE LIEVRE: So that was – to me, that was the final – final input from the MDBA in relation to the science. That is it, there's no more science to go, is the way
30 I took it.

THE COMMISSIONER: Is there any reference to where one would see this science.

35 MR LE LIEVRE: Not to my recollection, no.

THE COMMISSIONER: Does it jolt any of your recollections as to whether Mr Finn is a scientist?

40 MR LE LIEVRE: No, he's not.

MR O'FLAHERTY: How about Mr Pride? Is he – I take it he might be a – not a scientist as well?

45 THE COMMISSIONER: Mr Pride is not a scientist.

MR O'FLAHERTY: No. I want to ask you, I have – for the life of me don't understand the sentence that immediately proceeds the – sorry, immediately follows the sentence that the Commissioner took you to. It says:

5 *They are disappointed that the flow plan as written and provided to Parliament.*

now, leaving aside the fact that it doesn't make any grammatical sense, do you understand what that means at all? I will read it again:

10 *They are disappointed that the flow plan as written and provided to Parliament.*

THE COMMISSIONER: I think it's a matter. The second shoe hasn't dropped. I think we can – I'm assuming from the context, this being at the time when the northern Basin had been disallowed, they were disappointed it had been disallowed. Why the MDBA is commenting upon parliamentary conduct in a partisan fashion, I don't know. Maybe one day, they will tell everything why they are doing that. But did they explain or give any explanation as to why it was proper for the MDBA, a statutory entity, to be expressing disappointment at what members of Parliament had voted?

MR LE LIEVRE: No, Mr Commissioner. They did not.

25 MR KORN: Mr Commissioner, could I just say something here in relation to the issue. This, from my recall, was occurring during that disallowance period. And they were probably commenting on that, whether it's right or wrong – I will let you decide on that. If I can just go back to a point about scientists and whether or not Mr Gavin Pride is a scientist, I understand Mr Gavin Pride is a modeller and is in charge of that area. And I guess it depends on what your definition of a scientist is, but I
30 ---

THE COMMISSIONER: Indeed, it does.

35 MR KORN: I would say he's been trained in some science, and he is a modeller. Then he would – some people would call him a scientist. So I would just like to have that on the record.

THE COMMISSIONER: No. That's fair enough.

40 MR KORN: He would be a scientist in that context.

THE COMMISSIONER: Whether he's a biological scientist is a different question.

45 MR KORN: Yes, that's true. I'm not sure if he is a biological scientist.

THE COMMISSIONER: Or a hydrological scientist.

MR KORN: If he is a water modeller, then I would say he is a hydrological scientist.

5 THE COMMISSIONER: In which case, then, he will be a person who may have prepared material that may have been published to provide science for the Northern Basin Review.

10 MR KORN: That could be true. I can't – I just wanted to clarify what we were talking about as a scientist here.

THE COMMISSIONER: Yes.

15 MR O'FLAHERTY: There's a – the next heading along is an update – was the update about the national – Natural Resource Assets Regulator. In this meeting and the following meeting, was there much detail about – that's a relatively new reform of course arising from the various inquiries of late in New South Wales. What level of detail was provided with respect to the Assets Regulator – Resources Assets Regulator? Was there much detail?

20 MR McCLURE: I think the – yes, Justin McClure. I think the – being the new concept, it was – the program was outlined on what was going to happen, and there was a level of information delivered.

25 MR O'FLAHERTY: Yes. And were you happy with that level of information?

MR McCLURE: It was a positive – it was a step in the right direction and, yes, I was happy with that information.

30 MR O'FLAHERTY: Over the page, on page 4, there's – under the heading General – now, this may seem like a pedantic point to make, but it seems like a – sounds like, from what I'm reading in these minutes, an ongoing issue about the provision of documents for the purposes of SAP meetings. Am I right in interpreting that that has been an issue that has caused some concern for you?

35 MR LE LIEVRE: Stuart Le Lievre. Certainly, counsel, yes.

MR O'FLAHERTY: What's been the nature of that concern in terms of how you have been able to participate in the SAP meetings?

40 MR LE LIEVRE: We get documents extremely late before meetings. And we've also found that the minutes that you just found out are not exactly correct. And having the documents and so many documents to read and understand before, you know, before that because as you are quite aware, there is some very complex issues there, and there are some there that I can't get my head around, especially not three
45 or four days before a meeting.

THE COMMISSIONER: Was that improved for the June meeting?

MR LE LIEVRE: Marginally at best. Will be my - - -

MR McCLURE: Yes, look, I would support what Stuart is saying. The delivery of the documents has been abysmal. The time and the access to the Google Drive and
5 access to the papers has been particularly cumbersome, and it makes it nearly impossible for graziers like ourselves to come to a meeting and have papers delivered on the day and that's, at times, in a manner that – that just haven't had the time to absorb.

10 THE COMMISSIONER: Well, I see there's a request here for material to be made two weeks – available two weeks in advance. Did that happen for the June meeting?

MR McCLURE: No.

15 MR LE LIEVRE: No.

THE COMMISSIONER: And is there any reason given for why that can't be done?

MR O'FLAHERTY: A reason follows that.
20

MR McCLURE: Their argument is lack of resource staff.

THE COMMISSIONER: You mean they aren't paying enough people - - -

25 MR McCLURE: Correct.

THE COMMISSIONER: - - - to do the work.

MR LE LIEVRE: Yes. And, Mr Commissioner, they probably haven't got enough
30 people with the knowledge to do that work.

THE COMMISSIONER: Which usually translates to they're not prepared to pay enough people to do it.

35 MR KORN: Mr Commissioner, if I can – Terry Korn here. If I can just comment here, I think that relates to one of the major points we address in our submission about the way the NSW Government stripped its water department and, you know, knowledgeable staff over a period of time. And it was downgraded to such an extent, they are now playing catch-up, and they are having trouble recruiting sufficient staff
40 with skills and knowledge to undertake the tasks that are now before them following the Four Corners Program and their revision of water management in the state.

THE COMMISSIONER: I read that part of your submission. It looks to be yet
45 another sorry example of what is gruesomely called efficiency reforms in the public services.

MR KORN: Correct.

THE COMMISSIONER: I take it in your experience, you have had the experience of the roller-coaster of those things is in the past.

5 MR KORN: I have been. I worked my full professional life in the public sector, the last 10 years at an executive level, and I had to undertake some of these particular restructure programs, and they generally are not good for the overall operation of the organisation.

10 THE COMMISSIONER: They sound like a false economy to me.

MR KORN: I thought some of them were when I was involved in them.

15 THE COMMISSIONER: It's true you save money by not paying for services but then you don't get the services and eventually people say we need the services back and you end up paying more money to try and get them back to a state where they are not as good as they would have been, which sounds like a false economy.

20 MR KORN: That's true. I mean, once you lose corporate knowledge and corporate history, and dedicated passionate staff, then recruiting those staff again is extremely difficult because they have moved elsewhere and you have to bring in staff who are generally often ignorant of the whole process and the corporate culture. And getting an effective operation and organisation working in a short period of time is well-nigh impossible in the public sector. Because the good people have gone, and you have to recruit people outside who really don't know the system and don't know the major
25 people in the industry. They've got no working relationships, and there's no networking and all those things take a long time to build up and so that you get trust and you can make progress. That's the problem with big restructures that shed staff.

30 THE COMMISSIONER: That's right. And restructure is a ridiculous misnomer because it suggests something is being built again, but it's just being demolished mostly. Because you then have to recruit by saying to people, in effect, come to our department, we will let you down within five or six years.

35 MR KORN: And the other – the add-on effect of that is -the negative add-on effect is that good people don't want to work for an organisation like that.

40 THE COMMISSIONER: That's what I mean. Something who has a career enthusiasm, in effect understands that if you go to the public sector or one of these agencies you are going to somewhere that says, I've got this terrific job for you, PS, you won't have it for all that long because we will go through another restructure at some time in the near future which we won't tell you about. Most people would prefer to look for career prospects elsewhere, I would have thought.

45 MR KORN: Correct.

THE COMMISSIONER: Now, I would like to think, however, that some of the people from the department – from the department that I notice is attending this

meeting number 5, are any of them what I will call old hands, experienced people with good contacts? Or are they all newbies?

5 MR McCLURE: Look, there are some old hands. There is some modellers, and I would say that 25 per cent of the staff would be old hands.

THE COMMISSIONER: Good. Thanks.

10 MR O'FLAHERTY: Just in terms of the provision of documents, do I understand it's not just a timing thing for these minutes, it has been an access thing with the Google Drive. Is that right?

MR McCLURE: Both.

15 MR O'FLAHERTY: It has been both, hasn't it?

MR McCLURE: Yes. On some occasions the documents haven't turned up at all.

20 MR O'FLAHERTY: Right.

MR McCLURE: And at some time there hasn't been enough time in the meeting to actually deal with the agenda items.

25 MR O'FLAHERTY: I see. So they've packed the agenda too much in order to properly go through in sufficient detail all the documentation and all the matters - - -

MR McCLURE: Yes.

30 MR O'FLAHERTY: - - - in that agenda. All right there's a reference in that last dot point on page 4 and following on, in the following page about the need for greater support. I wonder for you could explain what additional support was envisaged by SAP members?

35 MR McCLURE: I think they are referring to the modelling and modelling as we know is a dark art and I guess we asked for support to understand - - -

MR O'FLAHERTY: In order to explain it.

40 MR McCLURE: To explain and understand the models. That was forthcoming.

MR O'FLAHERTY: Right. So is that something that happened in this latest meeting that the modelling was explained a bit more?

45 MR McCLURE: Yes. Yes.

MR O'FLAHERTY: You hesitated. Was it explained to your satisfaction?

MR McCLURE: My knowledge increased but I don't think it is - - -

MR O'FLAHERTY: You feel like there is more room for - - -

5 MR McCLURE: There is room for improvement or absorption.

MR O'FLAHERTY: Okay. I wanted to – on page 5 there's under the heading New South Wales SAP, there's – the second dot point of that and I will – there is a reason why I'm going to the second dot point before the first dot point. There's a reference to a request for a meeting between the Murray Lower Darling SAP and the Barwon-Darling SAP. Now, we have heard evidence with members of the Murray Lower Darling SAP and I understand that that was a – that has been a request that they've made more than once. When did you become aware of this request from the Lower Darling members of the SAP to meet up with your SAP?

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MR McCLURE: We have a member who is a – of the Australian Floodplain Association who is a Lower Murray Darling SAP member.

MR O'FLAHERTY: Okay.

20

MR McCLURE: Jones and we have discussed – discussed the concept of getting together, getting the SAPs together to talk about connectivity between - - -

MR O'FLAHERTY: Yes.

25

MR McCLURE: - - - the bottom of the northern basin and the top of the southern basin prior to Howard sending a letter to, I think, Peter Hyde, so we did.

MR O'FLAHERTY: Okay. And when did that discussion – you don't have to be exact on a date, but around about when did those discussions start about trying to get that meeting or get that connectivity started?

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MR McCLURE: I would suggest, yes, May somewhere, in that early May.

35 MR O'FLAHERTY: May of this year or last year?

MR McCLURE: Of this year.

MR O'FLAHERTY: This year. Okay. And then there's a – in brackets it says see other business for more details on this discussion. If you turn over to page 12 of these minutes, under the heading C, combined SAP meeting, MLD, which I understand to be Murray Lower Darling, there is – under the dot points in the middle column there's – it talks about concerns between lack of flows, management of lakes, water quality and salinity. And then the second dot point:

45

There was general agreement about the need for discussion about connectivity.

I will just pause there. When it says “General agreement”, was there any people who didn’t agree?

5 MR McCLURE: No, it was pretty well unanimous that connectivity needed to occur between valleys and particularly across State boundaries and that the more water that was accessible by the Barwon-Darling was of benefit to all water users.

10 MR O’FLAHERTY: I just want to sort of separate those two sub-issues of connectivity. There’s two issues that you see from your point of view on the Barwon-Darling SAP. There is the connectivity downstream, so in this case the Barwon-Darling down to the Lower Darling, and then there is also the issue of connectivity from upstream with the various tributaries and their water resource plan areas into the Barwon-Darling. That’s there’s two issues: upstream and

15

MR McCLURE: Correct.

20 MR O’FLAHERTY: I will get to upstream shortly. In terms of the downstream aspect, the – there is a discussion – so that being an issue which is for administrative purposes wholly within New South Wales, from your perspective, the two relevant water sharing plans – Water Resource Plans being within New South Wales, the Barwon-Darling and the Lower Darling Water Resource Plans. There is a suggestion that the discussion be a whole northern Basin discussion, what’s that suggestion?

25

MR McCLURE: The suggestion is that the Lower Darling is in the southern Basin.

MR O’FLAHERTY: Yes.

30 MR McCLURE: Not the northern Basin.

MR O’FLAHERTY: No.

35 MR McCLURE: So the suggestion from the Lower Darling is that there needs to be recognised connectivity between the northern basin and the southern Basin. The issue is that the Barwon-Darling is a unregulated system and the Lower Darling is a regulated system. Due to the current SDL adjustment – proposed SDL adjustment
- - -

40 MR O’FLAHERTY: Just to stop you there, in terms of it’s regulated in the sense that access to also releases of water can be made from the Menindee Lakes down to the Lower Darling, whereas there is no equivalent storage at the immediate top of the Barwon-Darling. There are storages further upstream - - -

45 MR McCLURE: Correct.

MR O’FLAHERTY: - - - but it is not immediately like the Lower Darling is.

MR McCLURE: That's right, yes.

MR O'FLAHERTY: Sorry, I interrupted you, yes.

5 MR McCLURE: I guess the point is that there is a perception or there's understanding that the Lower Darling is serviced by a dam, by a headwater because it's a regulated system. There was lack of favour for a meeting of the two because the northern Basin, southern Basin type – the situation.

10 MR O'FLAHERTY: Yes.

THE COMMISSIONER: The reservoir or storage which renders the Lower Darling regulated in this sense, is itself fed from the northern Basin. Is it not?

15 MR McCLURE: That's right, that's correct. Yes.

MR O'FLAHERTY: It is fundamentally different from other headwaters such as the big ones of Hume and Dartmouth where it is not direct inflows from the immediate catchment, it is fed directly from that upstream river.

20

THE COMMISSIONER: What we mean, it is not generated by local run-off.

MR McCLURE: No, that's correct.

25 MR O'FLAHERTY: Yes.

THE COMMISSIONER: So that I'm struggling just a little bit to understand at the moment why there isn't self-evidently hydrological connectivity and therefore desirably an administrative connection.

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MR McCLURE: I guess the Menindee Lakes had a capacity of 2,000 – whatever it is. Let's say 2,000 gegalitres. The management and release of that water out of Menindee downstream is an active lever. It is - - -

35 THE COMMISSIONER: Quite so.

MR McCLURE: Hence any adjustment to the capacity in the Murray-Darling Basin agreement will adversely impact on the Lower Darling. The current proposal is to reduce the capacity of Menindee back to 80 gegalitres rather than the 640/480 rule.

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MR O'FLAHERTY: Yes, that's the chain between the – the 480 - - -

THE COMMISSIONER: It is probably best that we not get into all of that now. It is worth about six months full-time inquiry, I suspect. But yes, we are to put it mildly, familiar with the Menindee question. I am just wondering about in terms of connectivity with the north, where there obviously is connectivity, and I'm not doubting anything that you've said, I would need a bit more explanation as to why at

45

the SAP level the role of Menindee for the Lower Darling, how that has an effect on consideration of what ought to happen in the north.

5 MR McCLURE: I think I understand your question, Commissioner. There is an expectation within Water Sharing Plans that there be a percentage of – an amount of water that flows out of a water-sharing plan to the downstream water-sharing plan.

THE COMMISSIONER: Yes.

10 MR McCLURE: And there is an argument – a strong argument that the amount of – the volume of water is – has reduced over the last 20 years, 30 years.

THE COMMISSIONER: Yes .

15 MR McCLURE: And for the Barwon-Darling, the Barwon-Darling water-sharing plan and every water-sharing plan upstream needs to have a volume - - -

THE COMMISSIONER: Which will deliver to end of valley, which will go on.

20 MR McCLURE: That's correct, yes.

THE COMMISSIONER: I think it once was a school of thought that the water would be wasted if there was any left at the end of the particular valley but that seems to have been consigned to the garbage bin of history now. Everyone seems to
25 accept that it is – that connectivity is critical to the Basin. I think.

MR McCLURE: I think - - -

30 THE COMMISSIONER: Except for natural exercises like the Macquarie Marshes and the Gwydir, etcetera.

MR McCLURE: There are some Water Sharing Plans better than other Water Sharing Plans and I think there are some Water Sharing Plans that are – are archaic and don't recognise downstream. And I think that's evident by the – by the inter-
35 government agreement and the cooperation between New South Wales and - - -

THE COMMISSIONER: Queensland.

40 MR McCLURE: And Queensland. And I think that that lack of detail and transparency is worrying for us being members of the SAP. We don't know where our water is coming from, we don't know what – what another water sharing plan is delivering to downstream. Will we have enough water to - - -

45 THE COMMISSIONER: Well, now, the MDBA has a role in relation to the WRPs that are intended to come into operation in the middle of the next year. And that role is variously described, and one of them is accrediting them. That includes for their – their appropriateness to achieve, among other things, functions of connectivity.

MR McCLURE: I – with respect, commissioner, I really hope so. I have had this discussion with Marcus Finn and Gavin Pride from the MDBA, and I have asked the question what mechanism has the MDBA got to guarantee that there is connectivity between water sharing plans.

5

THE COMMISSIONER: Well, now, one method would be to ensure that no one area's WRP is regarded as the business only of people in that valley. In other words, by definition, I would have thought hydrologically and socially.

10 MR KORN: If I - - -

THE COMMISSIONER: Every valley's WRP is of legitimate and important interests to what I will call the next valley's people. Isn't that right?

15 MR KORN: If I could speak here, Mr Commissioner.

THE COMMISSIONER: Yes, please.

MR KORN: Terry Korn. That's correct. All of them should be connected so they speak to each other, and the end of flow system is protected, whatever that end of flow volume is.

20

THE COMMISSIONER: Yes.

MR KORN: That's critical. The – I was speaking to MDB staff last week, about this very issue, with their water – with the Water Resource Plans, and they assure me they're pursuing that.

25

THE COMMISSIONER: Yes.

30

MR KORN: Now, the disappointing thing that's happened with the Barwon-Darling SAP process is that while I'm not directly involved like Stuart and Justin, it's apparent to me that the initiative for the connectivity process has to be initiated by people within SAP, independent members, rather than the department leading the connectivity process. So they didn't initiate the connection between the Lower Darling and the Barwon-Darling SAPs. It's had to be - - -

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THE COMMISSIONER: Well, it's an advisory panel.

40 MR KORN: Yes, that's right.

THE COMMISSIONER: And if there is meaning to be given to that expression, there is some reason, isn't there, to hope that the advice that has been given to work on connectivity will be accepted?

45

MR KORN: That's correct. But what I'm saying is that the New South Wales agency should be leading this, rather than the - - -

THE COMMISSIONER: I find it difficult to disagree. But has anybody actually said, “No, no, no, they should not be leading it”?

MR KORN: No.

5

THE COMMISSIONER: No.

MR KORN: No. So what’s happened in the last two days is the Lower Darling group have had their meeting, and Howard Jones who was mentioned earlier, one of our committee members, is part of that group. So Howard sent me an email yesterday saying he had spoken to the New South Wales rep who covers both the groups, and they have agreed that a subcommittee of each - - -

10

THE COMMISSIONER: Yes.

15

MR KORN: - - - planning body should talk to each other to ensure connectivity.

THE COMMISSIONER: Yes.

MR KORN: So the disappointing thing from the association’s viewpoint is that the government had to be sort of pushed - - -

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THE COMMISSIONER: Sure. On the other hand - - -

MR KORN: - - - to make this connection.

25

THE COMMISSIONER: Let me be Pollyanna, it suggests that an advisory panel may have served a useful function in giving some advice which has been accepted.

MR KORN: Yes, I agree.

30

THE COMMISSIONER: I don’t know if this offends your personal history, but it suggests that not all wisdom resides within the public service.

MR KORN: I know that, Mr Commissioner, well and truly.

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THE COMMISSIONER: It’s not only a concern of the downstream that they get, as it were, enough from the upstream. It is vice versa as well, isn’t it, in this sense that the upstream that legitimate interests that they are not sending water downstream, which that water will not in turn appropriately connect further downstream. In other words, simply taking a consumptive resource from upstream to be excessively consumed immediately downstream is of really legitimate concern to the people upstream. And it’s for though reasons I would have thought that you cannot do WRPs without consultation and involvement extending outside the particular area, not in a connected system.

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45

MR McCLURE: Totally agree.

THE COMMISSIONER: Does that accord with your opinions or not?

MR LE LIEVRE: I couldn't agree with you more, Mr Commissioner.

5 THE COMMISSIONER: We don't seem to have that as a system though. That –
the sub-committee for the Barwon-Darling, Lower Darling exercise. That's good.
We don't seem to have as a system the notion that each WRP is not merely the
business of the area for which it is being made. Which seems to be a genuine
10 weakness in what I will call the system. It doesn't look to me as if it will be either
difficult or expensive to fix that. It involves, however, I suppose, a thing that
governments don't want to do at the moment, which is spend money on public
service.

15 MR McCLURE: Commissioner, there was a point made yesterday by Geoff Wise in
discussion, and he has suggested that no Water Resource Plan be signed off until all
water sharing – all Water Resource Plans have talked to each other and come to a
position which is signed off by the MDBA.

20 THE COMMISSIONER: I confess – maybe I'm pessimistic. I'm sure I am. I
confess that that sounds to me like a very good idea which has no hope of being
realised. That is, I cannot see in the timetable and the lack of method to permit that
to be done, that is making sure that there is real disclosure and an active making
available and education of what I will call the Basin community or communities. I
can't see – it's now nearly September, 2018. I just cannot see any possibility of the
25 WRPs coming into effect in 2019 after the entirely sensible, indeed splendid notion
that has been carried through, of full understanding mutually before any one is
operating.

30 MR KORN: I would agree. Terry Korn, Mr Commissioner. I would agree with
that. I think the agencies - - -

THE COMMISSIONER: It is all running too late.

35 MR KORN: - - - lack the capacity to do that, the physical capacity. And - - -

THE COMMISSIONER: As you say, it is not just a matter of hiring three times as
many people, it is those people needing to experience, which by definition they
won't.

40 MR KORN: That's right. They have the knowledge and skills to do that, and they
have got to have sufficient people on the ground, and they have got to have the
overall capacity. And I think – I don't think especially in New South Wales, because
of the way they have had to rapidly build up the agency again, with relatively
inexperienced staff in the water area, that they have the capacity to do that. I don't
45 think they will meet those deadlines. If they do, then the water sharing or Water
Resource Plans will be bad Water Resource Plans. And I don't think anyone in the

water management area wants that, I don't – the irrigation industry wants that, I don't think. We don't want it.

5 THE COMMISSIONER: Well, particularly as it's quite difficult, as I read the Act, and the plan – it's quite difficult, as it were, to rejig them very quickly, particularly as, desirably, they all relate to each other.

MR KORN: Well, they are extremely complex documents.

10 THE COMMISSIONER: Yes.

MR KORN: And to do them quickly is extremely hard when you've got diverse stakeholder views. It's a major exercise and the problem is, though, they have forced into this tight time frame June, 20, sorry, 30 June 2019, and I think that's – that will cloud their judgment unless they stop back – step back and say, well, maybe we can extend the time out. Now - - -

20 THE COMMISSIONER: Well, now the combination of the Act and the plan has a kind of a carrot and stick in relation to complying with the time for the WRPs to be made. I gather from what you are suggesting to me that you think I should be considering recommending a relaxation of those pressures in order that the substance of acceptably good plans be made, rather than bad plans be made on time.

25 MR KORN: That's correct. I – my view, and I sit on another working group with major irrigator bodies, and they have expressed that at this meeting as well. They don't want to see bad plans put in place. They would rather see, if it's legally possible, the time frame deferred and so that a good plan for the next 10 years is in place.

30 THE COMMISSIONER: Now, you three have probably heard even more often than I have this irksome political slogan, in full and on time. I don't know what "in full" means. But if it meant anything, it would mean fulfilling the maximising of environmental social and economic outcomes, which at least includes fulfilling environmental outcomes. I can't see any way that anyone could honestly or competently predict that at the moment. It's just not known. But as to the on time, I'm afraid it does seem to me that the WRPs effectively mid-2019 is the most obvious milestone. I can see a lot of merit in the notion that it ought to be moved. So as not to require mid '19. But, of course, if politicians are capable of being embarrassed, that might embarrass any of them who are reminded that they have committed to this notion of it being done on time. Now, I confess I can see a concern which you've expressed again today. I see in the material a concern that in order to get a tick in the box for on time WRP, we are in danger of sacrificing decent WRPs. I think that's your concern.

45 MR KORN: That is. That's exactly my concern and I think – I think – I can't speak for the irrigation industry, but I talk to people in the irrigation industry, and they –

their social licence will be damaged, if there is a bad water resource plan put in place.

THE COMMISSIONER: Damaged further, I suspect.

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MR KORN: Damaged further, Mr Commissioner. So for them to regain social

THE COMMISSIONER: I think it is unfortunate it has been damaged, but I think it has been damaged.

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MR KORN: Yes. The irrigation industry would support a good plan.

THE COMMISSIONER: Well, of course, it's not on time if what is delivered is really shoddy goods. That is, you may get whatever political credit there is for something that has WRP on its front cover, being done by the date, but if it's not a decent WRP, in fact, it's not on time at all, but I'm afraid this is an area where we seem to be grappling with the huge gap between the irrigators and the communities wanting something of substance, and people in government have been prepared to take the form rather than substance. That's, at least, what is emerging to me, at least in relation to the WRP process. And for that matter, the antecedent Northern Basin Review where I think I started off by asking you three can you tell me where I find the science that's – it's said to be based on.

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MR KORN: Well, if I can just answer that, I think, as I said, it depends on your definition of science. But the - - -

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THE COMMISSIONER: A model is not hydrological or biological science. In fact, it is very offensive for people to persist in saying you can answer scientific questions with a model. They are tools ultimately, of not much more than what I will call a logical kind. They are very complicated algorithm.

30

MR KORN: Yes. I agree with that.

THE COMMISSIONER: That's all they are.

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MR KORN: But the – I'm just saying if you look at the science, what they call the science, they have a multitude of reports. Now, whether or not you support the veracity prima facie that and the - - -

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THE COMMISSIONER: I don't think they have the multitude of reports at all, on the science of the Northern Basin Review at all. There are many reports, but not on the science of the Northern Basin Review to support what was originally 390 becoming 320 as the recovery needed for the environment and where we all know it is not just a matter of adding water. You have to have science behind what are the desirable flows when, where, how, in order to achieve, ultimately, geographical, biological outcomes.

45

MR KORN: Yes.

THE COMMISSIONER: Soil and biota. That's what it is all about, I think.

5 MR KORN: Yes. I agree with – the science is lacking – good science is lacking and that, I think, in their attempt to rush through a plan and make the variations then I think a lot of good science has been not addressed or ignored.

10 THE COMMISSIONER: I thought the Northern Basin Review in fact had in its genesis in an acceptance officially that the science had not been good enough, certainly by comparison with the southern basin science, and it needed to be revisited. Or reviewed. Is that - - -

15 MR KORN: Yes, they did undertake a whole scientific investigation associated with different aspects. Ecology and the fish and the biota, etcetera. So – but I think a lot of that wasn't and couldn't be definitive for a complex biological system like that.

20 THE COMMISSIONER: Can I ask you to look at page 9 of 13 of the SAP number 5 of April this year. And in relation to the water-sharing plan individual daily extraction limits, it records that the group was given an overview of the main modelling scenario paper described on the previous page. In particular, the modelling obviously looked at outcomes of applying individual daily extraction limits using the current rules. And the next paragraph records this:

25 *Results of the modelling indicate that existing water-sharing plan rules will not deliver a material environmental benefit and in some cases may result in more water being taken from some events.*

30 It's fairly bloodless in a minute, but that seems to me as if – as information to a SAP, that more or less amounts to saying it won't work.

35 MR McCLURE: I think it relates back to the modelling and the inaccuracy of modelling the low flows.

THE COMMISSIONER: Yes. Which seems to be common ground. Everyone seems to agree that modelling doesn't work for low flows.

40 MR McCLURE: But then they make a statement like that.

THE COMMISSIONER: So what does that statement mean? Does that mean – it starts off by referring to results of the modelling. Does it mean this model is uninformative or does it mean that taking account of the problems with the model, nonetheless is an indication that environmental benefits will not be got or what?
45 How should I read that? Do you remember what at the meeting what explanation was given that is summarised in that bald minute?

MR LE LIEVRE: Mr Commissioner, I found the whole modelling thing right from go to where we are now very hard to follow because they are not comparing apples with apples. It's apples with something else. It could be mangos one day and avocados the next day and it's very confusing. Right. And I'm also finding that
5 through this process – and as I said, we have just got the minutes from the SAP 6, and if I could read part of what's in this minute if you don't mind, it might give you a bit of an understanding and my take on the process:

10 *Discussions were continued to identify the objective of the SAP. The SAP was advised the objective 4 the SAP is to provide the department with advice in response to the options presented for addressing the identified issues. Issues related to management of water in the Barwon-Darling will be managed through changes to the water-sharing plan.*

15 Now, my take on that, and I think Justin will concur with me, every time we go these things are put in front of us. Okay. If we want to add something to it, basically we are not heard. The decision has been made before we get there. So the modelling and everything else is based on what, I can't tell you, I wish I could but I can't. You
20 know, who is giving – who is making the inputs into the modelling because as you know the modelling is only as good as the information that goes into it.

THE COMMISSIONER: Yes. Well, there are other important things about a model, including its logic.

25 MR LE LIEVRE: Yes. Okay. And I can't – to answer your question, I do not know because I'm finding the whole modelling thing confusing. It's disjointed. There is no flow to it. And it's also very complex.

30 THE COMMISSIONER: Well, now, I see that back at meeting number 5, discussion included, to use the language of the minute, regarding the notion of protection of low flows as questionable. First of all, what should I understand protection of low flows – that means prevention of consumptive take at designated low flows; is that right?

35 MR LE LIEVRE: That's correct.

MR McCLURE: That's right.

40 THE COMMISSIONER: And someone at – reading number 5 – at the SAP, regarded the claim that a proposed system would protect low flows as being questionable. Can you recall how that discussion proceeded?

MR LE LIEVRE: Mr Commissioner, I can't. It's Stuart.

45 MR McCLURE: Justin. I have some recollection. I think the ideal proposed or the daily extraction limit proposed was not sufficient to protect the flow at Wilcannia.

THE COMMISSIONER: It was a rostering idea.

MR McCLURE: It was a rostering initiative in that the ability – if you're pumping – the cease to pump threshold is at 320 megalitres a day, which is the A class trigger at Bourke at the moment. The capacity of the A class licences in that section of the river is above 3,000 megalitres a day. So if the – the B class threshold triggers at 1,250 megalitres. So the capacity to extract water with A class pumps in that window between 320 and 1,250 is 800 megalitres. I think the reference is directed towards the ability of A class pumps to extract the volume between the A class and the B class, if that was the only water available.

THE COMMISSIONER: Yes.

MR McCLURE: And it would not benefit downstream because physically with evaporation and transpiration that water would not make Wilcannia, for example. It won't allow for Tilpa.

THE COMMISSIONER: The flow will be too low in order to be useful low flow.

MR McCLURE: That's correct.

THE COMMISSIONER: Well, did anything happen at meeting number 6 in relation to that? That was advice from SAP saying this is questionable. What happened in light of that advice at meeting number 5? Did something - - -

MR McCLURE: I think – this is my recollection of reading the minutes once, but in the minutes there is reference to raising the pumping thresholds. There is – the reference goes something along the lines of there will be no beneficial outcome of lifting the cease to pump thresholds in the low range from 500 down.

THE COMMISSIONER: How does that come about?

MR McCLURE: I think that's a result of discussion in SAP 5. There was a paper that was presented and - - -

THE COMMISSIONER: So, no, how does it come about that there would be no benefit from raising the cease to pump.

MR McCLURE: I think there are long-term averaging issues and there is modelling issues and there is still the capacity to extract that – the existing scenario is that the major irrigator still has the capacity to extract that huge volume of water if the water is there. There is a benefit in the higher range, in the 500 to 1,500 range, but that was actually squashed because of it would have an adverse effect on irrigators' entitlement. So - - -

THE COMMISSIONER: Well, cease to pump.

MR McCLURE: Cease to pump.

THE COMMISSIONER: That's what it means. You have to cease to pump.

5 MR McCLURE: That's right.

MR O'FLAHERTY: It necessarily follows.

10 THE COMMISSIONER: I take it that people weren't saying you can't have cease to pump because it would mean cease to - - -

MR McCLURE: Sorry?

15 THE COMMISSIONER: A cease to pump means just that. It's a level below which you are not permitted to pump.

MR McCLURE: There are some vagrancies because of cease to pump rules - - -

20 THE COMMISSIONER: I understand that.

MR McCLURE: - - - because of a lack of - - -

25 THE COMMISSIONER: Leave aside qualifications at the moment. The whole notion of a cease to pump threshold is that at a certain - I will call it flow indication - certain consumptive uses, using pumps, must cease. Correct.

MR McCLURE: Correct.

30 THE COMMISSIONER: Correct. There can't possibly be an objection to that.

MR McCLURE: To raising the - to raising the level of access. If you lift the - if the level - - -

35 THE COMMISSIONER: That's the point of raising - - -

MR O'FLAHERTY: It's not so much the concept that is - - -

40 THE COMMISSIONER: If you raise the level it means cease to pump will come, as it were, sooner or more often, correct, all other things being equal. That must be right. If you raise the indicator level at which cease to pump is imposed, either more often or for longer, you will not be allowed to pump.

MR McCLURE: Correct.

45 MR KORN: Correct.

THE COMMISSIONER: It can't possibly be an objection to that happening that it will have that effect. That is the intended effect, surely, and the only question is whether that is necessary in order to protect the low flow which is necessary for the stipulated environmental outcome. Isn't that - - -

5

MR McCLURE: That's correct.

THE COMMISSIONER: Or social outcome downstream. And yet you tell me that discussion includes the idea that you can't do it because it would have its intended effect.

10

MR McCLURE: Because there is a third party impact.

THE COMMISSIONER: But this third party impact is exactly what a raised threshold for cease to pump is intended to have, isn't it?

15

MR McCLURE: I agree, Commissioner.

THE COMMISSIONER: You can't make an omelette without breaking eggs. You have got to have broken eggs to make an omelette. You've got to have more cease to flow in order to have more cease to flow in order to get the environmental and social improvements.

20

MR McCLURE: I agree.

25

MR KORN: That's correct.

THE COMMISSIONER: I'm sorry if it sounds as if I'm oversimplifying it but I have to say, no doubt because of this wretched modelling discourse that you must be very patient to put up with, this thing seems to have been spuriously complicated in discussion. If you are going to get more water downstream for environmental or social reasons, or for that matter economic reasons downstream, then it follows that there will be less upstream. Yes, that is the nature of things.

30

MR KORN: That's correct, Mr Commissioner. Terry Korn. The issue here is that through this whole process, the planning process with New South Wales and certainly with the Commonwealth, the irrigation industry is a protected industry in this whole planning process. So that there's fear that if you impact on the reliability or the amount of water that irrigators access, currently access, which they have had traditionally used, then they will seek compensation. And - - -

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THE COMMISSIONER: What's wrong with that by the way? Why shouldn't we compensate people?

MR KORN: There is nothing wrong. I think the government has got itself into this position. It is going to have to buy itself out. If there is compensation required, pay it.

45

THE COMMISSIONER: That's social justice, isn't it?

MR KORN: That's one of our arguments.

5 THE COMMISSIONER: Rather than an individual suffer the cost of something we all want.

MR KORN: It's one of the points we make.

10 MR O'FLAHERTY: And that seems to it be a point that was made in the very discussion about individual daily extraction limits. If you could turn to page 6, about the purchasing of A class licences being floated as an option, there's a suggestion which is attributed to Western Land Advisory Council, which I understand to be you, Mr McClure, supporting that proposal to remove A class licences and pay affected
15 irrigators. So there seems to be at least a discussion at this very meeting that insofar as these rules do affect an irrigator's licence's reliability, that there is scope for the compensation to address that.

MR KORN: Yes. And we've pushed that line for some time. I've been to two
20 ministerial council meetings with peak bodies over the last two years, one in 2016/17. And at both of those I've raised the issue about the Basin Plan not having an adequate restructure package associated with it to compensate those affected by the Basin Plan. I have said to Barnaby Joyce at the Mildura meeting, we are delusional if we think we can introduce the largest rural restructure program ever
25 introduced in Australia – \$13 billion over 10 years – and not have an adverse impact on some parts of the community. And those parts of the community who are adversely impacted should be compensated in some way. And there is no structural package in the whole Basin Plan to accommodate that sort of thing, like they did with regional forest agreements which I was involved in.

30 THE COMMISSIONER: It's interesting you say that. I mean, I think I agree with you. In the Basin Plan itself, chapter 6, part 5 is headed promisingly Allocation of Risks in Relation to Reductions of Water Availability. So that looks as if you're going to find an answer to what you have just mentioned, Mr Korn. And you will
35 find that the – there are only two provisions in that part. And 6.14, which has been the subject of considerable attention, to use a neutral expression, by the MDBA, stipulates – that's in the Plan – that nothing in the Basin Plan requires a change in the reliability of water allocations of a kind that would trigger - - -

40 MR KORN: Section B.

THE COMMISSIONER: - - - subdivision B of division 4 of part 2 of the Act. That's really easy language to follow, isn't it? Anyhow, when you go to part 2, division 4, subdivision B of the Act, section 80 has another of these misleading
45 headings. It says it contains a simplified outline of the subdivision. It doesn't actually. But when you then look at the very complicated provisions that follow, they are designed, particularly in light of section 85(a) to ensure the Commonwealth

is obliged to provide compensation in relation to changes of the reliability of water allocations, but only to the extent that the National Water Initiative made the Commonwealth responsible for them. So it's ultimately – it is a question of social justice as recorded in the political compact federally, that, as you recall saying to
5 Minister Joyce, this is a very large systemic reform being attempted.

Probably there will be people who should be spared their individual special detriments by us, all of us compensating them. Now, the difficulty is, as – and we don't have time to go into that this morning or probably ever, but the difficulty is that
10 6.14 is being used in relation to WRPs in particular so as to be an occasion for contest between the Commonwealth and the States as to who has to compensate. Which is an extremely unfortunate – because in a sense there's only one public involved, the national public. But you're right, there seems to be a bit of a stand-off in relation to these compensatory things. And I understand somebody who doesn't
15 think they would get compensation, saying, "well, why should I suffer a particular loss in my reliability for a general good". I can understand that.

MR KORN: 6.14 is complex issue and I was hoping it wasn't going to come up, Mr Commissioner, because it's very complex. We have got a six-page advice from the
20 Environmental Defenders Office on this. And I have to sit down and read it very slowly and carefully because it – there is cross-references.

THE COMMISSIONER: It is very difficult, I agree.

25 MR KORN: Yes, it is. And we got this advice, wrote to Phillip Glyde, the CEO of the MDBA. He has responded. But we were fearful that the section 6.14 may be used to adversely impact on the integrity of the Water Resource Plans. That's why we sought the advice.

30 THE COMMISSIONER: Well, I have a similar fear. It's not allayed in my case. Are you happy to make that correspondence available to my Commission staff?

MR KORN: I am. It is probably in the material that I sent you. But if not I've got it here.

35 THE COMMISSIONER: Good. Thank you. I mean, there are some difficult technical legal questions about 6.14, because – in part due to division 4 subdivision B of the Act is all about changes to the Plan.

40 MR O'FLAHERTY: To the Basin Plan. Yes.

THE COMMISSIONER: Yes, that's right.

45 MR O'FLAHERTY: Rather than the implementation of the Basin Plan as made.

THE COMMISSIONER: And a WRP, to put it mildly, doesn't change the Plan. It's implementing - - -

MR KORN: It's about allocations versus reliability.

THE COMMISSIONER: So there's a real – just as a purely technical legal question, it is a very difficult issue. And it's – I think as a Royal Commissioner
5 rather than as a barrister, I think it will be terrible if that remained uncertain until there were litigation. I think it would be terrible if there was any litigation at all. And yet we seem to be heading towards mid next year when the WRPs will have been made under the influence of what I tend to think is either a policy wrong or a legally wrong or maybe both approach by the MDBA to 6.14.

10 MR KORN: Yes. That was our very concern. That's why we sought the advice and I guess if we have to go down a legal path we are preparing for it. We would prefer not to go down a legal path, of course.

15 THE COMMISSIONER: I'm glad to hear that. Thanks.

MR O'FLAHERTY: Just to circle back to the issue of connectivity and we were discussing the logical sense to it. Commissioner, I would just like to point out that it's not only a logical requirement, it is, in fact, a requirement for a Water Resource
20 Plan. This is section 10.05.

THE COMMISSIONER: Yes.

MR O'FLAHERTY: That it has to:
25

... be prepared having regard to the management and use of any water resources which have a significant hydrological connection to the water resources of the Water Resource Plan area.

30 THE COMMISSIONER: Yes.

MR O'FLAHERTY: To my mind, in my submission, that requires connectivity to be part of the Water Resource Plan.

35 THE COMMISSIONER: Yes.

MR O'FLAHERTY: And you will obviously also be familiar with the requirement in section 10.27 which talks about the connection of environmental watering across two Water Resource Plan areas.

40 THE COMMISSIONER: It's the Commonwealth style of drafting that makes me giggle from time to time. It is 10.27 says it:

45 *...applies if there are two Water Resource Plan areas that contain surface water –*

At which point you wonder whether they really are contemplating a Water Resource Plan area that contains no surface water, that is, groundwater only but anyhow. And then:

5 *There is a surface water connection between the two areas.*

In which case:

10 *the plan for each of the areas must provide the co-ordination of environmental watering.*

MR O'FLAHERTY: Yes.

15 THE COMMISSIONER: That's exactly the issue I have in mind as meaning that if you were interested, if you were interested in community consultation and obtaining advice from stakeholders, then that means that you can't restrict it to one area.

MR O'FLAHERTY: Quite.

20 THE COMMISSIONER: And yet they seem to have, is what I mean.

MR O'FLAHERTY: Yes, yes. So it's – it would run the risk of a Water Resource Plan that doesn't comply with those two sections.

25 THE COMMISSIONER: Yes. So that's a legal risk and that in itself is deplorable but I actually had more in mind the merit, that is, that - - -

MR O'FLAHERTY: Obviously there is a logical - - -

30 THE COMMISSIONER: - - - is we, that is, the public, the nation, are being denied the benefit of the people with local knowledge and with skin in the game, actually telling those responsible for devising a WRP, look, you should attend to this, this and this. Or these are problems or where is your science for that, etcetera. That seems to me to be the strength of an SAP.

35 MR LE LIEVRE: I couldn't agree with you more. That's my problem with this process through the SAP, is that we are giving these – given this stuff. We don't know where it has come from. We're told the modelling, you know, is all correct and all honky dory, and you know, as it is confusing. It just doesn't add up.
40 Practically, it does not add up and it gets frustrating, and then they bring in, you know, the corporate culture business on top of it which clouds anything, that can happen, you know, third party impact or whatever. You know, it clouds the whole thing. And I've got no idea where all this stuff is coming from. You know, we put in something no trading of ideals and no class licences at all, it's not even on the
45 paper. It is not even on the horizon. That should be discussed. Whether it's right or wrong is irrelevant at this stage but you should be able to have a discussion on it.

THE COMMISSIONER: So you gentlemen seem to have a fairly firm impression from your dealings that third party impact is seen as what might we call an obstacle rather than a matter that should be dealt with by compensation.

5 MR LE LIEVRE: That would be correct. In my – you know, and I don't understand, I don't know whether you call it climate change, climate variation and everything else but the bucket is no longer there and therefore sustainability of all businesses – it's just not irrigation and everything else has to develop around that.

10 THE COMMISSIONER: Yes.

MR LE LIEVRE: Okay. And I honestly don't believe there should be compensation for that. It's just a sustainability issue. But the rules change. Every time the sustainability is under the hammer the rules seem to change. So therefore
15 we have got a 2012 Barwon-Darling Water Sharing Plan that does what? It basically opens up a big can of worms, but now the sustainability of those businesses is now under question because the water never has been available.

THE COMMISSIONER: Yes. Thanks.
20

MR O'FLAHERTY: In terms of the trying to get that – that connectivity of discussions about connectivity, if I just return to the notion of the combined SAP meeting with the Murray Lower Darling SAP. The action that is listed against that, that discussion, there is a – in action – this is on page 12 of the minutes, there is a
25 reference to the Department of Industry organising a meeting about connectivity with northern basin SAPs as part of the All SAP meeting in June. Now, that meeting was on – in I think early June, 5 and 6 June. We have heard evidence from a member of the Murray Lower Darling SAP, Ms Strachan, about that meeting. And she described a 30 minute workshop which discussed – and I'm paraphrasing her
30 evidence – the need for connectivity. Does that accord with your recollection of that?

MR McCLURE: Yes, I attended that All SAP in Sydney and what Rachel has conveyed is 100 per cent correct. It was a workshop only and it was a generalisation
35 and discussion on connectivity, not the specific.

MR O'FLAHERTY: So was the nature of the discussion at this All SAP meeting was – if I could characterise it as a discussion about why we need connectivity rather than an assumption we need connectivity and how to implement it. It was that first
40 discussion, was it?

MR McCLURE: I think it was – the first – the discussion was a – was an overview of why we needed connectivity.

45 MR O'FLAHERTY: Yes.

MR McCLURE: But there was no definitive action that led a pathway to establishing connectivity.

5 MR O'FLAHERTY: Right. Given that we have established that there wasn't any dissent about the need for connectivity in the Barwon-Darling SAP, did it surprise they were still talking about the – why we need connectivity rather than treating that as read?

10 MR McCLURE: Not at all.

MR O'FLAHERTY: Why didn't it surprise you?

15 MR McCLURE: I went to the first SAP, and the attitude when connectivity was raised from the - - -

MR O'FLAHERTY: This is the first All SAP?

MR McCLURE: First All SAP in Sydney.

20 MR O'FLAHERTY: That was around December of last year, was that?

MR McCLURE: November, December 2017.

25 THE COMMISSIONER: What does all – what's the universe that's contained within the All SAP?

MR McCLURE: Collective SAPs in - - -

30 THE COMMISSIONER: From - - -

MR McCLURE: New South Wales. Yes.

MR O'FLAHERTY: Yes.

35 MR McCLURE: I guess the discussion on connectivity was actually very verbosely - - -

MR O'FLAHERTY: Debated.

40 MR McCLURE: - - - debated or turned – yes, debated. There was little, I guess – what's the word for it – support for the concept of having connectivity. We raised the issue from the floor on numerous occasions, hence the discussion with one of our Lower Murray-Darling and it was – the intent was to have a meeting with the lower Murray-Darling in Sydney, at SAP 2. That didn't eventuate and the result was the
45 generalised workshop.

THE COMMISSIONER: Who expressed opposition to connectivity?

MR McCLURE: Some of the valleys, northern valleys.

THE COMMISSIONER: Why, what did they say?

5 MR McCLURE: They wanted a definition of connectivity.

THE COMMISSIONER: Yes.

MR McCLURE: And - - -

10

THE COMMISSIONER: Assuming they are fluent in English, I don't think that was a very serious - - -

MR McCLURE: How that related to water.

15

THE COMMISSIONER: Really?

MR McCLURE: Mmm.

20 THE COMMISSIONER: Can you name any of the individuals responsible to for these point of views?

MR McCLURE: No, I can't – I can't name any individuals - - -

25 MR O'FLAHERTY: In terms of which valleys they were - - -

MR McCLURE: - - - but it derived out of the Namoi and Gwydir SAP.

THE COMMISSIONER: Thank you.

30

MR O'FLAHERTY: There is a reference in that meeting about a meeting with the Murray Lower Darling before or after. And I think you just indicated that that didn't eventuate.

35 MR McCLURE: No, it didn't happen.

MR O'FLAHERTY: Was there an explanation as to why?

MR McCLURE: No.

40

MR O'FLAHERTY: Is that a convenient time?

THE COMMISSIONER: It is a convenient time, yes. We will adjourn until 11.45 am.

45

MR O'FLAHERTY: Yes. Thank you.

ADJOURNED

[11.29 am]

RESUMED

[11.45 am]

5

THE COMMISSIONER: We will resume.

10 MR O'FLAHERTY: Okay. We are just printing off copies of the SAP 6 minutes for hopefully consideration very, very shortly. .

THE COMMISSIONER: I have a habit of asking counsel permission to speak.

15 MR O'FLAHERTY: Only senior counsel ... grant that.

THE COMMISSIONER: Yes. Would you mind if I asked a few questions at this stage, please, about the statement, for which I'm obliged. On page 8 –

20 MR O'FLAHERTY: This should be the submission behind tab 1.

25 THE COMMISSIONER: Tab 1 in the fold of in front of us. Tab 8. I'm looking at what you have written about term of reference 12. And the top of page 8, having noted the 68 per cent of extractions unmetered in Queensland and 34 per cent of extractions unmetered in New South Wales, you then turn under the heading 450 gigalitre Recovery, now, the 450 gigalitres that you are referring to there, is what is colloquially called the upwater.

MR KORN: Upwater. That's correct.

30 THE COMMISSIONER: In contrast with the so called downwater, just to put it in context, the concepts at play here are – what I will call the benchmark level of take, that which is available in the river. As soon as you say that you know that you must be talking – you have to make clear that you're talking about long term averages because it's such a variable phenomenon.

35

MR KORN: Yes.

40 THE COMMISSIONER: And then the legislated fact in section 21 of the Act, that the use of the water resources has produced what could be summarised as degradation so that steps have to be taken to recover and protect the biodiversity. And so if one moves to that central concept of Sustainable Diversion Limit, where is the S is very important, it's about Sustainable Diversion Limit which is by definition both long term and short term. And then that requires an understanding of the Environmentally Sustainable Level of Take in the Act. Again, the word
45 "sustainable" appears, and, again, it means all the environmental values that the treaties require us to observe and our national choice in Parliament have to be protected from what is called compromise.

I realise there's a political history going on, but for you, gentlemen, in the northern Basin, how do you, if at all, consider this question of the upwater, bearing in mind that that's an adjustment in the opposite direction from what is conveniently called the 605 gigalitre. So the 605 is a reduction in what needs to be recovered for the
5 environment, just to use the language that is being bandied about, which means, of course, that the Sustainable Diversion Limit can be adjusted by being increased.

So the – if we start off what were we taking before we decided we were taking too much, you work out how much is too much. That so-called gap or difference has to
10 be met. It was met by what I might call indiscriminate buybacks historically for a lot of time. That caused a lot of discontent. The buy backs stopped – virtually stopped, and then these other methods of closing the gap used in the water context were devised, and it produced ultimately the adjusted ESLT reduction amount of 2750 gigalitres which then produces a further adjustment, but the 450 is in the opposite
15 direction and for what's called enhanced environmental outcomes. How does that at all impact on the northern Basin? How can the northern Basin, as you understand, it, contribute to the 450?

MR KORN: I'm not sure how many projects were undertaken in the northern Basin,
20 Mr Commissioner. So I can't answer that question definitively.

THE COMMISSIONER: Is it a - - -

MR KORN: It is, as you know – the 450 was supposed to be – well, added to the
25 2750 to give you the 3200, and it was - - -

THE COMMISSIONER: I do know that. And that - - -

MR KORN: But I can't give you - - -
30

THE COMMISSIONER: It is either science or politics. It is unlikely simultaneously to be both.

MR KORN: Yes. I don't know how many projects involving the 450 gain which
35 undertaking in the northern Basin.

THE COMMISSIONER: I think the answer is none, but does it play any role in the SAP discussions?

40 MR McCLURE: No.

THE COMMISSIONER: It's seen very much as a South Australian southern Basin concern.

45 MR McCLURE: Very much a southern Basin issue.

THE COMMISSIONER: In the next paragraph, there is a quote from the Wentworth Group. Please correct me if I am wrong. I understood that that Wentworth Group exercise was directed to the downwater, the 605 gicalitres rather than to the upwater, the 450.

5

MR KORN: That's correct. Yes. That's – and that's probably not - - -

THE COMMISSIONER: That's all right. I just wanted to check I'm not missing some subtle point. Now, on page 7 under Terms of Reference 11.

10

MR KORN: Yes.

THE COMMISSIONER: The quote is from Northern Basin Advisory Committee business paper. Does the Flood Plains Association share the – or have the view that the matters there quoted from that 2016 document are, in fact, shortcomings or defects in the 2012 Water Sharing Plan?

15

MR KORN: I'm certain my two colleagues here would support me in that because I know that Stuart here – it is Terry Korn speaking, the Louth chamber of commerce put forward very similar concerns in relation to that water sharing plan, Mr Commissioner.

20

THE COMMISSIONER: Okay. So if I read that correctly, you are in favour of a ministerial power to introduce total and individual daily extraction limits on licences?

25

MR KORN: Yes.

MR LE LIEVRE: Correct.

30

MR KORN: We thought they should have been enacted by the present minister in New South Wales and they have never been enacted upon.

THE COMMISSIONER: I'm sure I'm not understanding it properly. Licences do have limits, obviously.

35

MR KORN: Yes.

THE COMMISSIONER: Yes. Is the point about the IDEL, is that it is expressed in terms of a day? Is that what - - -

40

MR McCLURE: There are two. There's IDELS individual daily extraction limits and TDELS which are totally daily extraction limits.

MR KORN: For a section of a group of people.

45

THE COMMISSIONER: Yes. And so it's a - - -

MR O'FLAHERTY: A TDEL is a sum of IDELS.

MR McCLURE: Yes. Correct, correct.

5 THE COMMISSIONER: But the D, daily, this is, as it were, a more micromanaging than the licence, which is annual with carry over. Is that the difference, or is that the relation between the two or what? An IDEL imposes a limit on daily extraction - - -

MR McCLURE: Yes.

10

THE COMMISSIONER: - - - but within the same framework of what your licence permits you to - - -

MR O'FLAHERTY: Correct. As a subset of the yearly extraction limit.

15

THE COMMISSIONER: Which is annual but with carry over.

MR McCLURE: That's right.

20 THE COMMISSIONER: But the point about the IDEL as a mode of administration is that it says as well as your obligation not to take more than your licence permits, that is, annual plus any carry over, you are also bound by these daily extraction limits which have been devised for what I'm going to call local social economic and environmental reasons.

25

MR McCLURE: That's correct.

MR KORN: That's correct.

30 THE COMMISSIONER: Now, thank you. In light of that explanation, if I think I understand, how could anyone oppose them being used? Why would they not be a good idea? I realise I'm asking you to give an answer contrary to what you yourself think, but from what you – you've been involved in this community and sector, stakeholder discussion, what is the – what is the opinion or are the opinions that you
35 understand are opposed to the use of IDELS?

MR McCLURE: I - - -

MR KORN: You want to answer that?

40

MR McCLURE: Yes, I could.

MR KORN: I will answer as well after Justin.

45 MR McCLURE: I don't think there is opposition to actually applying IDELS. I think it was possibly an oversight because it was one of the notes to the Barwon-Darling Water Sharing Plan.

MR O'FLAHERTY: Well, they are explicitly referred to in the Water Sharing Plan, but by reference to the fact they haven't been implemented yet.

MR McCLURE: They – so the benefit of not implementing them.

5

THE COMMISSIONER: It is neglect rather than opposition.

MR McCLURE: I believe so.

10 THE COMMISSIONER: What about shepherding, is that the same? Shepherding of environmental water?

MR McCLURE: I think irrigators resent shepherding because it impacts on their access entitlements.

15

THE COMMISSIONER: What do you mean by resent it? You mean they want to be able to use environmental water consumptively?

MR McCLURE: I think there are - - -

20

THE COMMISSIONER: Or they don't like being told not to during the period of the shepherded water going down?

MR McCLURE: I think they resent – and the term resent is that water going past is water they could have used, that they could have – and on occasions, they would have liked access to water to finish crops, and water has been shepherded for an environmental outcome, and they resent that water being used for an environmental outcome.

25

30 THE COMMISSIONER: So that's, as it were, a priority being expressed by them between their – finishing their crops and the environmental watering requirement for which that water was being - - -

MR McCLURE: Which is contrary to the Act and to the Water Act and priority of water use.

35

THE COMMISSIONER: Well, that's right. But what it is it's their expression of a different feeling of priority as from the Act.

40 MR McCLURE: Correct. Correct.

MR KORN: If I can comment there, Mr Commissioner, about IDELs. And Stuart and Justin might correct me here because they are more familiar with the actual operation of the Barwon-Darling Water Sharing Plan than I, but I think IDELs were primarily aimed at low flows and A class licences to reduce the impact on pumping on those. Am I correct? If I'm incorrect then I won't proceed any further.

45

MR McCLURE: No, you are correct. Because A class licences were framed by a size pump, and that size pump had a capacity.

MR KORN: That's what I'm leading to.

5

MR O'FLAHERTY: Which physically limited the daily extraction capabilities which now that that size restriction is no longer there, that's why you need an administrative restriction rather than a physical one.

10 MR McCLURE: That's correct, yes.

MR KORN: That's what I was aiming at. And when you asked if there was any opposition to IDELs, then probably not in a sense that it was written into the Plan, but there were certainly from the performance of the Minister over time opposition to the implementation of IDELs and you have to ask why would he not introduce IDELs under certain circumstances. And my only conclusion to that would be that he was asked not to do so by irrigators at low flows.

20 THE COMMISSIONER: This may sound silly. I hope it's not. Why is it in the interest of irrigators to oppose administrative limits? You will gather from the way I've asked the question, I put to one side the obviously crude proposition that the more water the better. Why I put that to one side is not because I'm Pollyanna, but because plainly that's a short road to hell, because it means that there will be gross overuse, and the first people to suffer will be those who have invested in irrigation agriculture. So I am assuming that no one is so foolish as to say get out of the way I'm just going to take as much water as I can. And to be fair I've not heard anybody say that to me and nobody has written anything like that to me. And in particular the irrigator groups have not said anything even vaguely resembling that. So why wouldn't an IDEL be – if you will forgive the pun – an ideal way of ensuring integrity, fairness, a common assumption of risk and reward by the irrigators in question?

25 MR KORN: I – you would have to ask them that. I can't answer that.

35 THE COMMISSIONER: They sound to me as if they're an administrative device that means in effect, look, you are the farmers making your farming decisions but from our point of view this public resource, the water, you will be allowed to take up to a certain amount, subject to conditions of course, a certain amount per day. And you are going to have to plan your farming accordingly. It sounds good to me if I were an irrigator, knowing that there is a limit, there has to be a limit. Once you accept there has to be a limit – and I think everyone does – and once you accept that it should be policed, and except for those who are criminally minded, everyone seems to agree with that.

40
45 Funnily enough I haven't had anyone tell me that there should be less enforcement of compliance. Because as a matter of social justice, if there's a rule, particularly with a scarce public resource of huge economic import like irrigation water, I think it's a

very important social factor that the expected to be fairness consistency of treatment. Which means everyone observes the rules.

MR KORN: That's correct.

5

THE COMMISSIONER: That's why I was thinking that an IDEL would be a good thing for irrigators.

MR KORN: Well, the Floodplain Association thinks so also. And we would support the introduction of IDELs at appropriate pump levels which should be determined by consultation with the SAP.

10

THE COMMISSIONER: Yes, quite.

MR KORN: I might add, Mr Commissioner, if the IDELs aren't and indeed haven't been implemented by the NSW Government, then the flow-on effect or the lack of flow-on effect impacts on people downstream of irrigation industries where the IDEL is not implemented, pumping can occur and the water for the general community is diminished downstream and stock and domestic supplies suffer. Town water supplies suffer in Tilpa and Louth and Wilcannia. That's the fallout of not introducing IDELs or not implementing IDELs when there is legal - - -

20

THE COMMISSIONER: I gather then that it's the view of you three that IDELs are one of the administrative tools available, worthy of being considered for use in order to enhance the prospect of requisite low flows downstream of the Barwon-Darling.

25

MR KORN: Correct.

MR McCLURE: That's correct. And protection of environmental water.

30

THE COMMISSIONER: It's more than just environmental, it is social as well.

MR McCLURE: Yes.

MR LE LIEVRE: Mr Commissioner, could I also add under the Water Management Act that the tightening of it or whatever you want to call it, you know, a few months ago, there is no IDELS or IDELs there now anyway. They have taken them out completely.

35

THE COMMISSIONER: Is there an explanation for why?

40

MR LE LIEVRE: We asked at the SAP meeting, SAP 6 and they said don't worry about it too much, it will be something in six months' time. And to answer any other question about it is completely and utterly unsatisfactory. It's not even close to being right and there is no suitable explanation that I can even think of for removing those at all.

45

THE COMMISSIONER: So do you understand from what was said at SAP 6, that they still have under favourable consideration including something like IDELS in the WRP?

5 MR LE LIEVRE: My understanding is any IDELS – TDEL or IDELS will have to be some sort of tradable, so there were six options given to us, I think, you know, in that SAP 6, but - - -

10 THE COMMISSIONER: You better explain that to me. What is the significance of them being tradable or not?

MR LE LIEVRE: I might defer that to Justin. He has been explaining that one to me a bit. Or Terry.

15 THE COMMISSIONER: The first thing that an IDEL is essentially local.

MR McCLURE: Yes and no.

20 THE COMMISSIONER: Right.

MR McCLURE: Okay. This is up for discussion and has been directed by the department. The proposal and the options put to us in SAP 6 was the six options include trading IDELS between sections which lets water move upstream. In our case an IDEL traded at Wilcannia, if the wrong rule is applied, would be able to be
25 traded to Mungindi. So we don't – we obviously – the value of water at Mungindi is greatly diminished by the time it gets to Wilcannia.

THE COMMISSIONER: That's what I meant. They have been - - -

30 MR McCLURE: Tradition - - -

THE COMMISSIONER: - - - calibrated on the basis that they describe a particular location.

35 MR McCLURE: That's correct.

THE COMMISSIONER: So that if you trade them without taking account of that, you are introducing another extraneous or artificial element to the notion that the market knows best. The market will in fact have a detrimental effect on the intended
40 allocation of water.

MR McCLURE: That's correct. And it's not a desired outcome obviously for - - -

45 THE COMMISSIONER: Does that mean there should be no trading or simply more complex trading rules?

MR O'FLAHERTY: Or just trading within a smaller area.

MR McCLURE: Within a smaller reach.

THE COMMISSIONER: So within a reach you can trade because they are all the same in terms of their localised calibration.

5

MR McCLURE: In our opinion they should be traded downstream rather than upstream.

THE COMMISSIONER: I see. Thanks

10

MR KORN: Mr Commissioner, if I can just clarify what I found yesterday on the latest report from the NSW Government on their intention with better management of environmental water, which is connected to IDELS.

15 THE COMMISSIONER: Yes.

MR KORN: They say in an update on their water reform package that they intend – amend – they intend to amend the Barwon-Darling Water Sharing Plan to allow for review, definition, and implementation of total daily extraction limits and individual daily extraction limits and to clarify individual annual take limits for water access licences.

20

THE COMMISSIONER: So that is under active consideration, according to that.

25 MR KORN: According to that, yes.

THE COMMISSIONER: Thanks.

MR KORN: Which surprised Stuart when I informed him last night.

30

THE COMMISSIONER: Something to take up with some vigour at the next SAP.

MR LE LIEVRE: It is a possibility. Anyway without sounding too pessimistic about it all but I have heard some of this stuff before and, as I said, we were told at that SAP 6, that don't worry, in six months time we will have something. I don't believe a word they said because the water-sharing plan has been sitting there since 2012 and they still did not implement IDELS or TDELS when they could have. So excuse the pessimism, Mr Commissioner, but when the fat lady sings, I will believe it.

40

THE COMMISSIONER: I don't need to excuse it. I probably share it. Thanks.

MR O'FLAHERTY: Do I take it in terms of the – what the Commissioner asked you about shepherding of environmental water, it requires a combination of individual daily extraction limits and the flow thresholds – the cease to pump, commence to pump thresholds – and it requires both working in conjunction together in order to shepherd environmental water; is that right?

45

MR McCLURE: No. Water can be completely embargoed on either a - - -

MR O'FLAHERTY: Sorry, in terms of there's the – what I might call the more
5 extreme version of there being a no extraction requirement, but in terms of a less
extreme version, it would be possible to either increase the commence to pump
thresholds or decrease the extraction limits in order to protect or shepherd that
environmental water. Is that - - -

MR McCLURE: That is possible to protect environmental water, by lifting the
10 CTPS it has the ability to - - -

THE COMMISSIONER: Mostly shepherding has been done by temporary
embargoes.

15 MR McCLURE: That's correct.

MR O'FLAHERTY: Because there has been no daily extraction limits in order to
implement that, I guess.

20 MR McCLURE: In – a scenario that occur was B and C were embargoed. A class
wasn't embargoed. Under the current rules a particular irrigator chose to access A
class water with the large size pumps, back in 2015, which had a massive effect.

MR O'FLAHERTY: Yes. And that then provides the justification for, like I said,
25 the administrative restriction - - -

MR McCLURE: Correct.

MR O'FLAHERTY: - - - which was previously provided by a physical one.
30

MR KORN: If I can just comment here also, Mr Commissioner, about the most
recent – what they call the connectivity event in the northern Basin, where the water
was environmental water, community water was allowed down the system. That was
only made possible – if you read their reports, which were put out on a monthly basis
35 – by embargoes being – and the irrigators saying we won't pump it. Whereas they
legally under the current water-sharing plan could have pumped that water. And –
but they voluntarily, to their credit, said we won't pump it. Mind you, their social
licence would have decreased further had they pumped it. But - - -

40 THE COMMISSIONER: Well, the 2015 event didn't do a lot for community
support.

MR KORN: So - - -

45 MR McCLURE: Correct.

MR KORN: The embargo on pumping was very effective in providing a great fillip to the communities down along the river when this flow occurred recently and it was
- - -

5 THE COMMISSIONER: I have understood that shepherding involves in effect consumptive users stepping back, and wishing the water well and hoping it goes past as quickly as possible so they can resume pumping.

MR KORN: That's correct.

10

THE COMMISSIONER: And I don't mean that disrespectfully, which sounds entirely – that sounds like a good sort of local cooperative exercise. Is it not?

MR McCLURE: It is a very good initiative if I may, Commissioner. That particular
15 embargo of that – of the environmental flow, it was not embargoed in Queensland and it raises an issue of connectivity out of Queensland.

THE COMMISSIONER: Where did the main pulse come from, was it

20

MR McCLURE: It came out of the Culgoa Balonne system. The second pulse came out of the Moonie system. The water in the Culgoa Balonne and the water in Moonie wasn't embargoed. Hence connectivity and Water Sharing Plans communicating with each other. The Culgoa Balonne water-sharing plan has a trigger of 12 months in that if water hasn't reached a particular point at the junction
25 of the Darling that if it – if there has been a flow within that period, then irrigators will have access upstream. This particular provision was, I think, 20 days short of the 365, hence the irrigators had access to water.

25

THE COMMISSIONER: I see, yes.

30

MR O'FLAHERTY: And that's the, what is described in these minutes, and in some others documents as a first flush rule; is that right?

THE COMMISSIONER: Well it would be addressed by a first flush rule.

35

MR McCLURE: Well, it will be addressed by a first flush rule in the Barwon-Darling. But if the Barwon-Darling sets a rigorous – as part of their Water Resource Plan of 20, 40, 60, 90 days, but it's not receiving water from the upstream tributaries
- - -

40

THE COMMISSIONER: It's a very good example of a discrepancy where there should be connectivity.

MR McCLURE: Connectivity between Water Sharing Plans.

45

THE COMMISSIONER: I understand. Thank you.

MR O'FLAHERTY: I just wanted to - - -

THE COMMISSIONER: Sorry, could I – with that event, did Queensland pumping have a detrimental – have a serious detrimental effect on the purpose for which the
5 water was being shepherded?

MR McCLURE: In my opinion it had a massive effect. The first pulse only just reached Wilcannia, not enough to – I think we had 30, 50 megalitres a day. The second pulse reached Wilcannia, I think with a maximum flow of 400 megalitres.
10 The EC level at Wilcannia with two additional flows, which has the environmental flow, the EC level at Wilcannia is still above 15 parts per million.

THE COMMISSIONER: Really?

MR McCLURE: So hence the figure that is derived under a proposed first flush rule needs to consider water quality as one of the triggers. So the answer to your question is yes, it did have a detrimental effect. If that first pulse was not accessed it would have put a significant flow of water past Wilcannia in the vicinity of 5 to 10,000 megalitres.
20

THE COMMISSIONER: Thanks.

MR LE LIEVRE: Mr Commissioner, can I make a comment, please. In the last week or so there has been some water coming out of the Macquarie Marshes down the lower end of the Bogan which, as you know, flows into the Darling. I'm not going to get into legalities because I don't know and I don't really care about that. Some organisation can take that up. But there has been pumping done on it and basically because there is no connectivity between the Barwon-Darling water system and the Macquarie system – the Macquarie Valley, and this just highlights why. So we needed – here we are, the river has stopped flowing at home. So with that bit of water coming down I'm not sure how much it would have – you know, but it certainly would have livened up the Berg weir pool. So, therefore, the town – okay. And I'm not sure how much further it comes downstream, but that highlights why we need this connectivity. Here we are - - -
35

THE COMMISSIONER: It is not only from Queensland, but it's also from the Macquarie.

MR LE LIEVRE: Yes.
40

MR O'FLAHERTY: This is the water that's gone through the marshes into the Darling River, and then once it is in the Darling River, it's open to be pumped. That's - - -

MR LE LIEVRE: It's in the rower end, right at the low end of the bogan. All right. So there's no rules.
45

MR O'FLAHERTY: Yes. Okay. Now, there's a bit of – there's a discussion in these minutes about the first flush rule. And I understand there were two versions of that rule presented, one at the May – sorry, the April meeting, and one at the more recent meeting in June. Just to sort of – and I think you have provided us with the documents relating to those first flush rules, and I don't intend to go through the minutiae of those reports, just to give a bit of context so that I think I can understand them to the extent I can understand them. So I wonder if we could try and put the Barwon-Darling protection first flush flows at Wilcannia dated April 2018. And I think this is – is this the proposed first flush rule – at least, a report on that first flush rule that was proposed at the April SAP 5?

MR McCLURE: Yes, that's correct.

MR O'FLAHERTY: And just so – just so I – bear with me so I understand. Have I got it right in a sense that if there has been a cease to flow that is close, zero or close to megalitres a day at Wilcannia for a period of time, a defined period of time, all extractions upstream are embargoed or restricted until a particular flow target is reached at Wilcannia? Is that – have I got that right or have I got that completely wrong?

MR McCLURE: You've got it mostly right.

MR O'FLAHERTY: Better than completely wrong, yes.

THE COMMISSIONER: Good in parts.

MR McCLURE: The concept is good, and if we can implement what you suggested in the Barwon-Darling and the tributaries, we have got a great outcome. But this particular scenario protects water in the Barwon-Darling only. Hence, the connectivity debate and - - -

MR O'FLAHERTY: Yes. This is a microcosm of one first flush rule. It would need to be implemented across the tributaries. Yes.

MR McCLURE: That's right. Yes.

THE COMMISSIONER: Where are we up to in terms of – sorry, I will start again. Is the natural place to find all of this in the WRP? Eventually?

MR McCLURE: Eventually, yes, definitely.

MR O'FLAHERTY: It would be envisaged that whatever rules come out of this are rules in the Water Sharing Plan and Water Resource Plan, I imagine.

MR McCLURE: That's right.

MR O'FLAHERTY: Such – the same as daily extraction limits and cease to pump and commence to pump

5 MR McCLURE: Hence the importance of the Murray Darling Basin Authority on signing off on these plans, and hence the importance of all wear sharing plans not being signed off until you have got a collective result of an end of valley.

MR O'FLAHERTY: Yes. So what did I get wrong?

10 MR McCLURE: What did you get wrong?

MR O'FLAHERTY: So I have a completed ongoing understanding.

15 MR McCLURE: This paper is centralised on Bowen-Darling Water Sharing Plan.

MR O'FLAHERTY: Yes.

20 MR McCLURE: What you got wrong was the concept of all values would be in Barwon.

MR O'FLAHERTY: Yes. Okay. All right. I see. So it wouldn't just be the Barwon-Darling Water Sharing Plan that would be affected; it would all the water sharing plans.

25 MR McCLURE: That's what you suggested. Sorry.

MR O'FLAHERTY: Excellent. I got most of it right, I think

30 MR McCLURE: You missed the important bit.

35 MR O'FLAHERTY: The – there's analysis of how – in terms of what the effect is and there is a discussion that – I just wanted to – see if you understand this, there's a discussion about the fact that the 90 megalitres per day flow target produces little improvement and very little change in annual diversions. Whereas the 400 megalitres target occurs more frequently. Why is that it occurs more frequently.

MR McCLURE: Can I refer you to refer back to the long term averaging is used.

40 MR O'FLAHERTY: Sure.

MR McCLURE: And the models are not particularly accurate at low flows. Hence we believe very strongly that the benefit is not mirrored in the document.

45 MR O'FLAHERTY: Yes. Okay. So you take issue with the accuracy of their analysis because as we see, everyone is in furious agreement that these models they are using in this analysis can't model low flows very well.

MR McCLURE: Yes.

THE COMMISSIONER: To be fair, isn't that what they say on page 3? The first paragraph under modelling assumptions cease to flow refers to what the second
5 paragraph calls that limitation. Is that right?

MR McCLURE: That's right.

THE COMMISSIONER: But they have tried to address it. I'm so sorry. I – there
10 are two questions I need to ask. I don't understand table 1. There is a column or two columns headed Duration Continuous Days Before cease to pump.

MR McCLURE: Yes.

THE COMMISSIONER: I understand the first line, Wilcannia flow threshold. And
15 20 and 60. What I don't understand – what are these notations: PBP12C, etcetera. What does that mean?

MR McCLURE: That is referring to different model runs. One of those would be
20 - - -

THE COMMISSIONER: That's a duration, is it?

MR McCLURE: No.
25

THE COMMISSIONER: So the problem is not mine, but the person who devised
the table because under heading duration, they don't have – only durations.

MR McCLURE: Sorry, I think you are correct. With a - - -
30

THE COMMISSIONER: What does the 400 mean in the foot of the left-hand
column?

MR McCLURE: 400 megalitres – a volume – 400 megalitres a day for a set
35 duration.

THE COMMISSIONER: So if I turn over the page - - -

MR O'FLAHERTY: Yes. That's the two flow targets that were - - -
40

MR McCLURE: Correct.

THE COMMISSIONER: So if I turn over the page, the second and third paragraphs
45 record what Mr O'Flaherty has just noted, namely, that a cease to flow trigger of 90 megalitres a day, as what's called no discernible change in long term flows. What is being measured then there? Long term flows are flows which the model simulated by reference to the experience at Wilcannia. Is that right?

MR McCLURE: That's correct.

MR O'FLAHERTY: I think that's the intent of these graphs that follow. Not that I understand - - -

5

THE COMMISSIONER: It may be. I will ask about the graphs in a moment. But so in more informal terms, if the 90 megalitres a day flow trigger at Wilcannia is modelled, the model says getting people to stop pumping at that trigger level won't make a discernible difference to the water that arrives at Wilcannia. Is that what I'm
10 – how I'm meant to read that?

MR McCLURE: We're talking about Wilcannia here, not – aren't we talking about the same tense?

15 THE COMMISSIONER: I think we are talking about Wilcannia, aren't we?

MR McCLURE: That's correct.

THE COMMISSIONER: Then they explain that this is not entirely unexpected as
20 upstream commenced to pump thresholds are considerably higher. And unless I'm mistaking it, what they are saying is that trigger has not brought about the commence to pump or the cease to pump.

MR LE LIEVRE: I think can I - - -
25

THE COMMISSIONER: In which case of course it won't make any difference.

MR LE LIEVRE: I think it is related to SAP 6 where they said between 5 and 1400
30 megs, was it? There is a difference, but below the 1400 megs, it makes no difference.

THE COMMISSIONER: What I'm just really concerned about, is that this is sort of the bleeding obvious, and it has been expressed in a very opaque fashion, but it is saying something that is not very intelligent and, I would have thought, utterly
35 irrelevant. The trigger that doesn't have any effect drum rolls, suspense, won't have any effect.

MR McCLURE: Won't have any effect, yes, correct.

40 THE COMMISSIONER: I'm sorry. I know I'm being grumpy. But I just don't understand how that is a useful thing for a government to publish.

MR McCLURE: I agree.

45 THE COMMISSIONER: Right. What about the next paragraph. Am I the only person who thinks it's again the bleeding obvious that a 400 megalitre a day trigger at Wilcannia will occur more regularly than a 90 megalitre a day trigger?

MR O'FLAHERTY: That was, in fact, my note to that.

THE COMMISSIONER: Isn't that really obvious? That more frequently we will experience 400 litres not being – the note.

5

MR O'FLAHERTY: Met.

THE COMMISSIONER: The note - - -

10 MR McCLURE: Of course.

THE COMMISSIONER: That's what I mean.

MR O'FLAHERTY: It seems – statement saying the sky is blue.

15

THE COMMISSIONER: It onsets at an earlier time, and its removal is more delayed, to which the short answer is, you know, welcome to the real world of rivers that rise and fall. Is it – I mean, again, isn't that – you don't need to be a modeller, do you?

20

MR McCLURE: No. Logical.

THE COMMISSIONER: And then startlingly – this must have come as a real bit of news for you with your experience, as a consequence, it impacts on irrigators more. Who would have believed it?

25

MR McCLURE: No, never.

THE COMMISSIONER: So – look, I'm sorry. I – again, I know I'm being grumpy. It is Friday. But this does seem me to be not the kind of thing that grownups should – like you should be dealing with at SAPs. This is not good enough, surely. You need to be told more about these first flush rules than these – I think really insultingly juvenile. You would know all of that. Now what you need to know is the game worth the candle.

35

MR McCLURE: Correct.

THE COMMISSIONER: There doesn't seem to be anything at all here about that. How do I interpret figure 1?

40

MR McCLURE: The – how do you interpret it?

THE COMMISSIONER: Yes. I'm told there are three plots. Figure 1 tells me there are three plots, I think.

45

MR McCLURE: 3 plots, yes.

THE COMMISSIONER: And do I understand that they are so close to each other that they - - -

MR O'FLAHERTY: There's no difference.

5

THE COMMISSIONER: There is really no difference.

MR McCLURE: That's what they are suggesting.

10 MR O'FLAHERTY: But you suggest that because the - - -

THE COMMISSIONER: That's an artefact of the model. Is that right?

15 MR O'FLAHERTY: We know that these models don't model low flows particularly well, this being a graph from a model that can't do low flows well about low flows. There is really not much utility in that graph at all.

MR McCLURE: You have got to remember that – that a lot of these models are post development, not predevelopment.

20

MR O'FLAHERTY: Yes.

25 MR McCLURE: So that has a marked influence, remembering that the third of the water that used to reach – sorry, two-thirds of water that used to reach Wilcannia no longer reaches Wilcannia. Hence by protecting the low flows, that – and giving – and letting the irrigators access the water at higher flows, while there is a – an impact on irrigation diversion, it is minimal. So to buy an outcome - - -

30 THE COMMISSIONER: Yes.

MR McCLURE: To use your point earlier, Commissioner, it is a logical occurrence that we lift the pumping thresholds and apply a first – flush rule across the river.

35 THE COMMISSIONER: Which is my reference to what I call an immediate past. You look at what's not happened in the past. That's why it's called first flush.

MR McCLURE: Yes, that's right.

40 THE COMMISSIONER: Right. Thanks.

45

MR O'FLAHERTY: The only other aspect of this documented I wanted to take you to is the very page, the conclusion. We touched upon the bleeding obvious, that the 400 megalitre trigger impacting irrigators more. This seems to be a discussion on what that impact is. In the last few sentences in that last paragraph, am I reading it right that the effect is overall there is – the – in the 400 megalitre first flush call there is between four and seven per cent or an additional five to eight years where there is

a reduction in access to flows across the Barwon-Darling Water Sharing Plan area.
Is that – am I reading that right?

MR McCLURE: That's correct.

5

THE COMMISSIONER: Does it tell me anywhere by how much the diversions are reduced in the model?

MR McCLURE: I believe there is a four to seven per cent reduction. That is the figure – I don't that's - - -

10

THE COMMISSIONER: No, that's four to seven per cent of the years.

MR O'FLAHERTY: Years. Yes. I don't think there's anywhere - - -

15

THE COMMISSIONER: That there – that's misspelled – annual diversions are reduced.

MR O'FLAHERTY: There's a few other spelling - - -

20

THE COMMISSIONER: Yes.

MR McCLURE: I think it is less than five per cent of their impact. Because they have the ability to recover.

25

MR O'FLAHERTY: Because there is a carry over as well.

MR McCLURE: That's correct.

MR O'FLAHERTY: Yes. So one year their access may be reduced and they don't use all of their entitlement they can use it in the next year when there is more water in the system.

30

THE COMMISSIONER: My question is really addressed to this: we are talking about a trade-off, aren't we, to get the benefit which is social and environmental, probably economic, but certainly social and environmental, downstream, we will call it Wilcannia, from the first flush rule. The whole point of the first flush rule is to delay or reduce pumping upstream, by reference to the Wilcannia trigger. That's the whole point of it.

35

40

MR McCLURE: That's the point.

THE COMMISSIONER: You don't anxiously ask, will it have the consequence of reducing pumping. The purpose of the rule explicitly is to limit liberty to pump.

45

MR McCLURE: That's correct. But the - - -

THE COMMISSIONER: So then the trade-off inquiry is by how much. Isn't it?

MR O'FLAHERTY: And that's what this document doesn't seem to explain. It says how often - - -

5

THE COMMISSIONER: How often there will be a reduction. But then you ask and how big will that reduction be. If it is 100 per cent I imagine there are very, very serious social and economic questions to be looked at. Particularly if it was a large proportion of the years in question.

10

MR McCLURE: There is an unwillingness by the Department of Industry and Water to go down the path of offset, for example.

THE COMMISSIONER: Why? Isn't that name of the game? You, the irrigators, will need to give up – let's use the figures were you saying – five per cent of the diversions that you would otherwise enjoy, in another four to seven per cent of the years, that is long-term average basis, in order that at Wilcannia they avoid the deleterious effects of extended periods, not being shortened by the first flush.

MR McCLURE: I agree, Commissioner. The directive coming out of the department is that if there is adverse impact on irrigators, that the environmental offset will not – it won't be considered because of the determined third party interest.

THE COMMISSIONER: That sounds to me like a magic pudding, frankly. I mean, you can't – you can't have an increase in one place without a reduction somewhere else.

MR LE LIEVRE: Mr Commissioner, can I throw something else in the ring here, which I don't quite understand that conclusion that figure. It simply is that floodplain harvesting hasn't been taken into account in all this. Right. And I don't mean to open up a can of worms but when you are dealing with this four to seven per cent that's pumping, right and in my opinion there has been a lot of floodplain harvesting that would border on dodgy for whatever – or because it hasn't been measured. So when you put all these figures in where does that lead us?

35

THE COMMISSIONER: No, you made – I don't know whether it will make you reassured or not but I can assure you that we are certainly thinking about trying to study floodplain harvesting. And you are right, it has currently the status of being unmeasured.

40

MR LE LIEVRE: Well, for example we were told in SAP 6 that the original estimation out of the Gwydir Valley is roughly 200 gigs, now they believe it to be 600.

MR KORN: Can I correct that, please, Stuart. So the 200 was originally the total basin-wide estimate in the Plan.

45

THE COMMISSIONER: Of floodplain harvesting. When you say baseline, you mean 94?

5 MR KORN: When the Plan was developed. The Plan was signed off in 2012 leading up to the development.

MR O'FLAHERTY: Baseline I think in 2009.

10 MR KORN: Around that period, probably 2007 to '10. The estimated floodplain harvesting for the formation of the Plan, development and setting of the Plan was estimated at 210 or 220 gigs.

15 THE COMMISSIONER: When you say the current, you mean the Barwon-Darling Water Sharing Plan, 2012 or the Basin Plan?

MR KORN: The Basin-wide Plan was estimated to be 210 or 220 gigs. Somewhere around there.

20 THE COMMISSIONER: Again, to be fair, the Basin Plan was accompanied by statements about the paucity of information, the unreliability of measurement of all sorts of the parameters and values in the northern basin, not least including floodplain harvesting.

25 MR KORN: Most of the floodplain harvesting occurs in the northern Basin. So currently the estimate for floodplain harvesting in the Gwydir alone is over 600 gigs, and - - -

30 THE COMMISSIONER: It's not 200 give or take 400, it is 200 give or take much more than that.

MR KORN: They have got to add on the Namoi and the Macquarie and other systems. So there will be probably be – yes.

35 MR LE LIEVRE: Thousands.

MR KORN: A thousand gigs or more where in the original Basin Plan it was estimated to be only 200.

40 THE COMMISSIONER: Well, now - - -

MR KORN: You have to ask how that's going to impact on the SDL process as well. That's undefined.

45 THE COMMISSIONER: Yes, I agree. Again, the evidence, curiously, doesn't include anybody saying this should not be measured. But it just hasn't been yet.

MR KORN: That's correct.

MR O'FLAHERTY: If I could then fast-forward to SAP 6. We may have now got copies of the minutes. If I could take you, gentlemen, to page 5 of 15 of those minutes. Just covering off on the discussion about the first flush rule. This is a presentation of a new paper, I understand, and the – in terms of the dot points the
5 four dot points in that first set, I take it the reference to 365 indicates that this new first flush rule, rather than 20 or 60 days was in fact 365 days. Is that correct? Had

MR McCLURE: That's correct.

10 MR O'FLAHERTY: Is that a reference because the Culgoa system had a first flush rule of about that time period, 365days?

MR McCLURE: I believe so.

15 MR O'FLAHERTY: And it was an intent to reflect that rule.

MR McCLURE: I think to bring Water Sharing Plans into alignment.

MR O'FLAHERTY: Right.

20

MR McCLURE: Rather than to look at the science of achieving environmental/community flows.

MR O'FLAHERTY: I take it from that, you would be contending that 365 days is
25 far too long for a cease to flow, that it needed to be closer to the 20 or the 20 or 60 days.

MR McCLURE: I concur.

30 MR LE LIEVRE: Could I also throw in the ring to bear in mind that whatever cease to flow first flush rule comes in, whatever period of time, to get to Wilcannia it's about two months. So you are adding another 60, give or take 60 days.

MR O'FLAHERTY: Yes. That exacerbates the problem if you are extending the
35 time period. I have a few questions about these minutes. I just wanted to, if I could bring you back to page 3. This is a – I think an update from the Department of Industry Water from Mr Hyde. I can't resist, the third dot point talks about the South Australian government recently having the presence in the press ongoing Royal Commission inquiry. Can you explain what that discussion was?

40

MR LE LIEVRE: My recollection of that was a – it wasn't a discussion, it was just something that was said and there were several derogatory comments in relation to – in some areas that exactly what I don't remember, counsel, to be honest with you because it goes through one ear and out the other. You get sick of it after a while.

45

MR O'FLAHERTY: Okay. It then goes on to the two dot points down about frustrations of a lack of decisions at the previous SAP. Just stopping there, what decisions do you think that relates to?

5 MR LE LIEVRE: The best of my knowledge – it's Stuart Le Lievre speaking – the best of my knowledge, counsel, we haven't made any decisions.

MR O'FLAHERTY: Yes. And I think, I take your evidence - - -

10 MR LE LIEVRE: So I will rephrase that. We haven't made any – given any advice.

MR O'FLAHERTY: Yes. Yes. And further down, after the dot points, there's a reiteration of the concerns about the distribution of papers and this apparently difficult conversation called a Google Drive. I take it the issues about late delivery
15 and access to the Google Drive hadn't been resolved by this meeting?

MR McCLURE: That's correct.

MR O'FLAHERTY: Over the page - - -
20

MR McCLURE: But then, again, we are only up to tab 6, so – but they - - -

MR O'FLAHERTY: My understanding, just reading these, is that there's only meant to be one more SAP and then a public display of the Water Resource Plan; is that right?
25

MR McCLURE: That's my understanding.

MR O'FLAHERTY: And I think – is the next SAP scheduled for around
30 September?

MR LE LIEVRE: 11 September.

MR O'FLAHERTY: Right.
35

MR LE LIEVRE: And we have also got – what was that other meeting on the same day?

MR O'FLAHERTY: Auspicious day, yes.
40

MR LE LIEVRE: The water meeting policy which they've done again, see, they've put all this stuff on in one hit, and we probably won't be finished the SAP by then.

MR O'FLAHERTY: Right. Okay. Over the page, there's talk about our favourite
45 topic, modelling. The second paragraph from the bottom refers to comments from the SAP about the relevance of historical data. To the best of your recollection, do you remember who made those comments?

MR LE LIEVRE: Sorry, counsel, what page are we on?

MR O'FLAHERTY: Sorry, page 4 of 15.

5 MR McCLURE: That's possibly one of ours, one of mine.

MR O'FLAHERTY: Sure.

MR McCLURE: And - - -

10

MR O'FLAHERTY: And there's - sorry. Go on.

MR McCLURE: - - - the observed, and, I guess, long-term averaging, the increase in diversion over the last 30 years, the concept that current data is more relevant - well - or it's totally relevant, in that, as we know, the water we have now is the water we have, and it's unlikely that we can roll back the - roll back the clock 40 years. We accept that. But it's a - it refers to the irrelevance, in our opinion, of long-term - long-term averaging and the reflective data that is reflected from that.

15

20

MR O'FLAHERTY: And this is the - - -

THE COMMISSIONER: There is a difference in general approach, I think, not - it's not confined to this SAP's work. I think there's an ongoing controversy, isn't there, intellectually, about how one uses long-term averaging in hydrology in systems that are, even without climate change - - -

25

MR O'FLAHERTY: Usually variable.

THE COMMISSIONER: - - - altered because of development, and second, of course, the vexed question of - is some variability due to so-called climate change or not. That is a big area, I think, of controversy.

30

MR McCLURE: Yes, that's an acceptable argument.

35

THE COMMISSIONER: The department seems to - from this minute, seems to meet your point by saying, no, they prefer long-term averaging; is that right?

MR McCLURE: Correct. That is a model that they use. That is the argument.

40

MR O'FLAHERTY: Yes. This is the 140 years idea.

MR McCLURE: Yes, and with - - -

THE COMMISSIONER: Yes, and what I'm saying is that I think that has respectability. One may disagree with it, but it is one of the respectable or respected views. Did they explain how that takes into account climate change?

45

MR McCLURE: I don't believe that it takes into account climate change.

THE COMMISSIONER: Well, it might. We just don't know. That is, if you are doing a long-term average, you include recent periods as well. The problem is if you project on the basis of it, you may be missing out on a change. On the other hand, how do you know that variability is down to change? I mean, there are real chicken and egg problems here logically and scientifically. It's a very difficult area. Have they explained to you how they – how their figuring takes into account climate change at all?

10 MR LE LIEVRE: Mr Commissioner, my recollection of it, that there has been no definition given climate change, climate variation, drought or whichever way you want to look at it. There certainly haven't said okay, look in this 20 years. Things have changed and this is what's left. They keep going back to the long-term averages, and it is not reflective of what we have to deal with now. It is – you have got to look back in history, right, to get a picture okay, but without looking at what's going on now you don't – you can't complete that picture. So they keep referring back to long term average and that's what I was saying to you earlier on, they have got to many compare apples with apples. You can't wander all over the place and it becomes disjointed, and quite frankly, I don't understand it –

THE COMMISSIONER: I don't want to put words in your mouth, but it sounds to me as if you are suggesting well given the country we are talking about and the period we are talking about, maybe medium-term average is more meaningful than long-term average?

MR McCLURE: Well definitely.

THE COMMISSIONER: You have got to look at experience.

30 MR O'FLAHERTY: And have a regard to the more recent context and arguably more increased change.

MR LE LIEVRE: It has to be explored, and it has to be put in front of you in a reasonable and legible sense so that, you know, that somebody like me can understand it.

MR KORN: Mr Commissioner, It is Terry Korn speaking. I have often said that medians should be used rather than long-term average. Long-term average, I think, is a – is a misleading tool for us projecting into the future.

MR O'FLAHERTY: The – there's a discussion in this portion of the minutes about no improvement in low flows, which we've addressed again. But I wanted to – and fast-forward. This was a two-day meeting, I understand.

45 MR LE LIEVRE: Yes, that's correct.

MR O'FLAHERTY: On page 8 of 15, this is under the item Recap of Day 1. The first dot point of the three main points from the previous day starts off as CTP, which I understand is cease to pump. There is no significant benefit for low flows indicated by the modelling and is not being pursued further. Discussion was had from this item was indeed closed off. Now, this is a – this seems to me a conclusion that the modelling shows no benefit for low flows, but in the context that they have already admitted that the modelling can't demonstrate those low flows. That seems to be, respectfully, somewhat academically dishonest.

10 MR McCLURE: Contradictory. Yes, that's correct.

MR KORN: Mr Commissioner, I've – Terry Korn speaking – I've been told by water modellers and planners that at Bourke, model accuracy diminishes significantly below 2,000 megalitres per day - - -

15 MR O'FLAHERTY: Yes.

MR KORN: - - - and that's – that's – when most of the flow - - -

20 MR O'FLAHERTY: Well, isn't the – I have seen the reference. What's the commence to pump? Is it 350? So - - -

MR McCLURE: A class is 350.

25 MR O'FLAHERTY: A class is 350, and B class is 1,800.

MR McCLURE: No, 1,250.

30 MR O'FLAHERTY: No, 1,250, sorry. So - - -

THE COMMISSIONER: So this data item, when it calls itself CTP, that's referring to proposals to change the thresholds, is it?

35 MR McCLURE: Correct.

MR LE LIEVRE: Yes.

THE COMMISSIONER: So this is telling us that the department is not going to consider that for the WRP?

40 MR McCLURE: That's exactly right.

THE COMMISSIONER: They then refer to any environmental watering environment analysis undertaken by the Office of Environment and Heritage would be provided if and when it was made available.

45 MR McCLURE: That's right.

THE COMMISSIONER: Now, correct me if I am wrong, the – there has to be EWR analysis undertaken in order to devise the WRP, isn't doesn't there? You can't have a WRP that doesn't have methods and activities to achieve environmental watering requirements.

5

MR McCLURE: One would hope so. It's a contradiction.

MR O'FLAHERTY: And finally, these minutes – the second to last page, page 14 of 15, there's a reference in that first row under the heading Issue of Discussions and the last paragraph in that first box, reference to the valley-based model, IQQM will be replaced by source. Source has greater technical capabilities than IQQM. All agree to use this software, and it should be noted that the source models can perform better in low flow capabilities. What is your understanding as to the progress of the source model in terms of its implementation?

10
15

MR McCLURE: I – Justin. I asked the question at the all SAP in Sydney.

MR O'FLAHERTY: This is in June.

MR McCLURE: In June, yes, and they informed us that it would be rolled out in the next 12 months.

20

MR O'FLAHERTY: Okay. Did they – is it going to be – did they suggest it would be used in the implementation of the Water Resource Plan?

25

MR McCLURE: Did not suggest it at all.

MR O'FLAHERTY: And so that the IKQM model would still be what I would say the operative model.

30

MR McCLURE: Yes. That's my understanding.

MR O'FLAHERTY: What do they mean then by – what were your words, rolled out?

35

MR McCLURE: Rolled out. Start to implement. Start to run comparisons.

MR O'FLAHERTY: Not to have any real world impact in the sense it is not incorporated in any planning instrument.

40

MR McCLURE: That's my understanding.

MR O'FLAHERTY: That covered off, I think, if I just check my notes, on the issues I wanted to raise for clarification. Was there other aspects or matters you wanted to raise, the three of you, for consideration by the Commissioner?

45

MR KORN: I have some - - -

MR O'FLAHERTY: Certainly.

MR KORN: - - - counsel, if I can go through those, and Stewart and Justin might like to add to them. We have a series of points here, and we have addressed some of
5 them as we've gone through this morning. Thank you very much. One that we haven't addressed is that we have concern about the independence of the Murray Darling Basin Authority in the water planning process. And we feel that it is insufficiently independent, and it has been compromised as demonstrated by the
10 Water Amendment Bill 2018 that was put through as a result of the northern Basin process. We felt it was directed by the Minister to partake in this exercise. So we think there should be a more independent Murray Darling Basin Authority than presently exists. We have talked about protection of environmental flows and low flows. That has been done.

15 The third party aspect, we really want clarification on what that really means. At the present stage we feel that if a third party is mentioned it primarily only applies to irrigators. The agencies, both Commonwealth and State, if they talk about third party as a concept then it is almost invariably about how it's going to impact on the
20 irrigation industry rather than all other sectors of the community involved in the Murray-Darling Basin. And this leads to another point about we feel that there's a cultural protection within the agencies of the irrigation industry because that's how they evolved traditionally as an engineering group to foster and development an irrigation industry which we support. But we believe that there's a disproportionate amount of attention paid to the irrigation industry rather than the broader community
25 as a whole.

And you mentioned social systems and community wellbeing; all of those things are really important and they are dependent upon diversity. And if you put all of your weight or most of your weight behind a particular type of industry then you're
30 opening yourself up to a vulnerable situation rather than diversity. So resilience is built on diversity. And if you don't have diversity then your resilience is diminished and you are opening yourself up to a greater impact of some perturbation in the system. So we believe that equity is paramount in this whole situation and that there should be equal access to this national resource of water that we have. And it's a
35 privilege to use it and that privilege should be recognised, acknowledged and paid proper attention to.

This is my belief, this next point is about the establishment or reestablishment of a large overriding body like we had with the National Water Commission, which was
40 demolished. Or disbanded under the Abbott Government. I believe that body performed a useful function in overseeing how water – the National Water Initiative was implemented and acted upon by the States and the Federal Government. I think a non-political body like that overarching the whole process would be of benefit.

45

THE COMMISSIONER: Would you envisage that has something of the nature of an audit function as well?

MR KORN: Yes, I think that would be good if that it had that sort of role as well, Mr Commissioner. The floodplain harvesting we've addressed. I think that's an elephant in the room in relation to how we manage the northern Basin in particular and what that means for Sustainable Diversion Limits. So that's an area that we put
5 our submission in to the NSW Government, stating our concerns about that. And we think it's an area that needs particular attention, and I hope – I'm sure that it will be raised by other people in this inquiry, Mr Commissioner.

10 THE COMMISSIONER: Yes. It is has been, yes.

MR KORN: And lastly, I think the – the thing is that the agencies involved in this – it's my view that they're trying to do the best with the resources that they've got. And the staff probably feel under threat through this whole process. And I would like to just say that they – they are doing a job under difficult circumstances, that's
15 politically driven to a large degree. And to some extent they're collateral damage in this whole process. So they're the main things that I would like to say. I don't know whether Stuart and – and Justin would like to add anything.

MR LE LIEVRE: It's Stuart here. One – just one more thing. I find it – dealing
20 with this process and again having a very basic understanding of, I know, some of the Acts and that we have got to undertake, I think that I don't understand why government and bureaucracy is not upholding the law as it states. Now, why is environment and everything else put down the end – community water put right down the end of the pecking order where it is the intention of all the Acts that I
25 understand and the plans that it's up the top? It's number 1 on the list.

And I also understand from legal advice that with the international conventions on the top of the list too. And I do not understand why a government cannot follow the law, therefore, there is a simple fix to all this. And for most complex problems, there
30 is always a simply, you know, fix. But somebody is go to have to have – get rid of this corporate culture and have a bit of political will, and we shouldn't be sitting here, you know, discussing all this. And unfortunately we are – and I think I made a – a comment earlier on when we first broke that the NSW Government and couldn't manager water in a dunny. I haven't changed my opinion on it.

35 THE COMMISSIONER: We are going to quote that answer after the last sentence.

MR McCLURE: The Murray Darling Basin Commission objective was to restore the balance. The result we have now after 13, 12 billion dollars' worth of money
40 spent has resulted in less water in the Northern Basin being delivered to Wilcannia. The MDBA needs to take control and to dictate the process to the states. Constitutionally, I'm aware there is an issue, but if we are going to have a beneficial outcome of taxpayers' money, the pathway needs to be identified to achieve an outcome. Because I think we are poles apart at the moment.

45 THE COMMISSIONER: And do you see that pathway as involving a Commonwealth agency?

MR McCLURE: I certainly do.

THE COMMISSIONER: Thank you.

5 MR McCLURE: Thank you for your time.

THE COMMISSIONER: Gentlemen, I'm much obliged and appreciative for your attendance and your efforts both beforehand and today. It means a lot to the work of this Commission that we get assistance such as yours. Thank you very much.

10

MR LE LIEVRE: Thank you Commissioner. Thank you for the opportunity.

MR KORN: Thank you.

15 THE COMMISSIONER: We will adjourn until 2 o'clock.

<THE WITNESSES WITHDREW

20

ADJOURNED [1.00 pm]

RESUMED [1.59 pm]

25

MR O'FLAHERTY: We are at 1.59 but ready to go, Commissioner.

THE COMMISSIONER: Very well.

30

MR O'FLAHERTY: The next witness this afternoon, who has been waiting very patiently, is Mr Mark McKenzie. I call Mr Mark McKenzie.

35 **<MARK DE LACY McKENZIE, SWORN** [1.59 pm]

<EXAMINATION-IN-CHIEF BY MR O'FLAHERTY

40

THE COMMISSIONER: Please sit down, Mr McKenzie.

MR O'FLAHERTY: Mr McKenzie, you are the Chief Executive Officer of the New South Wales Irrigators' Council

45

MR McKENZIE: I am.

MR O'FLAHERTY: And you were appointed, I think, in 2014.

MR McKENZIE: Yes, I was.

5 MR O'FLAHERTY: And I think either immediately prior to that or somewhat prior to that you were also a Director of the National Irrigators' Council.

MR McKENZIE: I was, yes, in the 18 months prior to that.

10 MR O'FLAHERTY: You come from an irrigation background yourself.

MR McKENZIE: Yes, my family farmed at Mathoura in southern New South Wales between Echuca and Deniliquin on what's the Moira Irrigation District. So the Murray irrigators effectively.

15

MR O'FLAHERTY: That's M-a-t-h-o-u-r-a. For the benefit of the transcript.

MR McKENZIE: Yes.

20 MR O'FLAHERTY: The Irrigators' Council, the New South Wales Irrigators' Council has provided a submission dated May 2018. That should be – do you have a copy of that?

MR McKENZIE: Yes, I do.

25

MR O'FLAHERTY: You're listed as the contact for further information regarding the submission at the back. Do I take it that means you're the author?

MR McKENZIE: Yes, I am the author of the document.

30

MR O'FLAHERTY: In terms of the development of the submission, on page 2 – I will get to the – well, sorry, I will withdraw that. The Irrigators' Council itself is described there as representing the interests of over 12,000 water access licence holders of which there are 26 members. Do I take it that most of the membership are in that first category in terms of irrigator groups?

35

MR McKENZIE: Just to explain the 26 members, for clarity, we are actually a confederated model so we are made up of members who are in a number of categories, either commodity groups, New South Wales Farmers Association, valley-based irrigator representative bodies or food and fibre specialist representative bodies and irrigation corporations. And each of those bodies will have their own membership.

40

MR O'FLAHERTY: Yes.

45

MR McKENZIE: Beyond that for people who are not represented within that geographical spread of members we have individual, some thousands of individual

voluntary subscription payers to the Irrigators' Council. So we have a direct relationship with subscribers and an indirect relationship in that sense with the members of our stakeholders in our member organisations

5 MR O'FLAHERTY: It's a case an individual member could either be a direct member of the Council or a member by reference through a - - -

10 MR McKENZIE: Yes. Technically they are considered subscribers because they don't actually have a seat at the table. That's the member organisations who have a seat at the table.

15 MR O'FLAHERTY: Yes. And the – and then going at a national level, the New South Wales Irrigators' Council is itself a member of the National Irrigators' Council.

20 MR McKENZIE: Funnily enough, no. We actually formed the National Irrigators' Council. We are the oldest irrigation specialist group in Australia formed in 1983. We formed the National Irrigators' Council. We're actually members of the National Farmers' Federation and I sit on their water taskforce. And the reason for that is because it's a complete overlap. We share about 85 per cent of the National Irrigators' Council's membership. So it was considered doubling up to be members of NIC. We do work very closely with them though.

25 MR O'FLAHERTY: Yes. That same paragraph it refers to the Irrigators' Council expressing the collective view – and I take it that's a reference to the submission expressing the collective view.

MR McKENZIE: Yes.

30 MR O'FLAHERTY: Being the author, I wonder if you could explain the process of drafting. You write the document, but how does it get written?

35 MR McKENZIE: Yes. It then gets circulated to the membership, and we have effectively a sunset period there depending on deadline. And we receive feedback and incorporate that into the finished document. The finished document in terms of the final draft is then recirculated to membership if there are substantive changes and effectively it is then taken as the direction of the Council that the collective agree. We do always insist, though, that individual member organisations can and sometimes do have an alternate view. But we work on the basis of majority view and as much as possible consensus.

45 MR O'FLAHERTY: Yes. Because I imagine given that the area and – by extension the breadth of the issues that the Council covers, you would get quite a wide disparity of views and divergence of views across the membership?

MR McKENZIE: Depending on what the issue is it's – yes, some members may be disinterested. I feel sorry in the context of I suppose the Commission's work but –

and a lot of the things that we've been doing in the last four or five years that a lot of our focus has obviously been on the Murray-Darling Basin Plan. But we do have coastal members so they are a different animal and have different issues but there are some commonalities too. A lot of talk this morning about Water Sharing Plan and
5 Water Resource Plans. They won't have resource plans but they do have Water Sharing Plans.

MR O'FLAHERTY: I mean absolutely no disrespect to your other members that aren't in the Basin but one Royal Commission is enough. I wanted to touch on one
10 aspect of that divergence of views and it goes to a certain extent partly a discussion we had this morning with the witnesses and a discussion we've had with other witnesses, this issue of connectivity of the Darling River. And if I could take you to page 10 of your submission. In the paragraph immediately above heading K, about the middle of the paragraph there's a statement that you make in that continuous
15 connectivity of the system – and that I understand to be the Barwon-Darling and then down to the Lower Darling – is impossible to achieve because of a high degree of variability and flows. I was wondering if you could unpack that a bit for me.

MR McKENZIE: Okay. Yes. It is, in terms of the major – a major system, it is
20 extraordinarily variable. Four per cent of the time over the record of 140 years or so the river, the Darling River has stopped flow. And prior to the connectivity event that the Commonwealth Environmental Water Holder undertook quite recently there were sections, as I think your witnesses this morning indicated, where there was no flow in the Darling. So it goes to that issue around averages, it is really a very, very
25 variable system. And while the connectivity of the system is obviously a principle that we understand is held by New South Wales Government planners, climatic conditions don't always allow that to happen.

It's a 1,600 kilometre long stretch of river over 14 individual river reaches. It's
30 administratively and from a variability point of view quite difficult but can suffer from quite high losses in the transmission of water, and can have enormous floods at the other end of that scale. So that's really what the reference refers to.

MR O'FLAHERTY: You made the reference to I think the four per cent of years
35 where there is no flow. I got that right haven't I?

MR McKENZIE: Yes.

MR O'FLAHERTY: And that's based on the historical record.
40

MR McKENZIE: It is, yes.

MR O'FLAHERTY: We see reference to the 114 years average. You know, this
45 may sound obtusely – obvious, it then necessarily follows that 96 per cent of years there is a connection. So do I take it that - - -

MR McKENZIE: Well, there's flow.

MR O'FLAHERTY: There's flow to the extent that there is a connection. It may not be much of a connection but there is necessarily in all of the 96 per cent. So when you say that continuous connectivity of the system is impossible, I don't take it to mean that any connectivity of the system is impossible.

5

MR McKENZIE: That's correct.

MR O'FLAHERTY: Just 100 per cent connectivity is impossible.

10 MR McKENZIE: That's correct. And it's clearly an aim to ensure that the system is connected.

MR O'FLAHERTY: Yes, yes. Do I take it then – I think you will have heard the significant discussion about connectivity of the administrative document, the Water Resource Plans, can I take that you would support the need to ensure that connectivity, having regard to the fact that there will be times where there is no flow.

15

MR McKENZIE: We understand that it is a principle in planning within what's now the Department of Industry and Water. Previously the Office of Water and the DPI Water in its various renditions.

20

MR O'FLAHERTY: It seems to change as almost many times as we have Prime Ministers.

MR McKENZIE: Well, three times in four years is a reasonable trot. So it is an overriding principle in planning to ensure that wherever possible the complication for us is that once the Darling River is re-regulated at Menindee, below weir 32 at Menindee in terms of releases into the Lower Darling that's basically a regulated system. So you're re-regulating an unregulated Barwon-Darling into a regulated system below Menindee. Menindee – the Menindee Lakes system is part of the Murray-Darling Basin Agreement, principally between Victoria and New South Wales and South Australia. It forms part of – because it's a re-regulated part of the Murray resource, and it forms part of delivery of water when water is available there, according to climatic conditions, to a delivery of water downstream to South Australia as part of that agreement.

25

30

35

MR O'FLAHERTY: When you say that it is a – the Lower Darling is a regulated system by virtue of the fact there is essentially a headwater reservoir - - -

40

MR McKENZIE: Yes.

MR O'FLAHERTY: - - - it does differ, though, doesn't it, from the headwater reservoirs in other aspects of the system where – such as the Hume and Dartmouth where they are fed by direct run-off into those reservoirs?

45

MR McKENZIE: Absolutely, it depends on upstream flow down the Darling to fill and maintain volume in that system.

MR O'FLAHERTY: That would reinforce the connectivity, would it not?

MR McKENZIE: To the extent that you can achieve it exactly. That's exactly right. More particularly because one of the principal reasons for having the
5 Menindee Lakes system there was to secure Broken Hill's water supply.

THE COMMISSIONER: You mean for the engineering?

MR O'FLAHERTY: I was about to say in the - - -
10

THE COMMISSIONER: In the late 50s and 60s. The Lakes have been there for a long time.

MR McKENZIE: Yes, I'm sorry, the engineered or reengineered - - -
15

THE COMMISSIONER: I don't want you to appear on transcript as - - -

MR McKENZIE: - - - with the regulators and releases and so on.

THE COMMISSIONER: - - - suggesting that somebody went to the trouble of
20 building those lakes.

MR O'FLAHERTY: I think one of the witnesses referred to the man upstairs but I
25 won't go into that.

MR McKENZIE: Yes, yes.

THE COMMISSIONER: Please don't.

MR McKENZIE: Yes, I prefer that that be clear, I think.
30

MR O'FLAHERTY: Indeed. Now, that, in terms of the experience of no flow, with
that four per cent figure being an average over 100 years, it's fair to say, is it not
35 though, that in more recent times since the turn of the century, we have arguably seen
an increase in no flow events? And I say – I will qualify that because that's a very
broad question. Particularly in the Lower Darling

MR McKENZIE: Yes. Particularly in the Lower Darling because obviously
40 historically over the previous period of some decades, from the effectively the
construction of the scheme there were – there was about – you know, there was
really an uninterrupted supply to the Lower Darling for a high period of time, both
for general security of water and high security water for the permanent plantings,
trees and vines there. In the last 16 years there have been three no flow events. So –
45 and block banks are back in the Lower Darling to try to secure supply for those
horticultural enterprises. So yes, in the most recent past there has certainly been a
higher degree of no flow events. That's right.

MR O'FLAHERTY: And I'm probably going to get a mathematician or statistician a heart attack by making this very simplistic point, but that is nearing up on 20 per cent of years being the subject of no flow in that 16 year period. That represents a quite marked increase doesn't it?

5

MR McKENZIE: Yes, it does and - - -

THE COMMISSIONER: Well, you are giving me a heart attack. You can pick any periods you like.

10

MR O'FLAHERTY: And I -

THE COMMISSIONER: I think we all understand that a variable history will have disparate segments within it. I think that's what makes it variable. Whether the recent experience being talked about indicates - I don't think anything will prove what is compendiously called climate change is, as we all know, not going to be known for quite some time.

15

MR McKENZIE: True.

20

THE COMMISSIONER: For present purposes, it does seem, doesn't it, that there has been during the era of most irrigation in the northern Basin, that is the highest degree of development using irrigation, there has also been, coincidentally or otherwise, a greater frequency of no flow events.

25

MR McKENZIE: Well, certainly over the last 15 or 16 years, yes. Yes. Our view is - - -

THE COMMISSIONER: Whether there is causal relation is another question.

30

MR McKENZIE: Yes, we won't know. But I think I can say very definitely, that we've had - really, if you have a look at the last 15 or 16 years we have had a profoundly drier sequence compared to perhaps the 1950s for instance where you had - - -

35

THE COMMISSIONER: Quite.

MR McKENZIE: And the 1970s you had two quite wet sequences there. So effectively over that period, it has probably been a dryer sequence that has been interspersed by significant flows and rainfall events that fed into the Darling - Barwon-Darling, Darling and Menindee and downstream in 11-12 and again in 2016, but in the intervening periods, most northern valleys of New South Wales have had an extremely dry sequence.

40

45 THE COMMISSIONER: Yes, quite. Yes.

MR O'FLAHERTY: So you draw that connection with the different climatic experiences between those timeframes as a potential explanation, but, again, as the Commissioner noted, we don't know for sure.

5 MR McKENZIE: Well, it puts the whole system under pressure. It doesn't matter whether it's irrigators' water or town water, or industrial water or water for Broken Hill. I mean, they were sort of very, very close to running out of water prior to 2016. So I think the reality of it is that it does show it's an extremely vary variable system. Will it eventually be seen as the leading edge of climate change, I think we may need
10 a longer period to know that.

MR O'FLAHERTY: It has been suggested to this Commission that the experience of the no flow events in the Lower Darling, rather than being expressly linked to climatic conditions has been more greatly linked, it has been argued, to the operation
15 of the Lakes. And the points being made with respect to the fact that the Lakes have been full after periods of greater in-flows in the northern Basin. I think 2012, they were quite full and then again in 2016. And it's been pointed out that after – not long after each of those event, the latest one being the predicted no flow later this year, it has been followed by no flow. Do you have a view on that view?

20 MR McKENZIE: Well, I think we are on record probably publicly of being concerned about the MDBA's – the Authority's release of water in I think April 2005. Was it 2005 or 2015? I would need to check.

25 MR O'FLAHERTY: I think it was '15 - - -

MR McKENZIE: It was '15.

30 MR O'FLAHERTY: - - - because that followed the filling after Millennium Drought, around about 2012, '13, I think.

MR McKENZIE: Yes. And you then get into somewhat semantic argument about, well, if the water stayed there, yes, it would have secured Broken Hill's water for a bit longer, but it would have evaporated over that summer. So, I mean, whatever we
35 think about the current management arrangements, the MDBA were quite within their rights to release that water for downstream commitments and needs and to fill South Australia's quota. But I think our view at the time was they probably attracted a lot of criticism, particularly from people in Broken Hill and others along the Darling because all they had to do was look upstream and see how dry the catchment
40 was. The likelihood of a further inflow was pretty unlikely. And we were quite critical of that. But that said, they stick – they stuck to their netting and basically said look, we – we had that water earmarked, they had control of the storage at the time, and they did what they were able to do under the Agreement.

45 MR O'FLAHERTY: So do I take it from that answer is that you – you will accept that they had the legal basis for doing so, but you do have concerns about whether it was the best approach, the best policy approach to management of the Lakes.

MR McKENZIE: Yes, look, I think that in all of this, particularly in management of flows along the length of the Darling, it is a bind that governments and probably the Authority have because almost every flow has to be judged on will it get – will it get to Menindee, will it get to the townships along the way.

5

MR O'FLAHERTY: Yes.

MR McKENZIE: And that makes the management of such a long system quite difficult. But, yes, you know, I think that they attracted a lot of flak for that particular release, and they were saved by the fact that we then have a big inflow in 2016 and as was Broken Hill.

MR O'FLAHERTY: All right. I'm not going to necessarily concentrate too much on the Menindee Lakes itself as a SDL project. We have obviously – we are very well aware of the issues relating to that, but I wanted just to ask you some questions about the SDL adjustment mechanism and its projects more broadly. You refer to that in a couple of paragraphs on page 3 of your submission. I just wanted to ask a bit of clarification on some of the matters you raised there. In the first sentence, you make the point that the council contends that there is no technical dispute over the 20 supply measure projects presented by the Basin states to the MDBA. What do you mean by no technical dispute?

MR McKENZIE: That – there's no technical dispute in terms of their capacity to save water through infrastructure. But that doesn't say that all the constituents that might be impacted by them don't have an alternate view that they don't want to see them built, because they see a downside for themselves in it. And not just at Menindee, but elsewhere.

MR O'FLAHERTY: Okay. On what basis do you – what documentation do – is there anything you rely upon the statement that there's no technical dispute that they will save some water?

MR McKENZIE: It's largely on the independent assessment of – under the ex-Managing Director of the Murray-Darling Basin Commission, the Authority's predecessor organisation, Don Blackmore and his technical group, who effectively assessed the likelihood of those projects saving the 605.

MR O'FLAHERTY: This is a – essentially, the peer review projects of the modelling.

40

MR McKENZIE: Yes, of the model's capacity to make a prediction that in all likelihood 605 out of anticipated 650 could be saved.

MR O'FLAHERTY: You accept there is a fair amount of uncertainty – I think you make the point that they – there's no dispute that they will save water, but there's a fair level of uncertainty as to – would you accept there is a fair level of uncertainty how much water they will necessary save.

45

MR McKENZIE: Yes. I think that's still to be proven. We are really only at pre-feasibility stage. So the MDBA have made a call on that putting it into the black box, the model, as to the likelihood of saving that if all things being even, whatever that means in that circumstance. And, look, I concur with comments made this
5 morning that we just don't have enough transparency around the assumptions in the modelling to be able to again say that. I think that in the case of Menindee, for instance, it's the largest project in the southern connected system, as part of an SDL offset program. It has been slated as being able to save up to 106 gigalitre of water. Our view is it could probably do better than that depending on circumstances. But in
10 all likelihood, the department and New South Wales are indicating it may not be fully commissioned until 2024, right on the knocker of the end of the Plan.

MR O'FLAHERTY: Yes.

15 MR McKENZIE: And if we happen to then try to run it in a sequence like we have at the moment, no water to test it, it could be some period of time before we actually know whether it's going to get close to, better or significantly under that figure. So, yes, I think we are still to see the next stage of feasibility in the final business plans, and hopefully it will give us something that we have got a bit more certainty around.

20 MR O'FLAHERTY: I would have to imagine that level of uncertainty causes – would cause quite a considerable concern for the Council and your members that they – well, there is no ability to assess or review these projects and the assumptions underlying them.

25 MR McKENZIE: We have always been very critical of the Authority and the plan for exactly that reason. We've had no line of sight, no real transparency. We don't know what the assumptions are. The Menindee project, for instance, is based on something called model run 35, which assumes there were 34 that went ahead of it.
30 Why 35 was the magic one, we just simply don't know.

THE COMMISSIONER: Have you had any success in obtaining an explanation from the people with whom you deal at the Authority for their lack of disclosure of such material?
35

MR McKENZIE: No, other than the fact that they – they – I think had a view it was very complicated stuff, and it would be difficult for anybody outside of modellers to fully comprehend.

40 THE COMMISSIONER: I find that condescending.

MR McKENZIE: It was very condescending, yes.

45 THE COMMISSIONER: Because I presume yours is an organisation which if you felt so inclined could retain the services of experts to advise you.

MR McKENZIE: Quite so, yes. That's true.

MR O'FLAHERTY: Some of your members may well be well-versed in water management that you may be able to interpret that as a corporate sense yourself.

5 MR McKENZIE: We have very significant technical capability within the membership. That's quite right.

THE COMMISSIONER: Now, apart from an application, if I may put it this way, with deliberate harshness, you should not worry your pretty little heads about things you might not understand, has there been any other explanation? The next one is a
10 serious suggestion, for example has national security been invoked for secrecy?

MR McKENZIE: No.

THE COMMISSIONER: Has any other explanation apart from "it is complicated" been advanced to explain a failure to provide the community, but particularly
15 organisations like yours with information concerning matters which are of obviously vital significance to your members and the members of your Council?

MR McKENZIE: I will probably be even more pointed about it and say they said it was based on CSIRO analysis and the framework of the CSIRO work that was the
20 foundation stone of it and had been peer reviewed a couple of times, including by the Blackmore Committee and - - -

THE COMMISSIONER: That's a reason for disclosure, isn't it?
25

MR McKENZIE: I would have thought so. Yes. I – look, it's – it was a continual thorn in our side that we just simply couldn't get transparency around the assumptions. We said okay the technical side of the black box we will accept it works to the extent if you feed good information in you get something reasonable to
30 guide the Plan. Our concern has been that we have had no transparency around the fundamental assumptions and, therefore, no capacity to actually give an independent view to this Commission, to a multitude of government inquiries, as to what our specific concerns around the modelling was, other than the fact that we believe they relied too heavily on the modelling. It should only have been one input in
35 establishing the framework for the Plan, and, secondly, there seemed to be an overly intense focus on getting the Murray Mouth open nine years out of 10.

THE COMMISSIONER: This is the end point.

40 MR McKENZIE: The end of system flow. Only to the extent that we are supportive of achieving the environmental outcomes that are outlined in the Plan, but there seems to be – there seem to be at times early in the set-up of the Plan that it was really about achieving very high flows at the South Australian border, almost to the detriment of people who were within the system on the way to getting there.

45 THE COMMISSIONER: Yes.

MR McKENZIE: And, again, I think yes, we felt that we were sort of getting off-handed really, to an extent. We think now that the debate because of the tight deadlines has become a political one chiefly.

5 THE COMMISSIONER: When you say the tight deadlines, you are talking about for the WRPs.

MR McKENZIE: That and the hard wired deadline of 2024, and, obviously, there will be a full reckoning at that time. And then we will know, hopefully, whether in
10 fact the projects will recover the water under the SDLAM programs and whether there's a gap still to be filled.

THE COMMISSIONER: We won't know by 2024, let alone the middle of it, anything about the success of a project that has only just started.
15

MR McKENZIE: Menindee being the major one, yes.

THE COMMISSIONER: So nobody thinks we will then know.

20 MR McKENZIE: Well - - -

THE COMMISSIONER: So you couldn't do a reconciliation.

MR McKENZIE: We argued for a review 10 years after – after the finish of the
25 Plan technically in 2024. There's going to be one in 2026.

THE COMMISSIONER: The Act has reviews built in and I've read with interest the way in your submission you raise the possibility of, what will I call it, timing reviews with a more environmentally plausible length of time. Which you suggest I
30 think in place of five would be 10, I think.

MR McKENZIE: Yes. And really we were quoting the ex-Commonwealth Environmental Water Holder principally, David Papps on that. The immediate ex because his view and our view would be quite rightly we had a degraded system.
35 Clearly, it is going to take more than five years to assess the whole Plan, and there has been quite a lot of public comment and media around the fact that it's been a failure. We don't accept that but we certainly don't accept that trying to pull a full review of the effectiveness of the Plan before we have even finished the full water recovery is very unreasonable. So, yes, 10 years would be better – for a Basin-wide
40 scale I think 10 years is almost the minimum in our view.

THE COMMISSIONER: Well, bearing in mind the express centrality of sustainability in a number of the statute's key provisions, there is intended simultaneously to be a concern for the short term and for the long term. That is, for
45 the living and the not yet born.

MR McKENZIE: Yes.

THE COMMISSIONER: I'm very sympathetic with the idea of assessments of what I'm going to call success, it's a very loose expression, at intervals sensibly long enough to embrace the notion of sustainability. After all a two year experience of water bird breeding becomes historically irrelevant if there's then an absence of them
5 for a period which is longer than the lifespan of the bird in question. But wouldn't it be better if that approach – so, if you like, the environmental audits say every 10 or 15 years or whatever, wouldn't it be better if that was accompanied by a real time continuous public availability of publicly funded monitoring? I can't see any –

10 MR McKENZIE: Yes.

THE COMMISSIONER: - - - harm in it being known, not only to the scientific and specialist community but publicly what is being observed by publicly-funded observers for the public benefit of the environmental outcomes of the Basin Plan.

15

MR McKENZIE: There is some of it available. Certainly the Victorian Environmental Water Holder and the Office of Environment and Heritage in - - -

THE COMMISSIONER: That's true, yes.

20

MR McKENZIE: - - - New South Wales publish, obviously, their monitoring results about environmental improvement around the targets that they are aiming with their watering plans and certainly - - -

25 THE COMMISSIONER: Why wouldn't that be a good idea generally?

MR McKENZIE: Well, I think – our view is that that's exactly what should happen because it seems to us that there's – there's a presumed lack of information. We are either not getting it out there or people are ignoring it, which is disappointing. I
30 think – look, there's a lot of politics obviously around is it working or isn't it working.

THE COMMISSIONER: Why is that political?

35 MR McKENZIE: Just simply because there are advocates who say, well, don't give this money over to efficiency programs, just buy the water. And from our point of view - - -

THE COMMISSIONER: I understand why that's a policy question, the buy-back or whatever, no, I'm sorry, I meant why is it political the question whether there should be information released about environmental progress?

40

MR McKENZIE: I don't think that is a political issue. I think it is more an issue of people have entrenched views around, it doesn't pay us to actually congratulate any progress here because we actually want to frame this in a different way. We want to recover more water and we simply want to take it out of irrigated agriculture, and
45 give it back to the environment and larger lakes.

THE COMMISSIONER: Well, I would suggest in response to that possibility is – I would be interested to know your comment on this – in fact that is a reason why in the public interest we should have full and unrestricted public access so that that kind of unmeritorious political game can't be played.

5

MR McKENZIE: I would absolutely agree. One hiccup in that process is we believe there has been a lot focused on meeting environmental objectives. But where I think there is a lack of investment is in continuous monitoring and evaluation.

10 THE COMMISSIONER: Yes.

MR McKENZIE: So I think we need to deepen the investment in that to ensure we are getting that continuous feed of information.

15 THE COMMISSIONER: It's not obvious to me that it should be all that much more expensive because the monitoring has to be done continuous in any event, surely.

MR McKENZIE: I'm not an expert on exactly what they do, but we have obviously got gauging stations but I don't know that we necessarily can roll that into environmental assessment. But our view is we understand that some state-owned assets have been withdrawn because they now consider that the Commonwealth will do that work and I think that's disappointing.

MR O'FLAHERTY: And, in fact, the – I think in their submission to the Productivity Commission the MDBA pointed out that it's a very big Basin and we have got limited resources in order to implement that. So you would see there being a very good argument to ensuring that there are resources in order to perform what the Commissioner is saying in terms of the monitoring work.

MR McKENZIE: Yes. We seem to have inter-government agreements about agreeing to implement the Plan. But in terms of evaluating the Plan I don't think we have necessarily got the same interactivity between State jurisdictions and the Commonwealth agencies around who is doing what, around monitoring and evaluation.

35

MR O'FLAHERTY: Surely the implementation of the planning would necessarily include the evaluation of that implementation, and the monitoring of that implementation, wouldn't it?

MR McKENZIE: It should do. But I think that's what I'm pointing to, that we think in fact they are a bit light on in the back-end of the process.

THE COMMISSIONER: It wouldn't be unique in that regard. I think a lot of the social sciences have not only themselves observed but also themselves exhibit a willingness to propose and indeed spend a lot of money on so-called reforms without always ensuring that an integral part of the project is stating in advance what would

45

be success and from time to time more or less continuously seeing whether you have met it.

MR McKENZIE: I think - - -

5

THE COMMISSIONER: The unmeasured experiment is a great way of wasting tax payers' money, I would have thought.

MR McKENZIE: Yes. I think in broad scale and against those icon sites that they have identified, they can probably do it. But it becomes a bit more of an expensive exercise.

THE COMMISSIONER: It is, as you say, so much more than that, yes. Well, now, I'm inclined to the view that the statute, the Water Act already requires this. So that it may be as simple to state and as difficult to achieve as ensuring that there's enough money made available by government at whatever level to carry this out. Otherwise it does seem to me that there is huge weight being put on these periodic reviews which will happen in any event, that there will be, as it were, a scramble for data that will be in danger of being a snapshot rather than continuums. You need continuums as well as snapshots for environmental monitoring.

MR McKENZIE: Yes. Yes. Look, I have to say, Commissioner, quite openly that we don't have the full drill down on the scope of all the work that is being done. But our view is that there – they appear a little light on in being able to provide that sort of continuous flow of information.

THE COMMISSIONER: Mr O'Flaherty, would you mind if I went to something that I'm sort of interested in?

MR O'FLAHERTY: By all means, Commissioner.

THE COMMISSIONER: I'm very interested in what you've written about the progress of the WRPs. And that's why I misunderstood your earlier reference to a deadline, because I have in my mind the deadline for the WRPs, a deadline in the sense that if the states haven't delivered something capable of being accredited in time then the Authority gets the job of doing it in effect, after a kind of opportunity to catch up has been given.

MR McKENZIE: That's true.

40

THE COMMISSIONER: I'm correct, aren't I, that what you've written is intended to convey to me fears, genuine fears you have of whether New South Wales will be able to perform?

MR McKENZIE: Yes, we are less – we are less fearful about the process per se than if you asked us a year ago.

45

THE COMMISSIONER: Good.

MR McKENZIE: Where we are in an almost total meltdown in terms of capacity to actually deliver these things. It is a complex bit of work that needs to be done
5 because obviously there is quite a bit of planning involved in that but I think what the situation we are currently in is whether we get all 22 booked by 30 June 2019 and effectively to do that and have them accredited by the MDBA with their 55 trip wires that they have got to accredit a plan, most of those have got to be booked with the MDBA, delivered to the MDBA in final draft form by the end of December this year.
10 Now, that's a time frame that frightening the living daylights out of people who are involved in the SAP process, and what it says to us as the peak industry body is they will be delivered but actually they will probably be rolled over and very much reflect the current Water Sharing Plans, including a whole lot of things that don't allow what we would consider adaptive management and flexibility of how the water is
15 shared between the environment and other users.

THE COMMISSIONER: Adaptive management of course is one of the reasons why something in the nature of continuous and disclosed monitoring is critical.

20 MR McKENZIE: Absolutely.

THE COMMISSIONER: Because it tells you whether something appears in the short term to be working or not. And if it's not is it a matter of keep trying or is it a matter of adopting?
25

MR McKENZIE: Without the data we can't know exactly right.

THE COMMISSIONER: On page 11 of your submission, which was – is the end of May, you say that:
30

The Council remains deeply concerned that the hard deadline for WRP accreditation will ultimately deliver sub-optimal plans.

MR McKENZIE: Yes.
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THE COMMISSIONER: Is that still your position?

MR McKENZIE: Yes, absolutely. In fact our view is probably hardened on that, that it will deliver sub-optimal plans.
40

THE COMMISSIONER: So that such progress as has occurred between the end of May to now the end of August has not allayed your fears at all.

MR McKENZIE: No. The feedback we are getting, we don't as a secretariat get involved in the nuts and bolts of individual valley water resource planning processes because the people on the spot are the people who best can take forward the views of
45

their constituents and particularly around technicalities. I think our general view is that the SAP process has been a tick the box process largely.

5 THE COMMISSIONER: You don't mean that politely, do you? That's not a term of praise. You mean it has been more form than substance?

10 MR McKENZIE: It fills the need for the agency to be able to go hand on heart to the Minister and say, we've gone out and consulted and we've done the best to actually assimilate the information that's required here. But I think the hard – the hard deadline of 30 June 2019 means it's going to be extremely difficult to achieve for a couple of reasons. The evidence this morning, we absolutely concur with. The changes in water administration through the responsible departments over the last four years has meant a lot of technical capacity has been lost and it's having to be rebuilt. The second issue is that there needs to be concurrence on final Water
15 Sharing Plans between the Office of Environment and Heritage and the department, in this case the Department of Industry Water.

20 And there are – there are in the interagency panels that also look at the Water Sharing Plans outside of the SAP process, there are a lot of people jockeying to ensure that either water is not given up, more flexibility is not introduced into the deployment of that water and the water sharing per se, or just simply want more water, in the case of DPI Fisheries, for instance. You know, they're very, very focused on getting more flows for the purpose of particularly native fish stocks. And what that means is, it's extremely difficult for members from industry, community,
25 indigenous communities to have much of an impact in our view against a very hard deadline in a SAP process that is somewhat stacked against industry and others being able to have a meaningful conversation about what that change may mean if we give it a go. Because they have run out of time to plan it.

30 THE COMMISSIONER: Should there be an extension?

MR McKENZIE: We would have much preferred that there be an extension but we believe that the Act is very clear, the Plan is very clear that it's a pretty hard wired
35 deadline.

THE COMMISSIONER: It is indeed. It may be of course that that deadline was always too short.

40 MR McKENZIE: I absolutely concur. In – with 20/20 hind sight it was far too short. I think there was a complete underestimation amongst the Federal Government department at that time, the Department of Environment, and the MDBA itself about the complexity of this task.

45 THE COMMISSIONER: Well, New South Wales has a much larger scale of task than the other jurisdictions.

MR McKENZIE: Yes, it does.

THE COMMISSIONER: So there may be real merit in the notion that applying the same deadline regardless of the scale of the task was never a particularly good idea.

5 MR McKENZIE: I think what we have seen would indicate that it has meant that we have had a compressed process that's not going to, in our view, deliver an outcome that means that the things that don't work in the current Water Sharing Plans of New South Wales can actually be addressed in a way that all parties come out of it, hopefully, with a good outcome.

10 THE COMMISSIONER: Yes. If you see, as I do, WRPs, as it were, the moving parts of the machine which the Basin Plan intends to create, then everything that you've been saying really deserves a lot of emphasis, doesn't it?

15 MR McKENZIE: It does, because Water Sharing Plans really underpin the framework for the sharing of water, obviously as they indicate by their title, but they also underpin – from an irrigator's perspective, they underpin the reliability of water, and, really, their property right and rule in water. So they are – they are hugely important, particularly when you are in an environment where water is now often more valuable than the land that you're actually irrigating. So that makes the point, I think. Where we are disappointed in the process, we were disappointed that in fact
20 the government decided to push ahead with a reform of the administration of water in New South Wales and as a consequence of that reform in the structure of the administration moving from the Office of Water to DPI Water, we effectively lost two years.

25 So under the state legislation – you basically have two 12 month periods for the rollover of that review, sorry, for the conduct of the review. They missed both those deadlines and it meant they had no option under the law but to roll over the existing Water Sharing Plans which is what we've currently now got. So we've learnt a lot
30 about what works or doesn't work in particular valleys, and where there might be opportunities for more flexible interchange between environmental water management and productive water over the last 14 years. But I think there is going to be very limited prospects of getting much of those things dealt with in the current – in the current highly dead lined, if I can put it that way, environment that we find
35 ourselves in.

So as a consequence, I think we've largely – we have not given up on the process, but I think we have largely said we are simply going to have what we have. We will probably see most of what we have currently got rolled over, and that's what OEH
40 and Fisheries and others, the MDBA will agree to augmented by some greater depth in terms of the – augmented by some great depth in the Environmental Watering Plans with the Water Resource Plan and obviously cultural water through the Indigenous community needs. So it's a more complex beast. There is provision for future review, but we are not sure about the mechanism that might be. So as an
45 Irrigators' Council, we are focused now on pushing for that opportunity after those Water Resource Plans are booked with the MDBA.

THE COMMISSIONER: I agree with you it's not straightforward to follow what the Act intends, if I can use that expression, with respect to improving value WRPs, but they have a relatively limited duration. I think maximum three plus one years. There has to be an iteration of them again.

5

MR McKENZIE: Yes, I think it is part of that review process. Yes.

THE COMMISSIONER: It is pretty continuous work to me.

10 MR McKENZIE: Yes. And I suppose to be cynical about it, are we going to be any better placed to actually exact any changes?

15 THE COMMISSIONER: You anticipate me. That is – so it might be better – what I'm raising is it might be better to start as you mean to go on, even if it means a delay in the inception.

MR McKENZIE: Yes.

THE COMMISSIONER: Because it is a pretty much continuous process.

20

MR McKENZIE: We wouldn't disagree with that. We don't believe we are going to get the best outcome for any of the sectors, to be honest.

25 THE COMMISSIONER: Thank you. I want to go to something completely different. A couple of places in your submission, including by reference to the independent panel that was chaired by Amon Moran of Queen's Counsel, you refer to the possibility of putting beyond doubt or putting beyond argument what has been variously described as the triple bottom line. I was wondering do you have in mind the kind of amendment that you would propose?

30

MR McKENZIE: I could probably provide that in terms of what the – the actual – the policy motion read.

35 THE COMMISSIONER: That would be great. I would be really very happy to take – if the – my staff will be in touch about it. Yes. That would be good. Thank you.

MR McKENZIE: Yes.

40 MR O'FLAHERTY: That – I think I've seen discussion in one of the prior submissions I think before your time on the Council, and it has been largely linked with the National Water Initiative and the optimisation principles in that. Is that the source from which the Council gets most of its policy content from?

45 MR McKENZIE: Not necessarily. I mean - - -

MR O'FLAHERTY: On that front, sorry.

MR McKENZIE: Yes, on that front. I think it was more – the more recent iteration of that policy position was that some of our people, particularly in the Murray system, had a view that in their view, demonstrably, there was an over emphasise on environment as against social or economic impacts. Now, in terms of the southern Basin, of course, we know that significant work was done in economic analysis of impacts by the MDBA in the northern Basin, and we now have work that similarly reflects that approach in the south, but not yet completely concluded.

But we do have some high-level impact. We know, for instance, that the dairy industry in northern Victoria looks very much like it's at tipping point in terms of two things: removal of water from the system, and the sharp end of that is in a dry cycle like now you have a shortened temporary water market at higher prices which means if they have to buy additional water for fodder production, that becomes difficult. And we certainly know that in the Murray system west of Deniliquin, there has been a hugely differential impact compared to say east of Deniliquin, which in the same stretch of system is quite remarkable.

THE COMMISSIONER: Can you elaborate more to me?

MR McKENZIE: Yes. In some districts, like Wakool, around Barham, around Mooloomoon, up to 60 per cent of water has been actually recovered. So, Commissioner, I think - - -

THE COMMISSIONER: This is buy-backs.

MR McKENZIE: This was effectively by buy-backs. I mean, I think that there clearly were some large licks of water from particularly large agribusinesses and pastoral companies in the northern Basin that then the Water Minister – Environment Minister Penny Wong took the decision to secure. The impact of that in, at least, two valleys, being the Gwydir and the Macquarie, is that they were technically over-recovered before they even started the recovery proper just because they were very large parcels of water. You have got a similar circumstance in the Lachlan.

And I think in general, the open tender process was very broad-based, and I don't think that either the irrigation corporations, the scheme that had stakeholders that were selling water, and, obviously, they had to allow that to happen under the ACCC rules, and the trading rules, and that's fine, but I think that the horse – there was an attempt to try to quantify the barn door, and the horse had well and truly bolted. So that's why we have got in some valleys quite significant stranded asset issues and Swiss cheese effect, as we call it. So I think the process the way the water was recovered in hindsight, again, probably needed to be more acutely managed, rather than - - -

MR O'FLAHERTY: More strategic.

MR McKENZIE: More strategic, yes. And ensuring that there wasn't – there wasn't over-recovery of water in some of those districts like west of Deniliquin, around Wakool and Moulamein.

5 THE COMMISSIONER: So the over-recovery could be dealt with by, in effect, saying you take back – you recover for the environment that which the environment, according to science, needs, but no more. It could be dealt with by something like that.

10 MR McKENZIE: Yes. But it would require changes to the legislation.

THE COMMISSIONER: I'm not so sure about that, but I understand why you say it. In the Swiss cheese or stranded asset – I much prefer the stranded asset position, I think.

15

MR O'FLAHERTY: I think Swiss cheese is being unfairly maligned.

MR McKENZIE: It could well be.

20 THE COMMISSIONER: Much better product, but - - -

MR O'FLAHERTY: I like cheese.

25 THE COMMISSIONER: The stranded asset approach would yield to another aspect, which is I don't think in the Act at all, namely that buy-backs must be conducted on a basis that takes into account non-vendors in associated schemes.

MR McKENZIE: Yes.

30 THE COMMISSIONER: Now, I think that would require an amendment, maybe only to the Plan. I'm not sure. But it could perhaps just be done as a matter of executive policy because the problem of the stranded asset, particularly with some of the – I will call them older and less capitalised schemes, is I think capable of being quite devastating.

35

MR McKENZIE: Quite so. The one probably in the firing line the most is Murray Irrigation. Murray Irrigation Limited which is geographically the largest of the irrigation schemes.

40 THE COMMISSIONER: Now, it is all gravity feed, I think.

MR McKENZIE: It is all gravity feed, yes, out of a canal system that comes out of Mulwala, and – but they have some parts of their network quite devastated in terms of now still having to supply perhaps one farm on a feeder channel.

45

THE COMMISSIONER: That's right. That's the image that sticks in my mind of the stretch has to go just as far as it always has to go, but the contribution to its upkeep - - -

5 MR O'FLAHERTY: Delivering less water.

THE COMMISSIONER: - - - is most

10 MR McKENZIE: We there are case in point. They were a scheme that was designed to deliver 1,500 gigalitres a year into the network. Currently including conveyance water, they are delivering, in a good year, 800. This year, nothing like it, but in a good year 800.

15 THE COMMISSIONER: Of course, then, you have to do the figures in terms of the economies, how that actually scales up or down. But those are figures which are enough to suggest that there probably is a very large effect.

20 MR McKENZIE: There is a change, or there is work being done at the behest of the Ministerial Council at the moment being led by Victoria, and supported by New South Wales in redefining what they – the neutrality or positive impact of the so-called upwater recovery would be.

THE COMMISSIONER: This is the precondition of the 450.

25 MR McKENZIE: Yes.

THE COMMISSIONER: That there be no net economic or social detriment.

30 MR McKENZIE: Yes. Because under previous governments, effectively, it has been the vendor, the vendor accepts the consideration, and, therefore, it's a neutral – it's a win-win. Our concern increasingly in those areas that have been heavily impacted – and there are a number of them in the north and the south – is that that didn't take into account if you take water out and you take employment out, it's going to impact your local post office, your bank branch, your primary school and so
35 on. So it's – it has the effect of eroding your social fabric and your base economy in those regions. And we think it's short-sighted not to consider that broader impact.

40 THE COMMISSIONER: Yes. I understand the force of that, but why can't the same be said against mechanisation, digitisation, better chemistry, better seed?

MR McKENZIE: I think that what they've tried to do, the MDBA has tried to do is try to split out some of those things that are happening broadly

45 THE COMMISSIONER: It's – it has indeed, and we've read that you know, as a society, why – we tend not to say, of people who want bigger and better tractors and computers and seed and fertiliser, pesticide, we tend not to say to them don't do that, you will – you won't need as many people to work for you.

MR McKENZIE: That's true. I think in some districts we had quite aged infrastructure and obviously the injection of funds on farm to allow infrastructure to be made more efficient has had a positive upside for those enterprises. But they probably have, as a consequence of that, shed some employment by being more efficient.

THE COMMISSIONER: Aren't we committed socially to thinking that's a good thing? I mean, I might not think that is a good thing, but I'm not substituting my personal views for what I understand to be a social position. Haven't we, as a society, decided that – we will tax policy among other things – we will help people to reduce their workforces?

MR McKENZIE: Yes, yes. Pretty much.

THE COMMISSIONER: Some people call it efficiency.

MR McKENZIE: Yes. I – quite so.

THE COMMISSIONER: As you correctly point out, that's all very well, but when it's done in a town with only one butcher, it might mean the difference between that butcher staying or not.

MR McKENZIE: Yes. Yes.

THE COMMISSIONER: Which has a knock-on effect.

MR McKENZIE: And that's what we called unmitigated third party impacts which we are concerned.

THE COMMISSIONER: I was going to ask you about third party. It's used in – throughout the whole of this area in a way that I've decided I don't quite understand.

MR McKENZIE: Right.

THE COMMISSIONER: Does third party just mean anybody else?

MR McKENZIE: Pretty much from our view, yes.

THE COMMISSIONER: All right. Thanks.

MR O'FLAHERTY: Has anybody else other than the individual irrigator who is – whose entitlement is being purchased - - -

MR McKENZIE: Yes, government irrigator, in broad terms we are talking about – we are talking about the broader community and in particular not just other irrigators, but they would be other landholders. And we particularly use that in the context of

for instance, higher flows in some parts of the system are likely to flood some landholder's land and either make that land unavailable to them for a period of time, or in fact can cause damage. So from our point of view we would see that as a third party impact. And our view is that they should be adequately mitigated. Whether it's levy banks or a new bridge for somebody to get to the other side of their property, or whatever it might be.

THE COMMISSIONER: Or compensation.

10 MR McKENZIE: Negotiation of easements.

THE COMMISSIONER: There seems to be a – I don't know where it has come from, exactly but there seems to be an ethos on government sides historically, against the payment of compensation for such events which I find a little disquieting.

15 MR McKENZIE: It's an active issue at the moment within the Council about trying to see if we can actually get a resolution around what Crown liability there would be. There's certainly a – there's a very conservative approach by Water New South Wales as the operator of the river systems in terms of releasing flows that may flood people out and damage private property, and I think there's the same view within the Commonwealth.

20 THE COMMISSIONER: When you say conservative, that's a use of that word that I find a bit odd. I would have thought a - - -

25 MR McKENZIE: Well, they won't – they won't pull the lever if – in other words, they're not - - -

30 MR O'FLAHERTY: Concerning the respect of legal liability, they're not necessarily - - -

THE COMMISSIONER: No. So do - - -

35 MR McKENZIE: Yes. Yes.

THE COMMISSIONER: You mean - - -

MR McKENZIE: That's what I mean. That's what I mean.

40 MR O'FLAHERTY: Yes.

MR McKENZIE: Conservative around not incurring a potential fight over liability. The other thing about the large systems - - -

45 THE COMMISSIONER: Well, that involves them saying the public benefit to be got, supposedly, from the overbank event is outweighed by the public fiscal expense

of compensating somebody whose property is used – is damaged, therefore, we won't do it. Is that what you mean by a conservative approach?

5 MR McKENZIE: Well, I think in their case, they're a corporate entity, obviously, owned by the NSW Government, but they're – my view of conservatism is they're not going to do something that could potentially bring them into likelihood of – of legal action against them for compensation or recovery of losses.

10 MR O'FLAHERTY: So do you say that they may not be having that first analysis the Commissioner pointed to about the public benefit being merely an operator of the system; they've only made an assessment as to the – their fiscal exposure without having done that public benefit analysis the Commissioner referred to?

15 MR McKENZIE: Well, let's – let's say there's a – there's a public benefit of, obviously, having overbank flows - - -

MR O'FLAHERTY: Yes.

20 MR McKENZIE: - - - in terms of when that flow recedes, you grow more pasture for cattle, let's say. That's obviously a benefit, but if it happens to have flooded somebody out with the wheat crop, and they've got shot head through a wheat crop because it also got flooded, it applies differentially. That's – therein lies the problem.

25 THE COMMISSIONER: Quite so. Quite so. We don't have any real doubt, do we, about the principle that if a highway is necessary, some individual, unfortunately, will have to suffer his or her land being taken - - -

30 MR McKENZIE: Yes.

THE COMMISSIONER: - - - for which they are meant to get full value. Now, there can be, unfortunately, disputes that have to go to court about how much that ought to be, but in every Parliament in this country, there have long been established laws that say – and only the Commonwealth has a constitution that requires this, but 35 all the States and Territories, they all have statutes that say, “Well, look, we are going to give you full value if we take your land for a public purpose”. It's elementary social justice of a kind that I think informs a deal of what your Council has submitted to the various reviews that you've shown us.

40 MR McKENZIE: Yes, but - - -

THE COMMISSIONER: But I'm not quite sure – you mentioned the easement model. I'm not quite sure why we wouldn't just straightforwardly say, if there has to be overbank for environmental reasons, then it ought not to be at the expense of the 45 riparian individual owners, and we either buy, in advance, an easement to do so or we consult before we do so. I would have thought all of these things were a good idea.

MR McKENZIE: Yes.

THE COMMISSIONER: And certainly, if something goes wrong, it doesn't have to be negligent, surely. Just if something goes wrong, the individual who suffers
5 shouldn't be left bearing the cost on their own, because it has been for all of our benefits.

MR McKENZIE: Yes. I absolutely agree. I think it's a matter of degree in some landholders views, but, then, I'm thinking particularly about the southern connected
10 system and the Murray in New South Wales - - -

THE COMMISSIONER: Yes. Yes. Yes.

MR McKENZIE: - - - where I think the sensitivity at both Water New South Wales
15 and the Commonwealth Environmental Water Office is around so-called piggybacked flows.

THE COMMISSIONER: Yes.

MR McKENZIE: In other words, in that system, if you are likely to get a significant
20 rainfall event, particularly into the unregulated streams that feed the Murray - - -

THE COMMISSIONER: Yes.

MR McKENZIE: - - - as we saw in 2016, you can get a whopper flood.

THE COMMISSIONER: Yes.

MR McKENZIE: If you had planned to actually piggyback something on that and
30 you pull the lever and let some of that water out, then I think they're - they're very concerned about an increasingly litigious public.

THE COMMISSIONER: Yes, well, look, I'm a litigator, but nonetheless, or
35 perhaps because of that, I don't think any of this should have to go to litigation, if you can help it. A deplorable way of organising one's affairs.

MR McKENZIE: Yes, I agree. Yes.

THE COMMISSIONER: I'm not quite sure why we wouldn't commit ourselves to
40 a system that says, "If you're going to piggyback a flow for environmental reasons", and there is no other reason to do it, "that will not be at the expense of affected people".

MR McKENZIE: Absolutely agree.

45 THE COMMISSIONER: And if that costs money, so be it.

MR McKENZIE: No, I absolutely agree with that.

THE COMMISSIONER: Or to put it another way, if – you really can't have a publicly operated river system as highly regulated as the Murray without paying for
5 all of the aspects of social relations that are affected by it.

MR McKENZIE: Agree.

THE COMMISSIONER: And if that means that the public is made aware,
10 politically, of just how much money is involved in this, that seems to me a good thing, that is, a better informed voting public is a good – is a better outcome.

MR McKENZIE: Well, we would agree with that on the basis that deployment of environmental flows is a community benefit at the end of the day.
15

THE COMMISSIONER: And it is better that we know how much it costs.

MR McKENZIE: True.

THE COMMISSIONER: Thank you. Now, it won't be unfair for me to attribute
20 those views of yours to your Council.

MR McKENZIE: It wouldn't be unfair, no.

THE COMMISSIONER: Thank you.
25

MR O'FLAHERTY: Just to close off on some of the discussion about the social and economic impacts, the third party impacts, there's – is there not a bit of – and we were discussing this to some extent, a bit of tension between the social good that's
30 attributed to the farmer who, on his or her own bat are enhancing that farm's efficiency, which may have that knock-on effect of – I think the Commissioner used the example of the local butcher not being viable enough because the population and the jobs in the region have decreased. That scenario there is attributed a social good, but if that farmer were to do that in order – were to enhance his or her efficiency as a
35 result of efficiency measures funded through – in part and parcel with water recovery, that seems to be a cause for concern in this area. Is there not a tension between – the only difference in those two scenarios in my view is the – the influence of water recovery?

MR McKENZIE: Yes. Yes, I think that the base tension in it is that our role as an organisation is to protect the interests of irrigators, obviously, water access licence holders.
40

MR O'FLAHERTY: Yes.
45

MR McKENZIE: And part of that is tied up with protecting people's property right and water. Now if you are going to protect their property right and water, you can't very much object if they want to sell that water to the government.

5 THE COMMISSIONER: It's usually the essence of a property right.

MR McKENZIE: That's right.

THE COMMISSIONER: Alienability.

10

MR O'FLAHERTY: Indeed. Alienability, yes.

MR McKENZIE: So that's where the real tension is.

15 MR O'FLAHERTY: Yes.

MR McKENZIE: And the tension on the ground is between the beneficiaries and the people who frankly want to do a King Canute, although I think he's misquoted.

20 THE COMMISSIONER: Yes, I think he was far more clever than people would give him credit for.

MR McKENZIE: I think he was trying to demonstrate that he couldn't turn back the tides rather than asking them to go. Anyway, the long and short of it is that there are certainly elements, even within our own membership, that would – that would prefer that this just not happen, because they don't – they don't want to have the prospect of having to deal with government around – around flooding as a consequence of deployment of environmental water.

30 THE COMMISSIONER: It's difficult to see that as an unreasonable view, isn't it?

MR McKENZIE: It's very difficult to see it as an unreasonable view, particularly if you've been there for a fair bit of time, and you're relying upon a fair bit of that – that floodplain country for your income. So I think that's an entirely reasonable view. The broader one, though, is how do we actually best achieve delivering the Plan to meet, as best we can, the environmental targets and minimising that sort of negative impact if it's going to occur along the system, and that's where the real tension is.

40 THE COMMISSIONER: And it may be, of course, that part of the attempt to reconcile these difficult contradictory elements is constantly to remind ourselves and others that a floodplain is called a floodplain - - -

MR McKENZIE: For a good reason.

45

THE COMMISSIONER: - - - because it floods.

MR McKENZIE: It's true.

THE COMMISSIONER: And that there are, as you earlier pointed out in another answer, there are also private benefits to a landowner in some degree and kind of
5 flooding. I don't want to overstate that. But – yes.

MR McKENZIE: I think we do – we do need to acknowledge that, and we are certainly – those people who don't live on floodplains, I think, quite rightly get somewhat frustrated when people who do live on floodplains want it not to flood.
10

THE COMMISSIONER: Yes.

MR McKENZIE: It is inevitably going to flood at some point. Now, the issue around the legalities of all of that is that people say, "Well, that's unfair if the
15 government is actually putting a scheme in place that guarantees that we are going to be flooded as opposed to an act of God".

THE COMMISSIONER: On the other hand, there is a big difference between foolishly located residential subdivisions, which this country and many other
20 countries have suffered, and agricultural and grazing endeavours which traditionally, not just in this country, have occupied floodplains in the knowledge that there is a trade-off. Yes. And I think apart from the case of Albury and the shacks in South Australia, I think everything in terms of floodplain risk is down to agricultural and grazing industry, isn't it?
25

MR McKENZIE: In the broad, I would have thought, yes. Probably some tourism assets.

MR O'FLAHERTY: Yes, I think one of the submissions there talk about – make
30 reference to the caravan park or two.

THE COMMISSIONER: Yes. Very well.

MR McKENZIE: Yes. I saw a lot of – in 2016, I saw a lot of very heavily flooded
35 caravans at Corowa.

THE COMMISSIONER: Yes. Yes, but caravans – or tourist parks, at least, and I don't mean this disrespectfully, are a bit like boatsheds, that is, if your enterprise has, at its selling point, that it's at water's edge - - -
40

MR O'FLAHERTY: Riverfront property.

THE COMMISSIONER: - - - you can hardly be surprised if from time to time you're flooded.
45

MR McKENZIE: Quite.

THE COMMISSIONER: In a river, that is. Very well. Thank you.

MR O'FLAHERTY: In the submission you – we've had regard to, your submission to the Productivity Commission – I don't need to take you to it, but it's in the folder
5 in front of you, you – the Council expresses the view, I think, and correct me if this – I'm wrong. I'm going to massively over-simplify the issue, namely that efficiency programs are preferable over that of straight out buy-backs

MR McKENZIE: Yes.
10

MR O'FLAHERTY: And there's reference to the social economic impacts of buy-backs, and I take that to be a reference to the MDBA social economic analysis that you referred to earlier this afternoon.

MR McKENZIE: Yes. Effectively that's quantifying it. Quite right.
15

MR O'FLAHERTY: Yes. And I think you referred, also, to the impact on the dairy industry in the northern Victoria. Do I take that to be the RMCG report in the Goulburn Murray irrigation district?
20

MR McKENZIE: Yes. Yes, it is. Yes.

MR O'FLAHERTY: You make the point – and correct me if I've got this wrong, but one aspect that you – that the Council is concerned about with respect to buy-backs is that it is essentially a once-off capital investment in the form of direct funds
25 in respect of a capital asset, namely the water access licence, whereas the effect of an efficiency work or measure is that it has an ongoing productive revenue effect. Is that - - -

MR McKENZIE: Yes, that's - - -
30

MR O'FLAHERTY: Have I got that right?

MR McKENZIE: Yes, that's a good way of putting it. Yes.
35

THE COMMISSIONER: Lots of people regard a one-off capital injection as having an ongoing productive potential. That's why we borrow money.

MR McKENZIE: Look, and if you're intent on leaving the industry, as some people
40 have done in selling the water and retiring - - -

THE COMMISSIONER: That's just what you want.

MR McKENZIE: - - - it's fine. I suppose from our point of view, what we're trying
45 to do, in very raw terms, is keep as much water in productive use as we possibly can.

THE COMMISSIONER: Yes. No, I understand.

MR O'FLAHERTY: And just to follow up on the Commissioner's statement, is it because it's water as a property, right, there may well be mortgages associated with that and such that a capital injection may well be able to reduce ongoing debt costs?

5 MR McKENZIE: Yes. And it goes to the heart of why we get very nervous around Water Sharing Plans and Water Resource Plans that might undermine reliability for exactly that reason.

10 THE COMMISSIONER: No. No. I – I happen to think that's looming as a very large element, and it cuts across all the sectors which I think, unfortunately, are depicted as being in conflict with each other, but perhaps ought not to be. So irrigators and non-irrigation communities and people concerned to restore and protect the environmental values, I think all have a huge interest, don't they, in the WRPs - - -

15 MR McKENZIE: Very much.

THE COMMISSIONER: - - - doing - - -

20 MR McKENZIE: And that's fundamentally what they're about, is ensuring that all of the sectors - - -

25 THE COMMISSIONER: Yes. Well, that's where – it's what I might call balance is most obviously reflected in the rules, in relation to volumes and timing and locations, as well as the environmental application. It's not true that irrigators don't have an interest in environmental water or vice versa.

30 MR McKENZIE: Absolutely not. We have an interest in the whole and obviously from our point of view as an organisation we want to protect the rights the irrigators have but not to the detriment of the other parts. That's why it's a Water Sharing Plan.

THE COMMISSIONER: Yes. Perhaps we should have kept the S rather than use the R.

35 MR McKENZIE: I think we will still call them Water Sharing Plans in New South Wales but they will articulate into the Water Resource Plans.

THE COMMISSIONER: They will have the status of being WRPs.

40 MR McKENZIE: There will still need to be a formal Water Sharing Plan under the Water Management Act.

45 MR O'FLAHERTY: Yes. The state legislation. Just touching upon that need for stability and the requirement to be – the need for certainty, just touching back on one of the discussions we had with respect to the SDL adjustment mechanism and then I think we – which I referred to very briefly the so-called reconciliation in 2024, that to my mind demonstrates quite a level of uncertainty – or it produces a level of

uncertainty with respect to the water resources that are subject to those adjustments in the sense that if we are – insofar as we are able to, there may well be a requirement to increase the recovery amount or put it another way, decrease the SDL. I imagine that’s a significant concern.

5

MR McKENZIE: Yes, it is. Yes, it is because what it means is that we don’t get the certainty that we hoped the Plan might deliver to us in that, okay, the recovery has happened, we can get forward – get on with business, if we can put it that way. And having that uncertainty around what the final figures are going to be, pushed out as far as 2024 means that we still have potentially the dagger hanging over the industry, that the government – in the first instance state governments would need to make good around what they have booked as the likely recovery volumes from the SDL projects they have put forward as the proponents unless there are reasonable excuses and we are trying to get the feds to fess up as to how they assess what a reasonable excuse is.

15

MR O’FLAHERTY: I was going to ask you about that. Because you make that – I think that’s in one of your submissions.

20 MR McKENZIE: It’s in the Productivity Commission. Yes, it is.

MR O’FLAHERTY: That’s the reference, I think, to the accounting process, is it, and in chapter six the Plan, with the register of take. Is it or is that something else?

25 MR McKENZIE: It’s broadly around whether the joint Federal/State funded – the partnership program projects have been able to deliver the amount of savings and I understand that the State partnership projects are about 12 gegalitres below their target volumes and that sits both in Victoria and New South Wales at the moment. So there will have to be a discussion about making good. But if for instance we couldn’t get new programs up and agreed by the parties that would actually recover more water towards the reconciliated volume - - -

30

MR O’FLAHERTY: Or at least fix the ones we have got.

35 MR McKENZIE: Fix the ones we’ve got, then our concern is that that would potentially lead to a situation where the government does come back into the market and just buys water outright and further deepens economic and social impact. That’s pretty much it in a nutshell.

40 THE COMMISSIONER: In business cycle terms, 2024 is not all that far off.

MR McKENZIE: Not far at all.

45 MR O’FLAHERTY: Certainly not for farming in terms of the long-term planning. No.

THE COMMISSIONER: Nor for borrowing.

MR McKENZIE: But I figure from the point of view of the people who wept through the Guide to the Plan and then, you know, the Plan proper being launched in 2012, you know, there is significant weariness around when on earth are we going to see the end of this thing.

5

THE COMMISSIONER: That is also not unreasonable.

MR McKENZIE: So when you say 2024 they see it looming a fair bit further off than maybe it is.

10

THE COMMISSIONER: That's right.

MR McKENZIE: Yes.

15 MR O'FLAHERTY: There are statements made in respect to the SDL adjustment mechanism provisions. Now we have talked a bit about the concerns the Council has and by extension its members of the veracity of certain projects promises, if I can put it that way. So in terms of the – you wouldn't necessarily describe that as opposition to those projects but more so concern about those projects.

20

MR McKENZIE: Yes, we would like to see them implemented and we would like to see them probably do better than the booked or the assessed independently assessed volumes that in all likelihood they could, all things being even, they could deliver. Originally the – the volume of course in the Basin Plan in the Act was 650.

25

We were disappointed that it was - - -

MR O'FLAHERTY: It was only 605, yes.

30 MR McKENZIE: - - - only 605. But, in fact, the amount of recovery from on-farm efficiency and off-farm efficiency programs has been more than they anticipated. So there is a bit of a balance there. We are very close to closing the gap. I mean, as we say to people who still want to roll the Plan back, we are 70 per cent of the way there. You can't be serious or to quote Jody Swirepik, the current Commonwealth Environmental Water Holder, when people have said to her on regional visits, what are you going to do when the Plan gets scrapped? What are you going to do with all the water? She said, "well we are the biggest water holder, we will deploy it for the environment for which it was purchased in the first place".

35

40 So I think there is a pretty broad church of views about exactly where all of this may end up. Some of it realistic and a hell of a lot not.

45 MR O'FLAHERTY: You describe –about the contention – well you say, the point that's made – this is on page 3 of the submission, be about media coverage, questioning the 605 gegalitres of water recovery offsets, but the Council contends that the basis of this opposition to the SDL adjustment mechanism provisions is largely political. Now, do I draw a distinction – or do you draw a distinction between opposition to the projects themselves, either individually or wholly, and

opposition to the very notion that we have such a mechanism. Do you draw that distinction or do you see it as a – because I’ve certainly seen – we have heard evidence with respect to opposition to the projects themselves.

5 MR McKENZIE: Yes.

MR O’FLAHERTY: Largely by the Wentworth Group.

10 THE COMMISSIONER: You mean scepticism whether they will generate savings.

MR O’FLAHERTY: Indeed. And concerns about environmental outcomes and that.

15 MR McKENZIE: I think there’s also a deeper one and that is there are some parties that are very deeply opposed to investing in any infrastructure. They actually don’t want investment in bricks and mortar or concrete or steel gates or whatever it might be. In other words, it’s a philosophical position around getting back to as closely as we can to a natural system.

20 THE COMMISSIONER: So you mean to take something that at least impressed me when I visited, so the Chowilla regulator which artificially permits some simulation of flood events that would otherwise require overbank flows, you say there are people who - - -

25 MR McKENZIE: They want the overbank flow.

THE COMMISSIONER: - - - for what I call – I don’t mean this all that rudely, ideological reasons - - - .

30 MR McKENZIE: Yes, that’s right.

THE COMMISSIONER: - - - say you must not do that with a very large pump. You’ve got to arrange to have it done by a flood.

35 MR McKENZIE: Yes. They want – and it’s the reason why the same parties believe there is not sufficient water being recovered to achieve that end. In other words, they want to see big overbank flood events to do it as closely to a natural run of river.

40 THE COMMISSIONER: To be fair, that may be neither political nor ideological, that is, it may take as a premise the achievement of a certain environmental outcome and then scientifically to opine that the only or really the best way of achieving that is by an actual overbank event. Which might not be all that surprising. That is, the best way to achieve overbank effects is overbank flow.

45

MR McKENZIE: Yes. That could be so. But our view would be that they are taking a view that the built infrastructure is intervening in the process and they don't find that a wholesome outcome, if I can put it that way.

5 THE COMMISSIONER: Thank you. I understand. It may be that the horse has bolted anyhow, because the flow – the seasonality flow has been reversed and will have to remain reversed while ever the irrigated plants tend to need more water in summer.

10 MR McKENZIE: Well, I think the other thing about it is there seems to be a - - -

THE COMMISSIONER: Isn't that right? I mean that already means - - -

15 MR McKENZIE: Well, it is. Yes. I mean – and, clearly, one of the things that's – particularly in the Murray system that is going to be an issue is the strategic move of some forms of permanent planting crops, particularly nut crops, to some extent cotton which is an annual, but into southern New South Wales and into north-western Victoria. That's going to mean that at times, like the seasonal conditions we're seeing now, there will be tension between delivering environmental water at
20 the end of winter/early spring, and the requirements of those plantings for an early drink, if I can put it that way, in their growing season.

THE COMMISSIONER: Yes, exactly.

25 MR McKENZIE: So I think going back to the point about people who have particular ideological views, is that there seems to be a denial that we have interfered with the system by building locks and weirs in the first place. So unless we are going to wipe them away, the whole concept of trying to run it as a natural system is a bit – it is not reflecting the reality that we do have structures in place.

30 THE COMMISSIONER: I certainly don't understand my Commission as involving any serious consideration of what I might call recovering the pristine. That's not a possibility. It seems to me the Water Act is against that.

35 MR McKENZIE: It's the – that goes to the heart of the call for 4,000 gigalitres of recovery. Is about trying to generate - - -

THE COMMISSIONER: So you would equate the 4,000 with seeking to recover the pristine, would you?

40 MR McKENZIE: Seeking to generate as close to something that looks like a natural flood overbank in seriously big events as they possibly can do.

45 THE COMMISSIONER: I confess that's now how I understood it but I will reconsider it, thank you.

MR O'FLAHERTY: You would accept though, that there would be legitimate – I think the Commissioner is talking about in terms of the scientific analysis of what is best for a particular area, and using an example of the overbank flows being replicated or not by infrastructure, there would be cause for legitimate scientific
5 debate about how best that is achieved and in fact that would be a welcome element of an open and transparent process, would it not, for such a scientific debate to occur, such that we are achieving the – because I think you point out that when there's a lack of emphasis on ecological – environmental objectives, and do I take it that scientific debate would assist that?

10 MR McKENZIE: Well, there are two things in that. One is some of the proponents of a particular view believe that it is all about flow. It's just is a volume that we require. If you just flood the system then you will meet all your environmental outcomes. And that's demonstrably not correct.

15 MR O'FLAHERTY: To be honest I don't think I have heard it and - - -

THE COMMISSIONER: Certainly a number of – like you I hear that from time to time but we have had no one seriously suggest that to us at all. And I'm not
20 entertaining it seriously.

MR McKENZIE: I'm glad to hear that, Commissioner. I am glad to hear it because certainly earlier in the debate there was certainly a view – our view was it was too
25 focused on a volume not on an outcome. Our view is it should be an outcome driven process.

THE COMMISSIONER: For what it's worth, I read the Water Act that way, yes.

30 MR O'FLAHERTY: When you say earlier in the debate, do you mean around the formation of the Guide in 2010?

MR McKENZIE: And the early – and the early parts of the Plan proper in 2012. There was still a debate around – and it did hinge around – you know, we heard
35 8,000 gegalitres recovery. People seemed to settle on 4,000. When I say people, it was a large part of the environmental lobby and probably the Greens Party amongst them so – and that's still the view they are putting publicly.

THE COMMISSIONER: Alas, we are bound by the terms of the Act and the Plan to translate environmental outcomes to apparently straightforward hydrological
40 volumes. Now, what I was narrating to you was that I think to a man and woman the evidence I have received makes it clear that it's the environmental outcomes that matter. The fact that for administrative facilitation the law requires it to be translated into hydrological figures must not be allowed to substitute the hydrological figure for the environmental outcome. The one is a kind of incomplete proxy for the other but
45 it doesn't substitute for the other. It can't.

MR McKENZIE: Yes, yes. I absolutely concur with that.

THE COMMISSIONER: So to detract the understandable critics of that supposed view, call it the just add water approach, which is an unfortunately flippant approach, I suspect, but anyhow, I am – I think I can tell you that – in my thinking to date on the basis of all the material I've heard and read, that no one serious is wanting just to
5 add water. Or at least I don't take that seriously.

MR McKENZIE: I'm encouraged to hear that.

THE COMMISSIONER: It seems to me the whole notion of a supply measure, for
10 example shows that Parliament and those who made the Basin Plan have proceeded on the basis that there may be more than one way of skinning a cat with an environmental outcome. And that there is an expectation that will be serious exploration of achieving environmental outcomes while permitting a greater use –
15 consumptive use of water. That's sometimes called reducing the amount of water to achieve an environmental outcome.

MR McKENZIE: Which we are working with - - -

THE COMMISSIONER: And that - - -
20

MR McKENZIE: We are working with – we are working with a number of entities to try to get – encourage more private landholder, environmental agency interaction to do exactly that.

THE COMMISSIONER: And all adaptive management will have at the background the idea can this be done better, and a lot of the times can this be done better will mean can it be done with less water. Because it's not – less water doesn't only mean that there can be greater consumptive use. It could also mean that there can be
25 environmental resilience in times of lower flow.
30

MR McKENZIE: Yes, truly. Yes.

THE COMMISSIONER: Thanks.

MR O'FLAHERTY: I wanted to take you to a discussion you have made in – this is
35 on page 2 of your submission. I know we are going backwards, but going more on themes.

THE COMMISSIONER: You better go fairly quickly backwards.
40

MR O'FLAHERTY: Yes. In terms of – you talk about the deficiencies in modelling on page 2.

MR McKENZIE: Yes.
45

MR O'FLAHERTY: Not reflecting real world water deployment scenarios. You would have heard the evidence this morning with respect to the deficiencies of

modelling up in the northern Basin. Is that an example of what you – what’s referred to there in terms of deficiency of modelling or do you have something else in mind?

5 MR McKENZIE: That would be a good example of it. In our view it has been very theoretical, and when it’s actually – in the case of the Northern Review when they reviewed the science they realised some of the assumptions which we still didn’t have live sight but what the MDBA was saying to us was, we had to fine-tune that because we didn’t actually have good enough science to be able to hook the programs that we were looking at specifically in terms of meeting the environmental objectives at target sites in north with. That’s where the 70 per cent reduction came. I haven’t quite got my head around how we can actually meet another of the 28 target outcomes, by having – by having less water. But clearly it must be a drying cycle issue. So – and that’s probably because I had – I simply haven’t read the detail. I’m sure it it’s there somewhere.

15 THE COMMISSIONER: I assume you say that’s with at least the tip of your tongue in your cheek, yes. No, I understand what you mean. There is a puzzling lack of explanation.

20 MR McKENZIE: So is that an example of not being grounded. I think the Northern Basin Review showed that what we were saying – and the evidence this morning – was true, you know, that a lot of that very theoretical approach to the black box, as I call the modelling machine, didn’t really have a good grounding, we think in on the ground outcomes. And I think there is still work to be done there. We hear a lot from our constituents around the need for institutionalising adaptive management. I don’t know how easy that is, but because it is hard wired and it is fairly – you know the deadlines and what has to be delivered in the Plan is pretty – is pretty strict. But we are encouraged by – certainly amongst the environmental agencies the – they are very open to taking an adaptive approach and working with the sectors to ensure that – they are not having a negative impact and trying to meet those objectives they have.

35 So I think on the ground now they are building that ability. If you go back to David Papps who I quoted earlier, the previous CHEW, as we call him – the Commonwealth Environmental Water Holder – he said they had had do think three environmental waterings in the Goulburn system in Victoria until they got it right. Now, they’ve been – they’ve been talking about large-scale deployment of environmental water that really hasn’t been done before. And so they are learning, as they go forward on this, and I think it’s unfair to expect that they are going to be instant experts on any of this. Despite the criticism of whether they are hitting the targets or not.

40 THE COMMISSIONER: I understand.

45 MR O’FLAHERTY: I wanted to briefly touch upon the point you make in respect of cap factors on page 3, where the Council has an opposition to their review. I think this being dated May 2018, I think since then there has been a review announced.

MR McKENZIE: I think we've lost that fight.

MR O'FLAHERTY: Do I take it that the position of the Council was that we only know of – well, we are only – we only consider two valleys, namely the Gwydir and the Macquarie where the cap factors were an issue, so it's unnecessary to review them – review all of them, just review those two valleys.

MR McKENZIE: Yes. The quantum of differential between the MDBA figures and the Office of Water, then DPI Water assessment and was so small in number of those streams it seemed to us to be sort of a nil game sum to do it. But were you talking about differentials of 20 and 27 per cent in those two northern valleys.

MR O'FLAHERTY: Yes. Okay.

MR McKENZIE: They were significantly – and in fact they used, I think that was a circumstance where they were using different software. They may have been using Source instead of the other.

MR O'FLAHERTY: Doesn't that feed into the problem we have, where we are not all that convinced about the accuracy of these models? So I suppose in any review of it based on those models is – has the same flaw. But in – in philosophically if there were inaccuracies in those cap factors as a result of those models it would be incumbent on the governments to review them, wouldn't it?

MR McKENZIE: We accept that. I suppose the issue to us is when is the appropriate time to do it? We were most concerned that here we were, we weren't even at the point of being close to the – to the full recovery of water under the – under the Plan and we are reviewing one of the absolute mainstays of the system, which is the cap factors.

MR O'FLAHERTY: Shifting the goalpost before we've ended the match.

MR McKENZIE: Yes, the cap factors inform the sustainable diversion limits for the valleys and the reaches so - - -

THE COMMISSIONER: Which in turn dictates the WRPs, doesn't it?

MR McKENZIE: Yes, it does. It feeds straight into that but also from our point of view, if that meant that they then said we don't have enough water in this system, then in our view it's somewhat of a betrayal of the people on the ground by saying, well, we thought this was all settled and nominally this is the amount of water we're supposed to have recovered from our valley which the MDBA did. A classic example is on the Barwon-Darling there was a nominal six gigalitre target for recovery and it is currently standing at 32.6. I suppose they are amongst the over-recovered – technically over-recovered, although I suspect quite a lot of that has probably been sleeper licences.

MR O'FLAHERTY: Finally, there were two references I just wanted to clarify in your submission. If I could quickly take you to page 7 under the heading 'Irrigated Crops'. The first indented dot point there is a reference to a statistic about the cotton industry having reduced its water use by 40 per cent.

5

MR McKENZIE: Yes.

MR O'FLAHERTY: I'm going to go out and assume that that may well be something that you've been provided by Cotton Australia.

10

MR McKENZIE: In fact it's – they have given me the document it's based on, which is the CRC for Cottons 2002 to 2012 Assessment of Water Utilisation.

MR O'FLAHERTY: That sounds eerily familiar. I think we may have received that.

15

THE COMMISSIONER: Yes, I think we have got that.

MR McKENZIE: And I think, it might be worth making contact because I believe they are doing a tranche of work to update that.

20

MR O'FLAHERTY: Okay.

THE COMMISSIONER: In any event it seems – I can't remember in relation to rice, although we have got some information but it seems that by world standards that's true for cotton - - -

25

MR McKENZIE: Yes.

THE COMMISSIONER: - - - that is, world leader. It does occur to me, of course, to ask – I don't know whether you know the answer to this – are we talking about water efficiency measuring the use of irrigation water or all water?

30

MR McKENZIE: Yes.

35

THE COMMISSIONER: Or all water?

MR McKENZIE: Yes.

THE COMMISSIONER: Just irrigation water?

40

MR McKENZIE: Yes, irrigation water, yes. Because there are circumstances where in the right season or conditions you will grow – there is rain-fed cotton. And in fact in some areas that are non-traditional in Australia for rice there is also now the northern valleys of northern New South Wales and parts of Queensland potentially have quite an important role in rain-fed rice.

45

THE COMMISSIONER: Yes. Thanks.

MR O'FLAHERTY: And just to pick up on your reference to rice, Commissioner,
the Rice Growers' Association has made a submission and there's a similar reference
5 to the efficiency of rice growing in Australia as well.

THE COMMISSIONER: Water efficiency.

MR O'FLAHERTY: Water efficiency, yes. Finally over the page, on page 9, the
10 first full dot point starting water extraction. The last sentence of that talks about a
recent review of the history of extractions on the Barwon-Darling.

MR McKENZIE: Yes.

15 MR O'FLAHERTY: There has been so many reviews I'm losing count. Do you
know what that is reference to?

MR McKENZIE: Yes. It was part of the MDBA's compliance review. So their
baseline was to look to see whether in fact there had been any breaching of the
20 extraction limits on - - -

MR O'FLAHERTY: That was done in late 2017, was it?

MR McKENZIE: Yes, that's right. Correct.
25

MR O'FLAHERTY: That covers off on the matters I wanted to raise with you.
Was there any other matters you wanted to raise with the Commissioner that you
considered to be important for us to consider and discuss?

30 MR McKENZIE: Not that I can think of pretty – no, we are satisfied that we have
probably covered off on most of those things. My apologies for not having a crack at
the constitutional law angles for you, Commissioner. I will leave it to you and others
to tackle that one.

35 THE COMMISSIONER: Thank you, yes. Listen, I'm really obliged for the care
and attention you have paid in providing all this material. And I've benefitted
greatly from being able to discuss the matters with you. Thank you.

MR McKENZIE: Thank you.
40

<THE WITNESS WITHDREW

[3.41 pm]

45 THE COMMISSIONER: We adjourn until 10 o'clock here on Tuesday next.

MR O'FLAHERTY: That's correct, yes.

MATTER ADJOURNED at 3.41 pm UNTIL TUESDAY, 28 AUGUST 2018

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