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TRANSCRIPT OF PROCEEDINGS

O/N H-927212

MR B. WALKER SC, Royal Commissioner

IN THE MATTER OF THE MURRAY-DARLING BASIN ROYAL COMMISSION

ADELAIDE

10.01 AM, TUESDAY, 28 AUGUST 2018

Continued from 24.8.18

DAY 21

MR S. O'FLAHERTY, Junior Counsel Assisting

THE COMMISSIONER: When you're ready.

MR O'FLAHERTY: Thank you, Commissioner. Before I begin, we acknowledge this land that we meet on today as the traditional land of the Kurna People and respect their spiritual relationship with their country. We also acknowledge the Kurna People as the custodians of the Adelaide region and that their cultural and heritage beliefs are still as important to living Kurna People today. We also pay our respects to the cultural authority of Aboriginal people visiting from other areas of Australia present here today.

Commissioner, for the next three days of hearings we have a number of witnesses to give evidence on a number of different topics. This morning we have Mr William Badger Bates of the Barkandji Nation. We're also calling Ms Jan Beer, a pastoralist on the tributary of the Goulburn River in Victoria, and Ms Juliet Le Feuvre, who is a representative of the Environment or – government organisation. Tomorrow we will be calling representatives of the Macquarie Marshes Association and Ms Karlene Maywald, former Minister for the River Murray in South Australia and the former Commissioner of the National Water Commission. Finally, on Thursday we will be calling representatives of Nature Foundation South Australia, a non-government organisation based in South Australia, and Dr Anne Jensen, a wetland ecologist.

THE COMMISSIONER: Thank you.

MR O'FLAHERTY: Just a bit of housekeeping from last week where I have neglected to tender a number of items. I tender tabs 2 to 3 of the Mal Peters folder. I tender tab 2 – and inclusive of the attachments of the Geoff Wise folder. That's Mr Wise's submission with a number of attachments as part of his work with the Northern Basin Advisory Committee. Mr Wise also referred to a number of documents during his – and handed up a number of documents during his evidence. I tender the brochure that he handed up dated 22 June 2012 entitled Darling River Flow Comparisons at Bourke. Mr Wise also referred to a map where he had done a radial diagram of the distance from Menindee to Bourke and its representation across to the northern Basin. As part of that bundle of documents there was also – he made reference to a draft version of the Northern Basin Review report. That's a draft version that he received as part of his committee membership. The draft page is page 13, but that corresponds roughly to page 9 to 10 in the final.

The last page in that document encloses a list of the towns that were part of the social and economic analysis of the Northern Basin Review and a notation by Mr Wise of some of those which are not dependent on irrigation industry, and there's a commentary about the downstream communities on the Darling River and particularly in reference to the buyer at Tandou on the Menindee Lakes having a particular effect on communities around there. I tender that bundle of documents. The final document Mr Wise referred to last week was a presentation – a PowerPoint presentation that he gave to the Northern Basin Advisory Committee in April 2013. I don't need to take you through that this morning, Commissioner, but, essentially, it

makes the points he was making in evidence about the variability, the impacts on gauging inaccuracies and metering inaccuracies that he was making at that time in his evidence.

5 With respect to the materials that I took Mr Bagley to, I tender tabs 1 through 3 of
the folder relating to him. The – in respect of the materials relating to Mr McKenzie
of New South Wales Irrigators' Council, I tender tabs 1 through 2 of his – of the
folder relating to him. And finally, I neglected to tender materials related to the
10 Australian Floodplain Association the week before, and so I tender tabs 1 through 5
of the folder relating to the Floodplain Association.

THE COMMISSIONER: Thank you.

15 MR O'FLAHERTY: I should try and make that as painless as possible. I call Mr
William Bates.

<WILLIAM BRIAN BATES, AFFIRMED

[10.06 am]

20

<EXAMINATION-IN-CHIEF BY MR O'FLAHERTY

ASSOCIATE: Please state your full name.

25

MR BATES: My real name is William Brian Bates. I was born in Wilcannia, but
since I was about five-years-old they call me Badger, so I just prefer to be called
Badger because there was three William Bates', and you would get mixed up.

30 THE COMMISSIONER: Thank you, Mr Bates.

MR O'FLAHERTY: Mr Bates, you will have to forgive me but the formality that
I'm used to will make me instinctively call you Mr Bates. I know you will prefer to
be called Badger, but that's just – you can take a lawyer out of a courtroom but you
35 can't take the courtroom out of the lawyer, unfortunately. You mentioned you were
born in Wilcannia; you're a member of the Barkandji Nation?

MR BATES: Yes.

40 MR O'FLAHERTY: And in fact, you're an elder in that nation.

MR BATES: Yes, I – yes. Yes, I suppose.

45 MR O'FLAHERTY: Yes. And you're – I think you've been described in various
news reports and articles as an artist and educator. Is that - - -

MR BATES: Yes.

MR O'FLAHERTY: - - - what you would call yourself? And you've currently got an exhibition running in Broken Hill; is that right?

MR BATES: In Broken Hill.

5

MR O'FLAHERTY: Yes.

MR BATES: It's called Barka, the Fragile River. And what we're hoping to do is bring it to Adelaide somewhere around about February.

10

MR O'FLAHERTY: Yes. The Barkandji Nation have a native title determination relating to an area with respect to which native title was claimed. I just wanted to touch upon that first. You should have a folder in front of you. If I can take you to tab 3, and that's the native title determination which is entitled Barkandji Traditional Owners Number 8 v The Attorney-General of New South Wales dated 16 June 2015. And it might be useful if – you will see behind tab 4 there is a map of the area which that determination relates. Now, that determination, what – that – I take it that that area doesn't go as far as Bourke?

15

20 MR BATES: No. No. That's right. I – just with the native title, could I just try and explain that?

MR O'FLAHERTY: Yes, certainly. Yes.

25 MR BATES: Okay. So what happened with the native title when it first was put in, it was put in because of the mineral sands around Pooncarie - - -

MR O'FLAHERTY: Sure.

30 MR BATES: - - - plus down towards Windford and all that. So my people, they get a bit greedy too at times and they try and cut people out.

MR O'FLAHERTY: Right.

35 MR BATES: So that's why the native title don't go right to Bourke. It was because of that. It was greedy black people.

MR O'FLAHERTY: Right.

40 MR BATES: And they're my people. Okay? So – but our traditional lands go right to Bourke.

MR O'FLAHERTY: I was – yes, because your b

45 MR BATES: Okay? Yes.

MR O'FLAHERTY: The nation of Barkandji goes up - - -

MR BATES: Yes, yes.

MR O'FLAHERTY: - - - as far as Bourke. Yes.

5 MR BATES: So if you look at this and you look at the geologists' maps and all that
- - -

MR O'FLAHERTY: Yes.

10 MR BATES: - - - around Broken Hill and that there is minerals.

MR O'FLAHERTY: Yes.

MR BATES: But there's none up around Bourke yet.

15

MR O'FLAHERTY: Right.

MR BATES: And that's why we got cut out. That's my grandmother's country.

20 MR O'FLAHERTY: Yes.

MR BATES: So that's why that's like this.

MR O'FLAHERTY: Yes, because your grandmother was - - -

25

MR BATES: Corrina.

MR O'FLAHERTY: - - - originally from Bourke. Is that right?

30 MR BATES: Yes. Yes.

MR O'FLAHERTY: Yes.

MR BATES: She was born at Toorale.

35

MR O'FLAHERTY: Yes.

MR BATES: Yes.

40 MR O'FLAHERTY: I just wanted to – in respect of the determination under tab 3, I
just wanted to draw attention very briefly to some clauses of that, Commissioner.
Clause 6C refers to:

45 *The right to take and use of the water for personal, domestic and communal
purposes (including cultural purposes).*

I just wanted to make sure that cultural purposes is somewhat quite different from the term “cultural flow” - - -

MR BATES: Yes.

5

MR O’FLAHERTY: In the sense that it’s used in the term “cultural flow” that we’ve heard. That’s defined in clause 13 and in the - - -

10 THE COMMISSIONER: The definition includes the proposition that it involves the use of insubstantial quantities of water.

MR O’FLAHERTY: Indeed, yes. So it certainly doesn’t encompass what is considered as cultural flows in the sense - - -

15 THE COMMISSIONER: No.

MR O’FLAHERTY: - - - of the Echuca Declaration.

THE COMMISSIONER: No.

20

MR O’FLAHERTY: In one – the only other aspect of this I wanted to draw your attention to, Commissioner, is in clause 6J which talks about the right to fish in non-exclusive areas. That may well include for commercial purposes, but I don’t need to take much time on that. Mr Bates, you provided a – I think you’ve entitled it
25 Statement to the Commission.

MR BATES: Yes.

30 MR O’FLAHERTY: And that should be behind tab 1 of the documents – of the folder in front of you.

MR BATES: Yes.

35 MR O’FLAHERTY: That’s your statement. And I’m not sure when it was dated, but that’s a fairly recent statement you provided in the last couple of weeks?

MR BATES: Yes.

40 MR O’FLAHERTY: You’ve also – sorry, I will – sorry. I just wanted to discuss a few matters that – sorry, go on.

MR BATES: This – this statement what’s here, this was done before the last couple of weeks.

45 MR O’FLAHERTY: Yes.

MR BATES: Yes.

MR O'FLAHERTY: Yes - - -

THE COMMISSIONER: Which statement? The one behind tab 1?

5 MR O'FLAHERTY: There's one that's behind tab 1 and that was, I think – I'm not too sure when the Commission received it.

THE COMMISSIONER: It was described as 12 August 2018 in the index.

10 MR O'FLAHERTY: Index. Okay. That must well – might well have been when the Commission received it. Thank you, Commissioner.

THE COMMISSIONER: Mr Bates, you're referring to the statement from the native title holders on 26 July 2017.

15

MR BATES: Yes.

MR O'FLAHERTY: Right. Yes. So there's a statement - - -

20 THE COMMISSIONER: Yes, I've read that, thanks.

MR O'FLAHERTY: - - - by the native title holders behind tab 2. There's also – you've provided staff of the Commission with a further statement, Mr Bates, which is entitled Statement Endorsed by Barkandji Native Title Corporation, 23 August
25 2018.

THE COMMISSIONER: Thank you.

MR O'FLAHERTY: If that could be in front of - - -
30

THE COMMISSIONER: You tender that as well.

MR O'FLAHERTY: That's one I think you provided this morning.

35 MR BATES: Yes.

MR O'FLAHERTY: And that's a more – that's a statement that has been endorsed by the proscribed body corporate. Is that right?

40 MR BATES: Yes, this one here - - -

MR O'FLAHERTY: Yes.

MR BATES: - - - has only been done in the last couple of days, couple of weeks.
45

MR O'FLAHERTY: Yes, 23 August, I think.

MR BATES: Yes.

MR O'FLAHERTY: Yes.

5 MR BATES: And sorry, look, I haven't got a good education, so you've got to bear with me while I go through these papers. Okay?

MR O'FLAHERTY: Pardon?

10 MR BATES: I haven't got a good education. I can't - - -

MR O'FLAHERTY: No, no, no, that's all right.

15 MR BATES: If you just bear – I will try and get it out.

MR O'FLAHERTY: Certainly. If I could just ask a couple of questions about that first document that I took you to behind tab 1. You speak about the importance of the river to your people and you talk about the story of the river. I was wondering if you could expand on that in a sense of also just explaining what the importance of the Menindee Lakes are to the Barkandji Nation.

MR BATES: Yes. Yes, I've just got to find it here.

25 MR O'FLAHERTY: Sorry, the discussion you've got is on the first page - - -

MR BATES: Yes.

MR O'FLAHERTY: - - - under the heading What the Barka Means to Barkandji.

30 MR BATES: Yes.

MR O'FLAHERTY: And there's a description about the Rainbow Serpent - - -

35 MR BATES: Yes.

MR O'FLAHERTY: - - - and the uses and the activities on the river to your – to the Nation.

40 MR BATES: Yes.

MR O'FLAHERTY: What I was hoping is if you could also explain what the activities and the significance of the Menindee Lakes system is as well.

45 MR BATES: Yes, well, the activity in the Menindee as – as – if you had a map of western New South Wales - - -

MR O'FLAHERTY: Yes.

MR BATES: - - - and the state where the Barka starts, the Darling River, the Bourke right down to Wentworth - - -

MR O'FLAHERTY: Yes.

5

MR BATES: Right? If you look out around and Wilcannia, they haven't got a good lake system. Okay? But then you look at Menindee, it's got a big lake system, what they done for supply for a long time ago. There it's important because when I was young there was a lot of work okay, and why we depend on the river.
10 When I was young we worked on stations and all that because they didn't have motorbikes, they just had horses.

MR O'FLAHERTY: Yes.

15 MR BATES: Right? Then they had the Shire, the centre of Darling Shire and the DMR, Department of Main Roads.

MR O'FLAHERTY: Right.

20 MR BATES: Then they lifted all that. Then at Menindee they put all the – fix all the Basin up so they could supply Broken Hill with water.

MR O'FLAHERTY: Yes.

25 MR BATES: But also at Menindee they grew grapes, veggies for everyone and a lot of other stuff. So there was employment at Menindee.

MR O'FLAHERTY: Yes.

30 MR BATES: And – and even today Menindee, there's employment for the people, black and white - - -

MR O'FLAHERTY: Yes.

35 MR BATES: - - - and people from overseas. But at the moment since they muck with the lakes, there is nothing for everyone. And it's in here somewhere. I just – it's there.

MR O'FLAHERTY: Yes.

40

MR BATES: Then also it states in there that one of the parliamentarians said that up – up around Moree, in that area, there would be 200 jobs for the people, right. But they killed the Menindee Lakes and they took a lot of work from us. So it was good for them up there to have work. Why isn't it good for black people and white people
45 around Menindee to have work? And that's where – the answer is there. I'm stumped. I don't know. I haven't got a good education, maybe, but I don't know. But that's – Menindee is important.

MR O'FLAHERTY: Yes.

MR BATES: You know, and all of the Darling River is important to us Barkandji people.

5

MR O'FLAHERTY: Sure.

MR BATES: Not just the Lower Darling. It's the whole of the river. Murray-Darling Basin – sorry, your Honour. Murray-Darling Basin, what they've done, they've said that they've consulted – consulted black people, but it was just a little meeting, like a colour-coded meeting. They would meet with the black people and they would meet with the white people. There was no agenda or anything like that. I'm sorry if I'm going all over the place.

15 MR O'FLAHERTY: No, no, that's all right.

MR BATES: But I - - -

MR O'FLAHERTY: We're going to be touching a lot of topics today, so that's fine.

20

MR BATES: Yes, I am very emotional about the Barka.

MR O'FLAHERTY: Certainly.

MR BATES: Without that, I'm finished. And – and – and it's on not just us black people, it's the white people now. You know, you talk about black people history, we talk about Ngatji, the Rainbow Serpent or whatever you want to call it. What about the white people? Wilcannia was the queen city of the west a long time ago. But gone right up to now for the status and you can't even get a bark canoe up there, and that's the state we're in, all of us.

30

MR O'FLAHERTY: Yes.

MR BATES: I'm sorry about rambling off, but, like I said, I get very emotional about this.

35

MR O'FLAHERTY: No, fair enough. You refer to the environmental significance of the lakes being a particularly important hatchery for fish.

40 MR BATES: Yes.

MR O'FLAHERTY: That, I imagine, is of particular significance for your nation as well?

45 MR BATES: Yes. Just this piece of paper here.

MR O'FLAHERTY: Yes.

MR BATES: What this states in here on the Menindee Lakes, it states – just to give you a bit of whatshername – everybody thinks that Lake Mungo is the only place where the Aboriginal occupation was a long time ago. You know, that’s where all the scientists study, but they didn’t – Menindee Lakes is just more important than
5 there. I can take you and show you mega fauna. I can take you and show you animals that were there a long time ago and that – they turn into stone.

MR O’FLAHERTY: Yes.

10 MR BATES: But it states here that the archaeologists’ evidence – that the Mungo is based on 45,000. At Menindee and Menindee on the Barka, the Darling River, it dates back 23,000 years. Right?

MR O’FLAHERTY: Yes.

15 MR BATES: So that there, the 23,000 years, is proven that the Barka flowed for a long time. And then if you go in that same thing somewhere else at Toorale National Parks, it has got another archaeologist’s evidence from a fireplace. I think it dated
20 back to 40,000.

MR O’FLAHERTY: Yes, I think that’s paragraph 19 there, you talk about - - -

MR BATES: That’s – that’s right, yes.

25 MR O’FLAHERTY: - - - 50,000 in a - - -

MR BATES: That’s fifty – yes, that’s – yes.

MR O’FLAHERTY: Around in Toorale National Park a fireplace there.

30 MR BATES: Yes, that’s right.

MR O’FLAHERTY: Yes.

35 MR BATES: And then with archaeological evidence we’ve got, then the scientific evidence that the Murray-Darling Basin put out, those people are not listening to those scientists, and you see in here that the Menindee Lakes is a hatchery for fish, right, but – and people pat themselves on the back for a hatchery for fish. To me, that’s bad management. A fish – a native fish is like a human. Anyone who know
40 the river system, they will move and the fish know when the water is going down. What about the Water Department, other little creatures there, the mussel, they can’t move.

45 MR O’FLAHERTY: Yes, you point out that what you’ve observed over recent times is a real serious decline in the quality - - -

MR BATES: Yes.

MR O'FLAHERTY: - - - and number of the mussels.

MR BATES: Of the mussels. That's right.

5 MR O'FLAHERTY: Yes.

MR BATES: When I – when I was a kid, we would get mussel about that big and all the fish - - -

10 MR O'FLAHERTY: That's your thumbnail.

MR BATES: - - - just eat them, like my fingernail, because they're going to grow.

MR O'FLAHERTY: Yes.

15

MR BATES: And these river mussel, they will grow to about that big. That's – yes.

MR O'FLAHERTY: So sort of a fist size?

20 MR BATES: Yes.

MR O'FLAHERTY: Yes.

25 MR BATES: About a fist size, like that there. Right? Big. But then – and – and we do need the Meninee Lakes because in the lakes they get another mussel. It's a round mussel about that big. So for this mussel to grow from my thumb size - - -

MR O'FLAHERTY: Yes.

30 MR BATES: - - - to that big, it has got to have a lot of water.

MR O'FLAHERTY: Yes.

35 MR BATES: Okay? But what's happening now, there is no cycle for any animal to depend on this. Right? And – and – and, you – you know, we think, “Yeah, we're doing good, we're breeding the fish.” To me, like I was saying again, that's bad management. You must need water in the river and in the lakes for those things to breed. Okay?

40 MR O'FLAHERTY: And I think your point is that it's not just the fish. It's all the wildlife in there - - -

MR BATES: That's right, yes.

45 MR O'FLAHERTY: - - - including the wildlife that can't find another - - -

MR BATES: Yes.

MR O'FLAHERTY: - - - breeding spot, like you said, the mussels - - -

MR BATES: Yes.

5 MR O'FLAHERTY: - - - who can't move.

MR BATES: Yes.

10 MR O'FLAHERTY: All right. Actually, whilst we're on that later document, one which was endorsed by the corporation, you make the - the point is made that the Barkandji would want the Menindee Lakes and the Barka River, the Darling River a cultural place of world heritage.

MR BATES: Yes.

15

MR O'FLAHERTY: And there's also reference to the Menindee Lakes as a Ramsar wetlands.

MR BATES: Yes.

20

MR O'FLAHERTY: Now, my recollection is that there were some attempts, or at least some discussion, a little while ago about listing it as a Ramsar wetland, but it never came to fruition. Do you have any insight onto that?

25 MR BATES: Yes, just on that there, the Ramsar thing, I think it was about 10 or 15 years ago some people come out and wanted to do it.

MR O'FLAHERTY: Yes.

30 MR BATES: But then it's like any politics - - -

MR O'FLAHERTY: Yes.

35 MR BATES: - - - in a town where some people who want it and some won't.

MR O'FLAHERTY: Sure.

40 MR BATES: Okay. A lot of us wanted it, but a lot of them didn't because back in them days why they didn't want it, it might have been before - - -

MR O'FLAHERTY: Yes.

45 MR BATES: A bit later, but why people didn't want it, because they didn't want something like if you make us build a heritage, it's the same as a wetland; you can't do anything with this building.

MR O'FLAHERTY: Yes. Yes.

MR BATES: It's exactly like the river. That's why a lot of people didn't want it.
And a lot of people around - - -

5 MR O'FLAHERTY: Because they were concerned that it wouldn't be able to add
or modify infrastructure on there.

10 MR BATES: That's – that's – that's right. They wouldn't be able to do it. And –
and then, because nobody thought we would be in a situation like we're in now,
right, that's why they didn't want it. And if you look at the Menindee Lakes and you
make it a Ramsar wetland, it's exactly like this building. You can't do anything with
this building because it's heritage. That's what the Ramsar – I think are the same
15 thing. But then I heard you talked about the situation we're in and this Murray-
Darling Basin put us in, they put us there – is to make us fight with white people but
also to make us fight with our – with the black people too. So what happened, if you
look in this statement here - - -

MR O'FLAHERTY: Yes, I think you make that point.

20 MR BATES: The – the first one, it states in here you talk about – and that's what I
want, the – the Echuca Declaration. I will come to that directly. But in this
statement it states you have MLDRIN and NBAN. And I state in here that my
grandmother, they put her on MLDRIN for a little while. That's the Murray and

25 MR O'FLAHERTY: Murray Lower Darling Rivers Indigenous Nations. Yes.

MR BATES: That's right.

30 MR BATES: Now, the Barka, the Darling River, our country run from Bourke right
down to Wentworth, and that's over a thousand kilometres or more. Okay? But
what MLDRIN done, the mob of black fellas down here – over there, they only went
to Menindee, and they put me there. So when I went and asked the people at the
NBAN, they said, "No, you can't be here because you're there."

35 MR O'FLAHERTY: You're too far south.

MR BATES: Yes. So - - -

MR O'FLAHERTY: So you're too far south for NBAN and - - -

40 MR BATES: That's right.

MR O'FLAHERTY: - - - too far north for MLDRIN.

45 MR BATES: Yes, and – and then on the Barka there is about – about five or six
hundred kilometres you know, from Menindee to Bourke, what's more or less
no-man's-land, that's our country.

MR O'FLAHERTY: Yes.

MR BATES: Then we talk here – while I'm just on the thing – is we talk about native title. To me, native title means nothing unless we are Barka. We – just mean
5 I'm a Darling River black. Without the Barka, we're finished. So what's a bit of land without water?

MR O'FLAHERTY: Yes.

10 MR BATES: It's no good what colour you are, hey, and that's what they done. They gave us our native title. And just before that, they was mucking around with the lakes. And as soon as we got our native title, they took the water. So I mean, it's worth nothing.

15 MR O'FLAHERTY: And just on that point, I think the point you're concerned about with, the representation with the – with NBAN and MLDRIN is that the – your people are kind of stuck in the middle of the two basins without a proper voice.

MR BATES: That's right, yes.
20

MR O'FLAHERTY: Where nations in those basins, the northern and the south, do have that voice – yet your people don't have that voice because you're in the middle of the two.

25 MR BATES: That's – that's right. It's not only just my people. It's the people – or it's normally the white people that live along that river.

MR O'FLAHERTY: Yes.

30 MR BATES: We have not got a voice. The Murray-Darling Basin come up about two weeks ago. They talk about the Lower Darling, nothing about the Upper Darling, so the rest of us are just forgotten. Then – and I say to people, that, "Don't fall for the trap to say Lower Darling or Upper Darling. It's the Darling or the Barka, and that's it." There's no such thing as lower. That's what happened. And – and
35 just the point that out to say I'm on the track is there's a native title claimant where I explained before that my people got greedy and cut a lot of us out. So with that and what's happening now, it's two wrongs. Right? My people done wrong by cutting us out, and then with the water people, so we say the Murray-Darling Basin, what they done to the black people, they gave one mob up around the Culgoa, that's
40 up above Bourke - - -

MR O'FLAHERTY: Yes.

45 MR BATES: - - - they gave them a wetland. Then, then MLDRIN down here on the Murrumbidgee, you know it runs in down there, up from Paranga so in the Parang, they gave them a wetland. The Barka and the people, whether you black or white, we got nothing and we, that's why I'm saying, all this here should go on a

RAMSAR wetland for everyone. My people are not irrigators. Then it states here where they talk about environmental flow and all that, to me and to my people they shut up water. That is shut up water, now you see it, now you don't.

5 MR O'FLAHERTY: Is this what they call the northern connectivity event?

MR BATES: That's the one there.

MR O'FLAHERTY: Yes.

10

MR BATES: And with that shut up water in Wilcannia now is salty.

MR O'FLAHERTY: Yes. I understood that it was essentially not enough water and not fast enough in order to flush that salt through the system so it was very slow
15 moving and not much water. So it was really quite salty. Is that right?

MR BATES: That's right, yes, but then if you look, say if you go back, say, five, maybe six years ago, they talked about this thing what they call El Niño, you know, the climate was changing and all that. Then like, we the black people and a lot of the
20 white people, we haven't got scientists working for us. We are not like the Murray-Darling Basin, but then if this thing with the climate was changing and all that, it was back in 2014, 2015, why a climate change? Why help the drought and take water away from us when there was nothing there? And I think there was evidence
25 somewhere that when all this was going on, the Murray was in flood and they let the water out of the Menindee Lakes, I think it was two thousand and something.

MR O'FLAHERTY: Was this the 2015/16, I think, was it, when they – no, I could get that wrong.

30 MR BATES: Yes.

MR O'FLAHERTY: But they were releasing – this was after the – or was this after the big drought, the millennium drought?

35 MR BATES: That's right, it was.

MR O'FLAHERTY: And it was the releases from the Menindee Lakes to supplement the flows in the Lower Darling basin system.

40 MR BATES: Yes.

MR O'FLAHERTY: And it was essentially empty what were full lakes.

MR BATES: Yes, they were emptying them out and then now what they want to do
45 and like I say, they say they call the Darling, the Barka, the lower and upper, they call it the lower and the focusing and so the lower Barka now is the Menindee Lakes system, so they got now, say from here to the microphone, that's about 80 ks across,

that's Menindee to Broken Hill. Wentworth way over here. They're letting the water go past here when it floods, go down there to the Murray, and pump it back up here 300 ks, it's stupid.

5 MR O'FLAHERTY: Actually, I want to touch upon the more recent what we might euphemistically call consultation, in relation to that at some stage. I will touch upon that, certainly.

MR BATES: Yes.

10

MR O'FLAHERTY: In terms of – you were making the point earlier about the long history and the proven literally thousands of years of connection to the land of your people, and I think you were making the point that that essentially demonstrates a flowing river system due to the habitation of the area. Is that fair?

15

MR BATES: Yes.

MR O'FLAHERTY: Yes. You talk about in your statement how there were instances – were times that you can remember and your people can remember about when there was – when the Barka would have low flows or no flows.

20

MR BATES: Yes.

MR O'FLAHERTY: And

25

MR BATES: Yes.

MR O'FLAHERTY: I'm not expecting you to give me an exact answer but roughly how – what period of time would they – how frequent would that be, and how long?

30

THE COMMISSIONER: You mean stop flowing?

MR O'FLAHERTY: It would stop flowing, yes.

MR BATES: It would, say, about when I was young, say about every 10 years or something like that.

35

MR O'FLAHERTY: Yes.

MR BATES: We would get a flood coming down.

40

MR O'FLAHERTY: Sure.

MR BATES: And then sometime it would stop, right, but if you look at my statement - - -

45

MR O'FLAHERTY: Yes.

MR BATES: - - - and it's on page 3.

MR O'FLAHERTY: Yes, this is the heading seven.

5 MR BATES: Yes. With here, do you want me to read out what I say.

MR O'FLAHERTY: No, we've read that.

10 MR BATES: Even there, what they're doing now, they drained the Barka, so what they want to do now, around the Tallywalka floodplains, that's sort of east of Wilcannia and that, that used to be ancient, the Barka long time ago and we know that because there's fossils found around there. So underneath there there was a shallow aquifer and you've got to dig and you get water and you get water.

15 MR O'FLAHERTY: Yes.

MR BATES: Right. So they want to kill – and in my statement I state that Ngatji the Rainbow Serpent that lives in the river but it also travels underground. Okay. So then - - -

20

MR O'FLAHERTY: In the ground water, essentially.

MR BATES: Yes, in the ground water, under the ground. You know, when you say ground water to me it's on top of the ground, not under the ground. So you say
25 under the ground, on top of the ground.

MR O'FLAHERTY: Sure.

30 MR BATES: Okay. But if then under the ground there's a lot of salt under there too, so you need weight and when I was a national parks officer we worked at Lake Victoria because the water supply in New South Wales for here. They said that there, they got to keep the lakes full and we were saying theyburials out and the scientists, they came down and said no, we've got to keep the lake full because the pressure of the water keeps the salt down.

35

MR O'FLAHERTY: Keeps the salt down.

MR BATES: Right. So then, so we say okay, so we had to fix all the people's remains in it, all the black people's remains in it, they train with aeroplanes there for
40 the Second World War, 1942, I think it was, and they had aeroplanes in there, some skeletons in there, of my people. And we said no, they died here, so leave them there right. So we let them do that, we fixed it, burying them up. But what they doing now, and remember now weight will keep salt down and then one of the earliest explorers came through up around Bourke or down the river below I think it was
45 Mitchell or Sturt or someone and they said the water was a bit salty.

MR O'FLAHERTY: Yes.

MR BATES: Okay, and it was there but then they must have had a dry time a long time ago, before our time and your time or anyone in this room's time. But then they started, they didn't listen to that, they, that's the water people, again, they started pumping so they're bringing the salt up and that's what's happening and if we don't
5 protect the Barka or the Murray, South Australia, it hasn't got a river. Correct me if I'm wrong, so this is where the problem – is going to get all the problem. We say we've got a problem up there, but our problem is the problem now, what we trying to protect is here, too. You know, and the Murray is going to die soon.

10 MR O'FLAHERTY: And in terms of – you make the point – you were making the point in your statement just then about the connection with the water holes and they need to be replenished by those larger flows on a regular basis, don't they, otherwise they just dry up. When you were – you make the point that you tried to tell the water
15 people these things about the connection with those water holes and the river. Were these officials from the New South Wales Government or the MDBA or were they both?

MR BATES: From both.

20 MR O'FLAHERTY: And has that been a discussion you've tried to have with them over a long period of time? I think just for the purposes of the transcript you might have to say yes rather than nodding.

MR BATES: Yes. Sorry. Yes.
25

MR O'FLAHERTY: And what was their response? Do you recall what they said in round terms to you?

MR BATES: Their response is they'd say yeah, yeah, yeah, but nothing comes out
30 of it.

MR O'FLAHERTY: Right.

MR BATES: It's just, and like I say in my statement here, on that river springs and
35 aquifer, when we talk about the Ngatji or anything like that is they just say, they just say it's a silly black fella story, I say it in here, but I'm not knocking the people up at the top or anything because we've got to be fair, it seems to be every time us people in New South Wales talk, we're just black troublemakers but if someone from up the top end talk the people take it into consideration because their skin is dark and
40 as I say I've got nothing against them but that's where the problem is.

MR O'FLAHERTY: They're very dismissive of what you're saying.

MR BATES: That's right, yes. And like I say in my statement that with the
45 environmental flow - - -

MR O'FLAHERTY: Yes.

MR BATES: - - - we, you know, you got MLDRIN and they've got the cultural flow and all that, and they say to us, that's the black people at MLDRIN, and they say to us we will look into this, you know, and then who are they, are they going to help us or are they just mirror people, just looking in a mirror all the time and not
5 doing anything. That's what I think the government is doing, they turning us against us. What we would like is a cultural flow, natural cultural flow with the shut off water that come down and we want our cultural flow for all the Barkandji people – and there's a mob of us – to be stored at the Menindee Lakes for people to enjoy. We're not irrigators.

10 I don't think that's too much to ask anyone and the people that come along, the Murray-Darling Basin people they will come along and they will ask us this, they will ask us that. They've got no minutes to give us anything. They will come along and befriend us, just pump us for information then we get nothing. We don't want it
15 just for us. We want it for everyone who lives along the river.

MR O'FLAHERTY: That brings me to the discussions, your interactions you've had with the New South Wales Government and the MDBA over the Menindee Lakes. I want to just to almost sort of do this in portions in the sense of prior to –
20 before this year would you – I think you were describing the – you just described the interactions as that they would pump you for information and then go. I take it from that you mean you would say that the nature of the consultation certainly wasn't to your approval. That's fair, I imagine?

25 MR BATES: Yes.

MR O'FLAHERTY: What was the – and I think you have a particular example earlier this year – actually sorry, no, I will get to that. But in terms of before this year – this is over on page 4 of your statement about consultation – you make the
30 point that they rarely come to Broken Hill, Menindee and Wilcannia. Where would they go? Would they – if their – when they would want to consult with the Barkandji, would they go to a particular township or - - -

MR BATES: Sometimes they would be around like Wentworth, now and again they
35 would come to Broken Hill.

MR O'FLAHERTY: Right.

MR BATES: But I don't think they know where Wilcannia is because they never
40 get to Wilcannia.

MR O'FLAHERTY: Right. Okay.

MR BATES: But even there, when they – you know, start mucking around with
45 water, you should be looking at everyone and like I say in my statement here with the Murray-Darling Basin again, I'm not being prejudiced but they have colour coded

meetings, they will meet with the black people and then meet with the white people and that's always the way.

5 MR O'FLAHERTY: Yes. When they meet with what they call stakeholders - - -

MR BATES: Yes.

10 MR O'FLAHERTY: - - - they will meet with irrigators and pastoralists separately and then they will have a specific meeting with the Barkandji.

MR BATES: Yes.

MR O'FLAHERTY: And other traditional owner groups.

15 MR BATES: Yes.

MR O'FLAHERTY: Separately. Is that the point there?

20 MR BATES: Yes, just there when you talk about stakeholders.

THE COMMISSIONER: I've seen that table.

MR BATES: Yes.

25 THE COMMISSIONER: And the way in which it's divided into three groups.

30 MR BATES: That's there again, like we're the native title owners but then you get stakeholders, the property owners, you know, we didn't - we before the native title, we got native title rights, we had some other money we saved and we are property owners too but to the water people we're not counted there.

35 THE COMMISSIONER: I'm not quite sure that's right. There are three groups, you're correct. The first group concerns direct commercial negotiation over buyback.

MR BATES: Yes.

40 THE COMMISSIONER: And I don't think the Barkandji are involved in that, are they?

MR BATES: That's what I'm saying.

THE COMMISSIONER: You're not going to be involved.

45 MR BATES: That's what I'm saying. They - we got native title, yes, sorry.

THE COMMISSIONER: The second group is described as stakeholders directly involved in decision-making processes during the project. Now, that's a bit vague and it could certainly, could have included people like the Barkandji. On the other hand, it looks as if, if you look at that list, that's – they are all governmental groups.

5

MR BATES: That's right, because I've – sorry.

THE COMMISSIONER: But there's no one non-governmental there.

10 MR BATES: I think on that list there it will state that the Aboriginal people or indigenous people got no rights in the water management or something. It states in a piece of paper somewhere here in this room. And that's what I'm saying. That's what I'm saying. We got properties but we're not irrigators. We've got properties that run sheep and all that.

15

THE COMMISSIONER: No. I understand the point you make about the way the stakeholders are grouped, but I'm just pointing out the first group seems to be only people involved in what's called commercial negotiations over buyback and structural adjustment, and that wouldn't include the Barkandji, I hope.

20

MR BATES: No.

THE COMMISSIONER: The second group seem more to be government groups.

25 MR BATES: Yes.

THE COMMISSIONER: And believe me, the Barkandji don't want to be one of them.

30 MR BATES: No.

THE COMMISSIONER: And the third group has got this description which is a bit mixed. You're described as important to the project. You will be engaged, and you will provide input which may influence the project outcomes, but then it says:

35

You may not necessarily influence the decision-making processes.

MR BATES: That's the right there.

40 THE COMMISSIONER: I don't really understand what that means.

MR BATES: I don't know either.

THE COMMISSIONER: But it doesn't sound good.

45

MR O'FLAHERTY: It might be category A in have regard to.

THE COMMISSIONER: That, I think, is something that you complain about.

MR BATES: Yes.

5 THE COMMISSIONER: It's a disrespectful and dismissive approach.

MR BATES: Because if you look at – then they will come along and call us traditional owners. It's stated in here that then on our country you got the national parks, you got the Kinchega National Parks, you got – I will just go with the waterfrontage ones. You've got the Kinchega National Parks. You got the Paroo-Darling National Parks at Wilcannia. Then you got Toorale National Park on the Paroo Warrego near Bourke. We are on border management with them, and it's there again that we are stakeholders for that land too, and while we took that up is to – and it doesn't matter who we are, where we go, we still depend on the tourist dollar, and that's why we stepped in to run these properties.

THE COMMISSIONER: Do I understand correctly that when you were consulted about the construction or the alteration of regulators between Lake Menindee and Lake Cawndilla? I think that was in August this year, this month, earlier this month.

MR BATES: Just there with Cawndilla and all that. When I was a national parks officer, which I was for 21 years – and that's where Kinchega National Parks is – they came up and when a lot of ours was going, a lot of the white people, and everyone said, "No, leave the lakes alone", so that thing – and I took a package from National Parks in about – about 15 years or something like that, 30 years ago, so it was there then. And we said, "No, leave it." So they let us cool off, and then they add it again. But that thing there it happened a long time ago, but they're bringing it up again.

THE COMMISSIONER: Well, as you understand it, there's a proposal, which is said to be one of the supply measures, to support the 605 gigalitre reduction in water to be recovered which involves – I will call it reengineering the Menindee Lakes so that Cawndilla will be empty more of the time and the lakes themselves will be emptied more quickly. You're aware of that proposal, aren't you?

MR BATES: Yes.

THE COMMISSIONER: And that's one upon which I think the Barkandji were consulted so-called, earlier this month by - - -

MR BATES: Yes. Yes.

THE COMMISSIONER: That was a consultation by the Department of Industry from New South Wales; is that right?

45

MR BATES: That was the meeting – we had a native title meeting while we’re down in Sydney doing a and I came back. They met at 7.30. I think it’s in there somewhere, right.

5 MR O’FLAHERTY: Yes, page 4 of your - - -

MR BATES: Yes. And our solicitors told those mob, the water mob, that where’s their agenda, and they said

10 THE COMMISSIONER: I’ve read all that. What I wanted to ask you was this, right.

MR BATES: Yes, okay.

15 THE COMMISSIONER: What did you tell them when they handed you the maps of the proposed new locations of the regulators?

MR BATES: Yes.

20 THE COMMISSIONER: And asked you for comment. What did you tell them?

MR BATES: Okay. We said, “Here, if you want to block Cawndilla, you can put a lower regulator here”, so we said, “Yes, this one we will go with”, right, and I just can’t think of the fellow from the water. And we said where they wanted to dig from
25 Sunset Strip across the Little Menindee Creek, straight across there was a thing. We said, “Don’t muck around here and open that regulator and let the water go fast.” That’s no. And coming down from Menindee to where there’s a system go out where it filled the anabranh, and we said no to that. There is a system down, and we said no. But then this was all just chucked out. I’m not making excuse for my
30 mistake. But if you look at the Menindee Lakes system and they complain about evaporation all the time, Cawndilla is the biggest lake. It’s the deepest lake. Lake Cawndilla is the one, you know, that everyone wants to block off.

35 THE COMMISSIONER: I know, I know. I do know, yes.

MR BATES: Yes. That’s the one. But we said, “If you block this, you don’t block it right up at the end Menindee where it runs in there because there’s another little lake called Eurobilli”, right.

40 THE COMMISSIONER: Yes, I’m aware of it.

MR BATES: That’s a good habitat for bird. We said, “Just go down a bit, put a lower level weir, and you can do that. But don’t muck with cutting across Menindee Lakes to let the water go faster, you know.”

45 THE COMMISSIONER: Thank you.

MR BATES: By putting a dam around Menindee and why we don't want Little Menindee because if you look at the Darling where the lake is, it's up higher than the – on the eastern side of the river it's lower, and then you've got weir 32 just down. If they cut it straight through the water, the water is going to go out faster, it's going to cause more erosion and more damage to the country, you know.

THE COMMISSIONER: You told them this, did you?

MR BATES: We tried to tell them.

THE COMMISSIONER: You told them. You don't know whether they were listening. Is that what you mean?

MR BATES: They won't listen.

THE COMMISSIONER: Thanks.

MR O'FLAHERTY: Commissioner, I would like to point out in terms of that stakeholder, what's called a stakeholder matrix - - -

THE COMMISSIONER: Yes.

MR O'FLAHERTY: - - - that first group includes, not just those involved in commercial negotiations, but the third group that's referred to as Lower Darling Landholders, and their communication objective is consultation in relation to ongoing service. I'm reading that as distinct from the Lower Darling Horticultural Group in which commercial negotiations are currently in place. I would read that as the partial community.

THE COMMISSIONER: I understand.

MR O'FLAHERTY: I think the point that can be made is that the partial community is being treated separately from the indigenous community in the Lower Darling.

THE COMMISSIONER: Yes.

MR O'FLAHERTY: And to follow on on that theme, Mr Bates, I understand you attended a more recent meeting. It was on either 14 or 15 August. This was the six options meeting.

MR BATES: Yes.

MR O'FLAHERTY: Could Mr Bates be shown the stakeholder brief document, exhibit RCE213. While that's being found for you, Mr Bates, how did you find out about the – this six – this meeting which was intended to talk about six options?

MR BATES: The six options.

MR O'FLAHERTY: Yes.

5 MR BATES: It was – I just can't think of the fellow from the water, and they had people from Deloitte with them.

MR O'FLAHERTY: So it was – yes.

10 MR BATES: And they wanted to meet with us, some of us native title people at Pooncarie.

MR O'FLAHERTY: Right. Yes.

15 MR BATES: And they were going to have this black and white meeting again. They wanted to meet with us down there.

MR O'FLAHERTY: They wanted to meet with you separately.

20 MR BATES: Just the native title people. I don't think that they got in touch with the Menindee people because I rang the people at Menindee and I told them, the water people, that it would be easier for us – because I live in Broken Hill it would be easier for us to meet at Menindee. When we got down there, there was about 15, 20 people.

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MR O'FLAHERTY: So this was on 14 August that you went down.

MR BATES: There was – that's 14 August, yes, but they wanted to meet with us separate.

30

MR O'FLAHERTY: Right.

MR BATES: Okay. And when we got there it was – I wouldn't call it a meeting because they had elders outside, and not just black people. They had other white people standing outside, and they didn't have the decency to give them a chair to sit on.

35

MR O'FLAHERTY: So there was a group of local community members outside.

40 MR BATES: There was the local community people there, and there was landholders there, the graziers and that, and they was all standing outside, and they sort of handpicked us, and one of the old Italian fellows was there in his 40s, Dominic Vettori, and he was good to black and white people because he got the real grapes and employment. They had that old man standing outside and one of my old cousins, so I went into the office, and I got some chairs and put outside. As soon as I turned my back, they put the chairs back inside because I wanted to give the elders a chair, and I was going to cut loose, but I had some woman standing around,

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so I just thought no. Anyway, and then they handpicked us and took us inside, and I said, "I don't want to go inside and meet with you", and walk away from these people. I said, "I won't turn my back on them. You can have your meeting there", and the people there, black and white, they said, "Go in there and meet with them",
5 and it was – just sitting there, and all they wanted to do then was sweet talk the people again, and they wanted to run a pipeline right up to Jamesville, just below Pooncarie and that.

10 MR O'FLAHERTY: Yes. That's Mr White's property.

MR BATES: That's Alan White's property, yes. They wanted it up there, and he was against that, and they want to run another pipeline from the Broken Hill pipeline across again towards Menindee and down near weir 32, and that's what I was explaining before that's weir 32, and if you go back to Little Menindee Creek and
15 Lake Menindee, so you've got those lakes there and the Darling, and then you got – it's Little Menindee Creek running. They want to cut that bigger, and weir 32 down here, so how are they going to save water for Menindee if they putting a pipe here and this pipe can shoot the water up or back? They're not saving water.

20 THE COMMISSIONER: Could I inquire how long before the meeting on 14 August this year were you informed of what was going to happen at the meeting, what the agenda was?

MR BATES: Well, we had option – these options here. I didn't know about these
25 options and I told them, I didn't know anything about this.

THE COMMISSIONER: I just asked how long before the meeting did you become aware of it.

30 MR BATES: Okay, sorry. There it was only a day or two days before that meeting.

THE COMMISSIONER: Thank you.

MR BATES: Right.
35

THE COMMISSIONER: And were you given this document?

MR BATES: This one here?

40 THE COMMISSIONER: Yes.

MR BATES: No. No.

THE COMMISSIONER: How were you told?
45

MR BATES: When I got there there was a young fellow pretty well from Menindee, and he was reading all this out, and I walked up and I said - - -

THE COMMISSIONER: This is at the meeting itself.

MR BATES: This is at the meeting this young white fellow there.

5 THE COMMISSIONER: So what happened a day or so before? What were you given?

MR BATES: Nothing. I can't recall seeing this document.

10 THE COMMISSIONER: The first time you were told about so-called six options, when was that?

MR BATES: They were going to talk about the six options. I was told over the phone that they was going to talk about six options, and when I went and I seen this
15 young fellow, this station owner - - -

THE COMMISSIONER: Take it were you told what each of the six options was?

20 MR BATES: No. No.

THE COMMISSIONER: Then you saws this young chap reading something, and that was this document, was it?

25 MR BATES: Yes. So if we go right back now to there was another meeting then where we ask our solicitors - - -

THE COMMISSIONER: No. I want to stick with the August meeting at the moment.

30 MR BATES: If I can go back, then I get to this. This is the easiest way to do it. We had that meeting, and a solicitor has asked the people from the water, and there was four of them. I got their names in the diary if you want them. And then they passed us these maps, and when I explained before about Lake Cawndilla and all that, this
35 was about – I think it was last month and then this where some of these options was in that map but there was no minutes for that meeting and when I first seen this document here, it was at Menindee what was given to me by this young station owner and he was saying there should be a seventh option on here. This the first time I seen this document was at Menindee.

40 THE COMMISSIONER: Well, now, who was conducting the meeting? Was it departmental people or people from Deloitte or both?

MR BATES: Deloitte was there, there was two people from Deloitte and a water –
45 there was – I just can't think of his name, it's in my diary there.

THE COMMISSIONER: Perhaps we can find out the names later.

MR BATES: Yes.

THE COMMISSIONER: So it was being run by the department; is that right?

5 MR BATES: Yes. Yes. It was run by the department and what they done there, we go back to the water people, it's a person, not Deloitte, I knew them and there was a lady there – it's all in my diary, look, anyway - - -

10 MR O'FLAHERTY: Was it a Mr Isaacs? Mitchell Isaacs ring a bell or - - -

THE COMMISSIONER: I don't want to spend time on finding names that are in a diary. We can get them later.

15 MR BATES: No, no. Daniel Black – that what his name was. Yes, Daniel Black. They never told us about this and when they got there we heard through the grapevine that there was law firm – Deloitte would be there. And then the other people just standing round didn't know who were Deloitte and I said a fellow – Daniel Black I think his name was.

20 THE COMMISSIONER: Right. What I want to find out is at the meeting did anyone from Deloitte or the department explain each of the six options?

MR BATES: After when we got inside they started talking about these options.

25 THE COMMISSIONER: And did anyone explain each of the six options?

30 MR BATES: Like I said, I wasn't right in there, for all the meeting. I got in there about five or 10 minutes before the meeting finished, so about 10 minutes – 20 minutes. But even with this here, when they explain them, everyone in that meeting said no to these here, they went against them, as far as I can - - -

THE COMMISSIONER: How long did it take for them, as you just said, to explain them?

35 MR BATES: It would have took them, it wouldn't have took them an hour to explain it. It was less than an hour.

THE COMMISSIONER: And were there questions asked?

40 MR BATES: There was questions asked and this young fellow from Scarsdale Station, there was a seventh option there and he started talking about - - -

THE COMMISSIONER: What was the seventh option?

45 MR BATES: I can't recall what was the seventh option but also he talked about when they bought Tandou for the water licence, right, that's Tandou just down below Menindee.

THE COMMISSIONER: I'm aware of it.

MR BATES: Yes. Okay. Then he was saying the water from here, why can't
5 we store it in the Menindee Lakes. There was something come up about the water
from Tandou.

THE COMMISSIONER: You've got in front of you the document that lists what's
called the current list of options, an initial list of six options. Do you see that there?

10 MR BATES: Yes.

THE COMMISSIONER: Do you see the one with number six. I apologise for the
English but it's their English, "re-scoping the Menindee Lakes water savings project"
etcetera, etcetera. Do you see that?

15

MR BATES: Yes.

THE COMMISSIONER: Was it explained to the meeting when you were there
what they meant by re-scoping the project?

20

MR BATES: No.

THE COMMISSIONER: Was anything explained about what it meant to maintain a
drought reserve.

25

MR BATES: No, not when I was there but - - -

THE COMMISSIONER: Just please bear with me.

30 MR BATES: Yes.

THE COMMISSIONER: And the document talks about that option 6 would likely
have – what they decided to call flow-on impacts to the water savings that could be
achieved. Do you see that?

35

MR BATES: Yes.

THE COMMISSIONER: Did anyone ask what that meant?

40 MR BATES: No, not when I was there.

THE COMMISSIONER: Did anyone explain what it meant?

MR BATES: No.

45

THE COMMISSIONER: Do you know what it means?

MR BATES: To me what it means, re-scoping the Menindee Lakes to me and when they're saying a drought reserve - - -

THE COMMISSIONER: No, the phrase:

5

...which would likely have flow-on impacts to the water savings that could be achieved.

I'm not suggesting you should understand. I'm just asking do you understand?

10

MR BATES: No, no. Well, to me I don't know – I don't understand what that mean, “the flow-on impact” because we got no water to flow on anyhow.

THE COMMISSIONER: Right. Thanks. In other words, option 6 is something that would need to be explained and questioned - - -

15

MR BATES: Of course.

THE COMMISSIONER: - - - for people's opinions to be worth obtaining about it; is that right?

20

MR BATES: That's right. And I would like to just add there, when they say a drought reserve, because we in a drought now, they state that Menindee Lake was always a water storage place for Broken Hill, and to let water from there into South Australia to flush the Murray, try and flush the Murray out.

25

THE COMMISSIONER: Now, at the bottom of that page from this departmental document for the so-called Lower Darling options analysis you will see that there's a suggestion for further opportunities for input and feedback. Do you see that? Right at the bottom of the page.

30

MR BATES: This here, “other options and inputs”, that's at the bottom of this page?

THE COMMISSIONER: Yes. Bottom of the page there's a heading, “other opportunities for input”.

35

MR BATES: Yes.

THE COMMISSIONER: I just want to know since this meeting on 14 and 15 August this year, have you been involved in any further contact with the department to provide further input?

40

MR BATES: After – after we had that meeting at Menindee, Deloitte and the water people came to our native title meeting at Wentworth last week, I think it was.

45

THE COMMISSIONER: I think you referred to that earlier.

MR BATES: Yes, and then from then on we didn't have any input.

THE COMMISSIONER: At that native title meeting with Deloitte and departmental people, was there any discussion then about options in relation to the
5 Lower Darling and the Menindee project?

MR BATES: Yes.

THE COMMISSIONER: What was the substance of what was discussed?
10

MR BATES: We told them there, and we gave them this document here at that meeting, we told them there - - -

THE COMMISSIONER: That's the document called - I've been given today dated
15 23 August.

MR BATES: Yes, that one.

THE COMMISSIONER: Yes.
20

MR BATES: So we gave this to Deloitte and the water people to look at this. But then we also told them on that option 6 where they say drought reserve, we told them, don't change that name, you put it back to the Menindee Lakes to be the water storage like it was always. To me and to us and not only to black people but the
25 drought reserve, that's only a little thing to sweeten people to think that they doing something, and we told them that like in this statement that we don't want any more pipelines coming from the Murray.

THE COMMISSIONER: I've read the document. You don't have to tell me about
30 that.

MR BATES: Okay.

THE COMMISSIONER: Was anything else said apart from what's in the
35 document?

MR BATES: No.

THE COMMISSIONER: Was there any response by the people at the meeting
40 when you gave them this document, to the statements in it conveying your opposition to the Menindee Lakes project?

MR BATES: No. There was no really good document, anything like that, no.

THE COMMISSIONER: Was there any discussion, either at the earlier meeting, the
45 14th and 15th or the later one, the 23rd, was there any discussion about the role, importance of the lakes as a fish nursery?

MR BATES: We – in at the meeting the – there was a lady there by the name of Karen Page. She did get up and talk a little bit about that. But it was – they said they would let some water and take it out, you know, but they never gave us any guarantee there would be water in the Menindee Lakes or the Barka would flow to any of us.

THE COMMISSIONER: Was there any discussion?

MR BATES: No.

THE COMMISSIONER: About the lakes' importance as a fish nursery?

MR BATES: At that meeting, no, I don't think I was at that meeting.

MR O'FLAHERTY: This is the meeting on the 23rd.

MR BATES: The 23rd, yes.

THE COMMISSIONER: Thank you.

MR O'FLAHERTY: There's reference to, in this document, to a report that will be delivered in September 2018. Was there any indication about when that report or sorry, in terms of, has there been any indication that there is going to be any other contact with you in relation to this options analysis prior to this report?

MR BATES: If you go back to the meeting when these six options come out when they wanted to meet us at Pooncarie what we told them there, that any meeting about the Menindee Lakes or the Barka, got to be at Menindee so they can see the desecration of what they're doing there now to the township. And I told them, some people in Broken Hill, don't meet them in Broken Hill, go to Menindee and show them what they're doing wrong. And it's like I could come into this courtroom here, tell you anything but unless you see a photograph I could be lying to you, too, okay. But that's where it is, you take the people to where the thing is and you show them.

THE COMMISSIONER: Now, have you been informed in any way whether you will see the report from Deloitte to be delivered to the department in September?

MR BATES: Yes, just on that, what we told them and Deloitte, that when they do all this, they must bring those documents and meet with the people at Menindee.

THE COMMISSIONER: What did they say to that?

MR BATES: They never said yes or no, or they might have just nodded their head but I think if – look, I know I'm rattling off but if you're going to do something and do it right you must go to the place where the most desecration is and it's at Menindee and that's where they should meet. We told them at the meeting at Menindee. Just before I walked into that meeting I asked the people there black or

white would you like a wetlands here, and they all looked at me mouth open. I said disagree with me if you want to disagree and they all said no, we want it. But I said you've got to make the decision, I can't make it. I can't tell you what to do.

5 THE COMMISSIONER: Thank you.

MR O'FLAHERTY: I wanted to touch on some aspects. You were talking about – this is on pages 6 to 7 of your statement, Mr Bates, about - - -

10 MR BATES: Yes.

MR O'FLAHERTY: - - - the – first of which the cultural mapping project. You refer on the top of page 7 to a mapping project that was conducted over the northern Basin.

15

MR BATES: Yes.

MR O'FLAHERTY: And my understanding is it was a mapping project that went as far down as maybe Bourke in terms of the northern Basin. Is that right?

20

MR BATES: That's right.

THE COMMISSIONER: It didn't go further below Bourke.

25 MR BATES: It didn't – I don't think it event got to Bourke. It might have got to Bourke and that was it but it went back up.

MR O'FLAHERTY: Okay.

30 THE COMMISSIONER: Remind me, the northern Basin goes to the northern reaches of the Menindee Lakes?

35 MR O'FLAHERTY: That's my understanding. I will go to the maps in the core folder relating to Aboriginal witnesses. Behind tab 9 of that volume, Commissioner, is a representation of the northern and the southern Basin.

THE COMMISSIONER: At a scale that doesn't really enable me to answer my own question but I think it does - - -

40 MR O'FLAHERTY: It at least goes further south from Bourke.

THE COMMISSIONER: Yes. It goes further south than Bourke but it's tied, I think, is it to the northern influence of the Menindee Lakes, is that correct?

45 MR O'FLAHERTY: That may well be. It may well be that the two blue lines presenting the river and their confluence east of Broken Hill is where the Menindee Lakes are, but yes, so the - - -

THE COMMISSIONER: Now, could I – while we're in that core document, could I ask Mr Bates to be taken to tab 10, please.

5 MR O'FLAHERTY: You've anticipated one of my questions I believe, yes.

THE COMMISSIONER: Right.

10 MR O'FLAHERTY: Mr Bates, that folder on your right-hand side, if you go to tab 10, it should be a map which has got - - -

THE COMMISSIONER: I want to turn to the second one. The first map is groundwater. Can we go to surface water please, next page. I think you've seen that before, haven't you?

15 MR BATES: Yes.

THE COMMISSIONER: Now, I may be wrong but I understand that you have some criticisms of it.

20 MR BATES: Yes.

THE COMMISSIONER: Could you, using that map to make your point, could you explain to me your criticism of it.

25 MR BATES: If, if you go back to my statement - - -

THE COMMISSIONER: I've read your statement. You don't have to repeat it.

30 MR BATES: This is the only way I can answer that question because what we've done – and you see the northern Basin and the southern Basin.

THE COMMISSIONER: Yes.

35 MR BATES: Right, and you see where the northern Basin come down, right, that comes down to Wilcannia.

THE COMMISSIONER: Yes.

40 MR BATES: In my statement it says that we've got no representation because you see the Barka is cut in half. It's cut in half right at Wilcannia where that funny little mark come down, just up from Broken Hill where the – where the Paroo - - -

MR O'FLAHERTY: I think Mr Bates is looking at tab 9.

45 MR BATES: Yes, where the Paroo come down to the – to the Darling, and it's cut in half, so then with us Barkandji people – this is the only way I could answer your question – is MLDRIN is down the bottom, NBAN is up to the top, just the black

people. But they cut my people in half, and then if you look at the map going across from Broken Hill there's funny little things. That's the anabranch coming down on the left-hand side and Menindee is right in there, straight down from Broken Hill, so they cut my people's country in half, and that's why - - -

5

THE COMMISSIONER: When you say "they've cut it in half" - - -

MR BATES: They did cut it in half with the southern and the northern Basin.

10 THE COMMISSIONER: Yes, I understand that.

MR BATES: Right.

15 THE COMMISSIONER: So – but you have, for example, the Barkandji listed in what is called - - -

MR BATES: MLDRIN.

20 THE COMMISSIONER: - - - surface water - - -

MR BATES: Yes.

THE COMMISSIONER: - - - area 8.

25 MR BATES: Yes.

THE COMMISSIONER: That's the second in the list there.

30 MR BATES: Yes.

THE COMMISSIONER: And you've got the Barkandji listed in what I think is meant to be SW12 and 13.

35 MR BATES: You're looking at that pretty map.

THE COMMISSIONER: I'm looking at the map which is the last page of tab - - -

MR BATES: The coloured one.

40 THE COMMISSIONER: - - - 10.

MR O'FLAHERTY: Yes, that's the one.

45 MR BATES: Yes. Yes. Okay. Sorry.

THE COMMISSIONER: You will see that Barkandji is in the list of nations for all of those areas: SW8, SW13, SW12. Do you see that?

MR BATES: SW13, yes.

MR O'FLAHERTY: Is it in 13, though?

5 THE COMMISSIONER: Well, I think so, bearing in mind that SW13 is - - -

MR BATES: Barkandji is – is – is there.

THE COMMISSIONER: Yes.

10

MR BATES: Up to Bourke, yes.

MR O'FLAHERTY: Not hugely clear, but - - -

15 THE COMMISSIONER: No, nothing is hugely clear, but, I mean, I'm just saying Barkandji seems to be recognised - - -

MR BATES: Yes.

20 THE COMMISSIONER: - - - both in the southern Basin and the northern Basin.

MR BATES: In there, yes.

MR O'FLAHERTY: Yes.

25

THE COMMISSIONER: But they're not the only people who are in that position. There are others in that list which we don't have to go through. You can see some others. Your complaint, as I understand it, is that in their operations, MLDRIN and NBAN omit representation of your people in the stretch of river country between
30 Menindee and Bourke. Is that - - -

MR BATES: Yes, that's – yes.

THE COMMISSIONER: Have I understood that correctly?

35

MR BATES: That's right.

THE COMMISSIONER: Yes.

40 MR BATES: Yes, and that's what I try to point out.

THE COMMISSIONER: No, I've read it.

MR BATES: Yes, yes, yes, yes.

45

THE COMMISSIONER: And so is this also correct, that as things stand at the moment, you represent your people, the Barkandji, on MLDRIN? Is that right?

MR BATES: Yes. Yes.

THE COMMISSIONER: And NBAN don't want you because you're in MLDRIN.

5 MR BATES: Yes.

THE COMMISSIONER: Do you have a complaint about the way in which your representation proceeds at MLDRIN?

10 MR BATES: Yes, well, – well, the complaint now is with my people, we're thinking about pulling the pin and just walking away.

THE COMMISSIONER: Not being in MLDRIN either.

15 MR BATES: Not being in MLDRIN either, because if you look back – I'm sorry for going back.

THE COMMISSIONER: No, that's all right.

20 MR BATES: But – but if you look at the northern and southern Basin, they cut my people in half, and that's not fair. And then by doing all this, it's only fair for me to say that who gives MLDRIN and NBAN the money for the Aboriginal cultural stuff, Murray-Darling Basin, isn't it? Because it states back here on – on seven – whereas in July this year, 26,000 sites in the northern Basin and they're not going to do
25 anything here. Right? So here again is the Murray-Darling Basin making black people fight the southerners and the northerners. It's just like overseas when you had the wars over there, southern and northern; it's the same in Australia on our rivers.

30 THE COMMISSIONER: And have the Barkandji made approaches to the MDBA to carry out site survey and mapping in their land?

MR BATES: Yes. If you go back to, on my statement, page 6, cultural - - -

35 THE COMMISSIONER: Yes. Again, there's no need to read - - -

MR BATES: On 13 – yes, it's there.

THE COMMISSIONER: I've read all that.

40 MR BATES: Yes. Okay. But - - -

THE COMMISSIONER: But I couldn't pick up there that there had been an approach made to the MDBA in relation to survey and mapping of sites. I see the reference to the cultural flows project, but what about - - -

45 MR BATES: Yes.

THE COMMISSIONER: - - - survey and mapping of sites?

MR BATES: The – the survey of mapping sites is this one here on page 7. Then if
5 you go back to page 6 again, 13, cultural flow project and cultural mapping project,
lack of information for Barkandji. We put this here, and there’s a lady by the name
of Suzie Croft - - -

THE COMMISSIONER: No, I’ve read all that.

10 MR BATES: Yes. Yes. Okay. Yes. No, no, I - - -

THE COMMISSIONER: You don’t need to show me what has already been read.

MR BATES: I - - -

15

THE COMMISSIONER: What I can’t find here - - -

MR BATES: Yes.

20 THE COMMISSIONER: - - - is whether the Barkandji have said to the MDBA,
“Could we please have the same kind of site survey and mapping as the other people
have had?”

MR BATES: We – we tried that here – now, just to go back – I will be – I know I
25 keep going back there, but the best way I could explain it is go back to MLDRIN and
NBAN here. If you look at the map and – and you see Bourke - - -

THE COMMISSIONER: Yes.

30 MR BATES: - - - I state in this statement that that’s where my country comes from.

THE COMMISSIONER: Yes.

MR BATES: But then there is black fellas’ politics again and here, which is
35 written on this piece of paper here

THE COMMISSIONER: Yes.

MR BATES: They saying that we don’t go there. Right?
40

THE COMMISSIONER: Right.

MR BATES: That’s why the native title thing, when you put the native title down,
there was parts of our country cut off. This is where it is here. When we took this
45 here, what this Suzie Croft done to Dubbo, and spoke about it, the black fella there,
this – the mob mob and with the Murrawarri mob, who are the chairperson for

NBAN, they were saying we was claiming land. All we was trying to fight for was the river.

THE COMMISSIONER: Righto. Thanks.

5

MR BATES: Not for land. And that's why that was pushed aside. So I've got to go back to this to get to – to try to explain.

THE COMMISSIONER: That's all right. No, I understand. Thank you.

10

MR O'FLAHERTY: Whilst we're on these maps, Mr Bates, if you go to the first of the maps behind tab 10, I think you make the point in your statement about one of the groundwater areas. So tab 10, sorry, next one along.

15 MR BATES: This one?

MR O'FLAHERTY: No, the next one along.

MR BATES: Yes.

20

MR O'FLAHERTY: So that's – that should be water resource for groundwater, that map there. I think you make the point that the – in your statement that the Darling alluvial plains, which I took to be the bit in the map which is GW7, which is the groundwater connected to the Darling River itself. It's that red - - -

25

MR BATES: Yes.

MR O'FLAHERTY: - - - area labelled GW7. I think you make the point in your statement that that – the Barkandji are not recognised as one of the relevant traditional owner groups.

30

MR BATES: Yes.

MR O'FLAHERTY: Have you raised that with the MDBA before?

35

MR BATES: No. This – this map here, I only seen this map about two months ago.

MR O'FLAHERTY: Right. Okay.

40 MR BATES: And then the MDBA, or whatever you call it, Murray-Darling Basin mob - - -

MR O'FLAHERTY: Yes.

45 MR BATES: - - - they don't come near us. It was only when that Daniel Black had come out and another lady - - -

MR O'FLAHERTY: Right.

MR BATES: - - - and a couple of other people, and that's the only time we seen
5 them. There was another fellow that was working with this Suzie Croft, a fellow by
the name of Neil Ward. All of a sudden since this all stuff come here, they seem to
went to ground then, and that meeting with the black people. Right? And we
don't see anyone.

MR O'FLAHERTY: When you saw this map two months ago, or couple of months
10 ago, is that at one of these meetings with the government people, was it?

MR BATES: This one here?

MR O'FLAHERTY: Yes.
15

MR BATES: No, I got this - - -

MR O'FLAHERTY: Off a website.

MR BATES: Off a website. That's right, yes.
20

MR O'FLAHERTY: Right. In - - -

MR BATES: The other map – the other map that I got off the people was - - -
25

MR O'FLAHERTY: Yes.

MR BATES: - - - the stuff that - - -

MR O'FLAHERTY: The – around Menindee Lakes.
30

MR BATES: Yes. Yes, that was the one.

MR O'FLAHERTY: Yes, sure, sure.
35

MR BATES: Yes.

MR O'FLAHERTY: Since finding this map on the website, have you raised it with
40 the MDBA?

MR BATES: We never got a chance to raise this with them yet.

MR O'FLAHERTY: Okay.

MR BATES: This one here.
45

MR O'FLAHERTY: Discussions were - - -

MR BATES: Yes.

MR O'FLAHERTY: - - - overtaken over by other things.

5 MR BATES: See – see this map here?

MR O'FLAHERTY: Yes.

10 MR BATES: This map we never raised with the Murray-Darling Basin, we never raised it with MLDRIN, we never raised it with NBAN because we don't see any of them. Okay?

15 MR O'FLAHERTY: Yes. I just wanted to touch upon some matters that are raised in the statement, in the 23 August statement, which I think is one of the loose pages in front of you there. Just wanted to ask you some questions about that. In paragraph 15 of that statement there's reference to the Barkandji:

...demanding the right to influence the decision-making and the management of our waters.

20

I just wanted to – wonder if you can explain on what forms of decision-making you're referring to in there.

25 MR BATES: No, I haven't – haven't got that.

MR O'FLAHERTY: No. Sorry, I'm looking at the 23 August one. Yes, that's the one.

30 MR BATES: Yes.

MR O'FLAHERTY: Yes, sorry.

MR BATES: Yes, yes, yes.

35 THE COMMISSIONER: Number 15.

MR O'FLAHERTY: Number 15.

40 THE COMMISSIONER: Includes this idea of a right to influence - - -

MR BATES: Yes, I got that one. Yes.

THE COMMISSIONER: - - - the management of your waters.

45 MR BATES: Yes.

THE COMMISSIONER: Can I ask this. You understand that the native title determination requires that the law of the Commonwealth and the law of the – of New South Wales governs, don't you?

5 MR BATES: Yes.

THE COMMISSIONER: And you understand that there are laws – statute laws of the Commonwealth and of New South Wales that relate to the management of the water?

10

MR BATES: Yes.

THE COMMISSIONER: And so number 15 in this statement, should I read that as meaning that you would like that state of affairs to change?

15

MR BATES: Yes, because it states in our native title, if you go back through, and it states in the Murray-Darling Plans and that, that we – and – and you said it yourself, that somewhere down back in our conversation before, that it states that us Barkandji people got a right to manage water. It – it – it – it states that there, and that's why we're demanding this here.

20

THE COMMISSIONER: No, I understand that. That's - - -

MR BATES: Yes.

25

THE COMMISSIONER: That's exactly what I was trying to get you to explain.

MR BATES: Yes, yes, yes, yes, yes.

30

THE COMMISSIONER: Thank you.

MR O'FLAHERTY: And in terms of the decision-making process, is that, in part, a reference to the formation of the Water Resource Plans or Water Sharing Plans? Is that - - -

35

MR BATES: Well – well - - -

MR O'FLAHERTY: And add an example.

40

MR BATES: Yes, I – could I try and explain it?

MR O'FLAHERTY: Yes.

45

MR BATES: To – to what we demand in here and what we're not getting, so if we sat down – and, like I said, we're not irrigators. We want the water to be stored at Menindee for everybody's use. If we – and that's for the station people and all. If we had a decision to make the decisions, then we should be right, if – if – if – if it

works like that. But at the moment we've got nothing, and that's what I said before. What's the good of land without water? They may as well take the land off us.

5 MR O'FLAHERTY: So this is essentially the decision – in part, the decision-making about ensuring what's described as environmental water - - -

MR BATES: Yes.

10 MR O'FLAHERTY: - - - coming into the lakes and being preserved for - - -

MR BATES: Yes.

MR O'FLAHERTY: - - - environmental purposes but also for downstream flow.

15 MR BATES: Yes. I would – I would like to make clear that the only way we're going to get the Barka up and running and get it healthy is because – just say if this was a thing and you dug a hole there, in the bush, it filled up with water to dry it up, the cracks in the ground will grow about that big and about this deep. Right?

20 MR O'FLAHERTY: Yes.

MR BATES: And then those cracks in that – in that dam going to fill before you can get water because they're underground. It's exactly the same thing as the river. It's not all the sand. It's clay, and if you let it dry it will get that salt, they will cut the thing real short. They can have – they shut up water. What we're demanding is a cultural, natural flow, so we get three lots of water and the river will be healthy. At the moment we're just getting this environmental water which – it can go anywhere. Now you see it; now you don't. We don't want that.

30 THE COMMISSIONER: So you - - -

MR BATES: And it's salty, anyhow, when they do send it down.

35 THE COMMISSIONER: You are directing my attention to the need for more sustained low flows.

MR BATES: Yes.

40 THE COMMISSIONER: Is that a convenient time?

MR O'FLAHERTY: Yes.

45 THE COMMISSIONER: Thanks. We will adjourn until a quarter to 12.

ADJOURNED

[11.30 am]

5 MR O'FLAHERTY: I'm ready if you are.

THE COMMISSIONER: Yes. Thank you.

10 MR O'FLAHERTY: Mr Bates, we were just talking about the flows into Menindee before we broke for morning tea. I just wanted to ask you, you talk about in your statement on a number of occasions about cultural flows and you refer to the work done by the MDBA cultural flows project. I just wanted to ask for your perspective on cultural flows, whether you had any further matters that you could expand upon about cultural flows?

15 MR BATES: To – for cultural flows, this – it's only down around the Murrumbidgee, they get cultural flows.

MR O'FLAHERTY: Yes.

20 MR BATES: They probably get some, I don't know about NBAN but from where the Barka starts near Bourke right to Wentworth there is no such thing as a cultural flow for us. We are the forgotten people.

25 MR O'FLAHERTY: It has not being recognised.

MR BATES: It's not being recognised. They give us this environmental flow, like the shutoff water which is salty. And every time we talk about a cultural flow, like I said before, it's MILDRN or NBAN are looking into it, and they're still looking into it.

30 MR O'FLAHERTY: Is this linked with the problem of representation that we were discussing earlier this morning about - - -

35 MR BATES: That's right, yes.

MR O'FLAHERTY: - - - the section of the Basin that your people are in are not represented by those bodies.

40 MR BATES: No.

MR O'FLAHERTY: So the notion of cultural flows that your people relate to isn't being discussed or raised.

45 MR BATES: That's right. If I could put it like this: that with the cultural flows you've got three lots of black people.

MR O'FLAHERTY: Sure.

MR BATES: You got NBAN and you got MLDRIN, then you got us Barkandji people in the middle and we got nothing.

MR O'FLAHERTY: Yes.

5

MR BATES: And like I said, it's not just us Barkandji in the middle, there's a lot of other people in the middle there, too, white people who got nothing. So everyone needs this cultural flow and it should be a cultural natural flow with the shut-up water, the environmental flow, and I will keep on calling it shut-up water.

10

MR O'FLAHERTY: Sure. So it's – and I think – when you're referring to – when we refer to cultural flows along the Barka it is that, what we were discussing before, the maintenance of those low flows, that steady stream of water to maintain the river.

15 MR BATES: Yes.

MR O'FLAHERTY: And to flow into the Menindee Lakes.

MR BATES: That's right.

20

MR O'FLAHERTY: All right. That covered off on the specific questions that I had for you, Mr Bates. As the Commissioner has indicated, we've read all the materials you put in and so we're definitely having regard and we're definitely reading through that, but was there any particular matters that you wanted to raise this morning with the Commissioner that you wanted to discuss?

25

MR BATES: Yes. I reckon this statement here, Commissioner.

MR O'FLAHERTY: That's the 23 August statement.

30

MR BATES: 23 August statement, if there was some way that we got this to the other government people and the water people, then we might be able to save the Barka. Like, like I stated here, that to me and to my people native title they may as well take it off us. What's the good of land without water. You know, I'm a Barka, I'm a Darling River black person, so the land, we call the land Mundi but we need water, that's what we need and the both got to go together. It's like your body, your body is the land, the blood is your water. Okay. It has got to be there. So what I would like to see is something come out of this Royal Commission, something good for everyone and not only for the rich people but for the poor people, for our future generation, the kids and it does not matter. We are Australians, the lot of us. If we don't protect the land and the environment properly, we going to have nothing and our kids and our great grand kids going to have nothing.

35

40

THE COMMISSIONER: Thank you very much. And thank you for what you've written and prepared and conveyed. We may be in touch about some of those names that you couldn't recall. I don't think we will be bothering you with many of that –

45

much of that detail. If something occurs to you, just be in touch with the staff about that.

5 MR BATES: Yes. What I can do is go through my diary and give them to Sarah names of the people and give them to you people.

10 THE COMMISSIONER: That would be convenient. I don't want to trouble you but that would be convenient. I'm much obliged for your help. Thank you very much.

MR BATES: And thank you for giving me the chance of coming down.

THE COMMISSIONER: Not at all.

15

<THE WITNESS WITHDREW [11.51 am]

20 MR O'FLAHERTY: Before I call Ms Le Feuvre I will tender at tabs 1 through 4 inclusive of the folder relating to Mr Bates and I tender the statement endorsed by Barkandji Native Title Corp dated 23 August 2018.

THE COMMISSIONER: Thank you.

25 MR O'FLAHERTY: I think I indicated I was going to call Ms Beer after Mr Bates but due to scheduling of flights - - -

THE COMMISSIONER: No, that's fine.

30 MR O'FLAHERTY: - - - I swapped that out. So I call Ms Juliet Le Feuvre.

<JULIET IRENE LE FEUVRE, AFFIRMED [11.52 am]

35

<EXAMINATION-IN-CHIEF BY MR O'FLAHERTY

40 MR O'FLAHERTY: Thank you, Ms Le Feuvre. You're a – described as a Healthy Rivers Campaigner, I think, in a statement made on behalf of Environment Victoria; is that right?

MS LE FEUVRE: Yes, that's correct.

45 MR O'FLAHERTY: There should be a folder in front of you. If I could take you to tab 1. That's a statement made on behalf of Environment Victoria and you're listed

as the contact person for further information on page 15 of that. Do I take it that you're the primary author of that document?

MS LE FEUVRE: Yes, I am.

5

MR O'FLAHERTY: Was it a collaborative effort with others or was it all your own work?

MS LE FEUVRE: It was a collaborative effort. I'm the main author but I've certainly had input from others to the document.

10

MR O'FLAHERTY: Could you explain what Environment Victoria is and what it does.

MS LE FEUVRE: Yes. Environment Victoria is one of Australia's leading independent environment groups. We've been around for 49 years. It's our 50th birthday next year. We arose out of community groups working together on a campaign to save the Little Desert from development and create a national park and the groups enjoyed working together so much they felt the need for an umbrella organisation and that's how Environment Victoria was born. So we now have about 150,000 supporters. We have 40 member groups and we lead and inspire Victorians to take action on behalf of our environment and we're encouraging Victoria's leaders on climate change and to protect the environment.

20

MR O'FLAHERTY: You mentioned member organisations.

25

MS LE FEUVRE: Yes.

MR O'FLAHERTY: What's the flavour of some of those organisations?

30

MS LE FEUVRE: They're quite a diverse bunch actually. There are some river-focused groups like the Yarra Riverkeeper is a member group. The Goulburn Valley Environment Group is a member group. We have some climate action groups who are member groups. We have some sort of sustainability groups who are members. So it's quite a diversion selection.

35

MR O'FLAHERTY: I mentioned before you are a Healthy Rivers Campaigner. What does that mean?

MS LE FEUVRE: I've been working with Environment Victoria for about 12 years now and my life is all about, in fact, what it says, campaigning to make our rivers, our State's wonderful rivers more healthy and more ecologically sustainable which means returning – many of them are over-allocated and stressed from overuse, so it's all about returning water to rivers to improve their health and then support communities to have a long-term future on those rivers as well.

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MR O'FLAHERTY: Would it be fair to say that Environment Victoria has got a broad remit but the river system is a significant part of the work that it does?

5 MS LE FEUVRE: Yes. We've been working on river systems, particularly in northern Victoria for the last 20-odd years so yes, we've got a long history there.

MR O'FLAHERTY: Now, I've just got – I've got a few queries by way of clarification and expansion on this submission, the first of which is on page 1 of that submission where you've got the dot points.

10 MS LE FEUVRE: Yes.

MR O'FLAHERTY: Which is described as “a snapshot of our key issues for the Basin Plan”. That first dot point, I just wanted to ask you about, it refers to the protection of environmental flows being of utmost importance.

MS LE FEUVRE: Yes.

MR O'FLAHERTY: We've heard quite a bit of evidence about protection of environmental flows or what is sometimes called water shepherding in unregulated river systems, particularly in the northern Basin. With respect to the rivers in northern Victoria which are largely what's called regulated how does this topic relate to that sort of river system?

25 MS LE FEUVRE: Well, we don't have the same shepherding issues in Victoria as we do in New South Wales. Obviously, environment water, once it's allocated is much better protected and it is able to flow in and out of wetlands, for example, there's watering going on at the moment in Gunbower Forest and the water which is being put into that system will – 90 per cent of it will come out the other end and be available further use downstream. So we do have that protection in Victoria.

MR O'FLAHERTY: Yes.

35 MS LE FEUVRE: But one of the issues for me is that, you know, we need to have – the environmental entitlements need to be secure, you know, that they're not then sold off, qualified, handed over in any other way. And also the other point that I'm making here is that there's no substitute for water in the context of the SDL adjustment and supply projects. You know, they do some things but don't do other things. They don't actually provide the volume of water that the river actually needs. So there's sort of two elements to it. One is the shepherding which is – obviously when I wrote this that was a really big issue in New South Wales. It continues to be an issue there. It has not yet been resolved but there's also the issue of actually having genuine wet stuff in your rivers.

45 MR O'FLAHERTY: Right. So the protection you're referring to, what I was describing as water shepherding in the northern Basin - - -

MS LE FEUVRE: Yes.

MR O'FLAHERTY: - - - but more locally it's – you mentioned a concern about it – environmental water not being sold off.

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MS LE FEUVRE: Yes. Well, obviously there's a strong push at the moment for environmental water to be – it's not that the irrigators don't have a need. I mean, obviously it's a really difficult time for everybody and there are farmers who are really struggling to, you know, finish off their crops. It's not taking anything away from the situation that they find themselves in. But the environment needs water too, particularly in New South Wales where a lot of the calls are coming from. There's zero allocation for farmers, there's also zero allocation for the environment.

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So they're not getting any new water. The water holders plan their water use well ahead. They make use of the tools at their disposal including carry-over, etcetera, etcetera. So they – and if there is surplus water like the CEWH has indicated he may sell off some water in the Goulburn in coming weeks. But they have to decide whether or not they – whether they need it, whether they can use it, whether they can carry it over and only then do they make a decision to sell any excess.

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MR O'FLAHERTY: That that you just mentioned about the Commonwealth Environment Water Holder is it, what, flagging a potential sale of environmental water. There are, of course, statutory protections as to what the Environmental Water Holder can do.

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MS LE FEUVRE: Yes, absolutely.

MR O'FLAHERTY: So you would see, do you say that there's a deficiency in those protections or - - -

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MS LE FEUVRE: No.

MR O'FLAHERTY: - - - are they able to be enforced?

MS LE FEUVRE: The thing is that, you know, we and the other environment groups fought long and hard to get the water holders set up, to take decision-making about the use of environmental water out of government hands and into an independent entity like the water holder. So, you know, that to me was a big step forward when – it was to get it away from that political process where - - -

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MR O'FLAHERTY: Where it could be bartered.

MS LE FEUVRE: Where it could be bartered away when times got tough, and, yes, we've seen that happen in the past. In the drought there was a lot of issues around environmental water and whether it should be returned to irrigator use or not. So that's the point about the water holder is that they should be making decisions in the best interests of the environment and not be subject to political interference, and

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there's a great temptation for ministers and others to get involved and try to direct them what in when they should be doing, but they should not be swayed by those considerations. They're there. That's their job. That's their legal responsibility is to look after the environment first and put it first.

5

THE COMMISSIONER: Now, the trading by the water holders is, as I understand it, widely seen as appropriate conduct. That is, it ought to be permitted. Is that your understanding?

10 MS LE FEUVRE: It is permitted, but the water holders have to go through a number of processes before they can decide to put water on the market.

THE COMMISSIONER: When I say regarded as appropriate.

15 MS LE FEUVRE: Yes.

THE COMMISSIONER: The power exists now, and, as I read the materials, including yours, the existence of the power is not seen as a bad thing in itself.

20 MS LE FEUVRE: That's correct.

THE COMMISSIONER: The point you've been making for me just now I think is that that highlights the need for particular decisions about whether to trade, whether and on what terms, being made for the purposes governing environmental water, and not at political behest.

25

MS LE FEUVRE: Yes.

THE COMMISSIONER: Is that right?

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MS LE FEUVRE: Yes, that's correct.

THE COMMISSIONER: So what would you say about the Basin Plan, the Water Act and the Basin Plan permitting a minister to direct the water holder to trade away environmental water for irrigation?

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MS LE FEUVRE: I don't think the minister has the right to do that.

THE COMMISSIONER: Not at present.

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MS LE FEUVRE: No.

THE COMMISSIONER: But parliaments can amend laws.

45 MS LE FEUVRE: Yes. I would strongly resist it.

THE COMMISSIONER: Right. A law amended to permit ministerial direction to an environmental water holder to trade water for irrigation would at least have the virtue, to me as a lawyer, of being subject to the rule of law; that is, it would be permitted by legislation, and such a direction would at least be lawful. I'm not
5 suggesting it would be a good law, but at least it would be according to law. As recently as this morning, the – there has been a suggestion made that water for irrigation from that held for the environment should be taken in the same way as a private bulldozer is taken by firefighters during an emergency, that is, without any permission or consultation, just taking it because it is an emergency. Have you heard
10 that suggestion before?

MS LE FEUVRE: Not put that way. I mean - - -

THE COMMISSIONER: That's from this morning.
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MS LE FEUVRE: In Victoria the minister has the right, the ability to qualify rights, and, you know, use that power extensively during the drought to redirect the water from environmental to irrigation or firefighting or whatever, so the minister has the right to do that.
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THE COMMISSIONER: Again, according to law.

MS LE FEUVRE: According to law, exactly. So they don't need to have the concept of just helping yourself to somebody else's entitlement, whatever the
25 circumstances. That's a new one on me because I mean - - -

THE COMMISSIONER: And, similarly to me, I had thought for good or ill we had committed ourselves to a property model.

30 MS LE FEUVRE: Certainly.

THE COMMISSIONER: Of water including the trading that comes with it.

MS LE FEUVRE: Yes. And the environment is subject to those same rules. I
35 mean, if a tanker arrives and said to an irrigator, "Sorry, I'm emptying your dam because Joe down the road needs it", they would be pretty upset, and exactly the same reasoning applies to the environment.

THE COMMISSIONER: Yes. It would be an offence.
40

MS LE FEUVRE: Yes.

THE COMMISSIONER: Yes. I'm just wondering whether before this morning you've ever heard of this notion of environmental water being taken for irrigation
45 because it's an emergency.

MS LE FEUVRE: No, other than in situation of qualifying rights by the minister.

THE COMMISSIONER: That's otherwise in accordance with currently stipulated legal possibilities.

5 MS LE FEUVRE: Yes. Exactly. Yes. No, I've not heard of it.

THE COMMISSIONER: Thanks.

10 MR O'FLAHERTY: You mentioned about the real delivery of environmental water to environmental assets, I think, and by reference to the SDL projects. That's your second dot point.

MS LE FEUVRE: Yes.

15 MR O'FLAHERTY: Where you raise concerns about those projects. I want to do – take to you page 3 of your submission, of Environment Victoria's submission. The bottom paragraph, you make – the point is made there, this is the second sentence:

20 *To the best of Environment Victoria's knowledge the MDBA has not carried out any checks as to whether this figure –*

Being the 605 gigalitre reduction –

25 *Still represents an environmentally sustainable level of take as defined in the Water Act.*

30 Now, leaving aside the usefulness or the cogency of the process that is prescribed in the Basin Plan, there is a process by which these projects are assessed having accord to their limits of change. There's a 10 per cent buffer I believe in terms of the scoring mechanisms in that particular method. If one were to assume – and it may not be an assumption you make. If one were to assume that the starting figure before these projects were fed into this model represented an ESLT based on the scores in that method, and then if these projects were put through that method and a limit of change assessment applied such that insufficient exchange meant that – well, a
35 still ticked, that seems to be the process that has been adopted on the SDL adjustment process, but you say there needs to be a – even after that there should be a further assessment of the – of whether the – what you're getting as a result is still an ESLT. I'm just wondering if you could explain.

40 MS LE FEUVRE: To me it's about how you define the ESLT. There's key parts which I quote from the Water Act earlier up the page, the key environmental assets.

MR O'FLAHERTY: Yes.

45 MS LE FEUVRE: The existent functions, the productive base and the environmental outcomes. Now, I think a lot of the supply projects are to do with particular sites, so they're all about looking after the key environmental assets, so

there's water in particular individual sites which is fine as far as it goes. I'm much more concerned about whether doing that in the way that's proposed through the supply measures actually maintains the key existing functions of the river and the other components of the ESLT. Just going back in history a little bit with the Living
5 Murray Project, that was all about the icon sites, the key environmental assets, and, you know, it was – you know, because there was limited water that was the best use you could make was to supply those individual sites.

10 MR O'FLAHERTY: Yes.

MS LE FEUVRE: And when the Basin Plan was first made my very simplistic interpretation of it was that the Basin Plan was about looking after the pieces in between.

15 MR O'FLAHERTY: Yes.

MS LE FEUVRE: So the river would actually work as a system.

20 MR O'FLAHERTY: Not just the six icon sites.

MS LE FEUVRE: Not just as the six – as the icon site, and so in the ESLT we protect the river as a whole. So when we go to these supply projects we're stepping back towards that icon site approach. Anyway, but I really am concerned about the functioning of the river as a complete ecosystem.

25 MR O'FLAHERTY: This is related, is it, to the idea that an indicator site on a particular floodplain is assessed in a scoring method such that if a piece of infrastructure directs water to that particular indicator site, that particular indicator site may well show a positive response.

30 MS LE FEUVRE: Yes, absolutely.

MR O'FLAHERTY: But, depending on how one directs the water to that site, we may be missing other aspects of the wetland or the floodplain.
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MS LE FEUVRE: Yes.

MR O'FLAHERTY: To that.

40 MS LE FEUVRE: Exactly. I mean, you're watering a very small proportion of the floodplain, and you get great results on those sites. I don't question that, and in terms of drought refuges and things like that, it's really important to water those sites. That's a key drought precaution, but in terms of actually maintaining the river as a functioning river that isn't prone to Blackwater events and, you know, actually
45 has existent functions and lateral – both longitudinal and latitudinal connectivity, they don't do those things. So those aspects of ESLT are what I'm concerned about.

MR O'FLAHERTY: Yes. And I think in one of the submissions we've received it talks about the fact that these SDL projects are achieving environmental outcomes that sheer delivery of water could deliver.

5 MS LE FEUVRE: Yes, I mean, equivalence is a really difficult - - -

MR O'FLAHERTY: Yes.

10 MS LE FEUVRE: - - - notion in terms of environmental outcomes. You know, just going back to what Badger was saying about the Golden Perch on the Menindee Lakes.

MR O'FLAHERTY: Yes.

15 MS LE FEUVRE: I mean, that's an absolute case in point. How do you - - -

MR O'FLAHERTY: How do you trade-off?

20 MS LE FEUVRE: - - - replace that perch hatchery?

MR O'FLAHERTY: Yes.

25 MS LE FEUVRE: You know, what are the trade-offs for that? What are you getting if you're losing that? So, you know, it's - it's - it's - it's apples and oranges. It's really - the methodology is a difficult one, and then there are these things underlying it as well.

30 MR O'FLAHERTY: All right. As the actual - the concerns you've raised - this is over the page on page 4 - in respect of the supply measure projects themselves, you refer to the Wentworth Group's analysis.

MS LE FEUVRE: Yes.

35 MR O'FLAHERTY: Do I take it that you rely on their analysis?

MS LE FEUVRE: Yes.

MR O'FLAHERTY: You haven't done your own.

40 MS LE FEUVRE: No, I haven't done my own similar analysis.

MR O'FLAHERTY: They've done a fair bit of work, obviously.

45 MS LE FEUVRE: They have, yes.

MR O'FLAHERTY: Over the page you pick up, I think, on their proposals, I think, to amend the Water Act and the Basin Plan, as, at the time, this is I think late 2017,

when they were making that suggestion. Now, time has moved on since that point in time. With respect to those recommendations or those following steps that you refer to on page 5, what do you see as possible steps that could be taken now given that

- - -

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MS LE FEUVRE: Well, I mean possible - - -

MR O'FLAHERTY: What we're at now.

10 MS LE FEUVRE: I mean, obviously, there's – since this was written there has been the agreement between - - -

MR O'FLAHERTY: Certainly.

15 MS LE FEUVRE: Between the Federal Government and the Federal ALP to progress. But to me, it's all about what sort of assessment do you put the projects through? Both the supply projects and the efficiency measures for that, for – you – you've got to give equal rigor to both sides of the - - -

20 MR O'FLAHERTY: Yes.

MS LE FEUVRE: Of the – of the – of the balance. We've got, you know, supply measures on one side. I mean, they need to – you know, a lot of them are concerned, you know, Ramsar list of wetlands, you know, key environmental assets of – of the
25 Basin, so you need an environmental impact statement before you go ahead with the project, so to actually untangle the benefits and disbenefits. And similarly with the efficiency projects, you know, there has been a lot of criticism about them and about whether – how much water they're actually returning to the environment, so you need to audit those savings as well. So you need to have a rigorous process on both
30 sides of the – of the ledger, and then you can have an adjustment which people have confidence in.

MR O'FLAHERTY: Yes, so it's - - -

35 MS LE FEUVRE: So, you know, whether you build those – those standards into the Water Act – that would be the best way to do it.

MR O'FLAHERTY: Yes.

40 MS LE FEUVRE: You know, put – put – put standards on both – both sets – on both sides, or whether you do it, you know, by regulation or how you do it, and that's – you know, there would be different ways of doing it.

MR O'FLAHERTY: Yes.

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MS LE FEUVRE: Ideally, you put it in the Water Act.

MR O'FLAHERTY: Yes. All right. The efficiency measure projects you just made reference to, we've – well, I've seen one such project being referred to which is a South Australian project which is – I think the reference I've seen is just shy of one gicalitre recovered or contracted to recover in respect of that 450-gicalitre target.

5 Are you aware of any other projects that are slated to progress or have started in respect of the 450 gicalitres in Victoria?

MS LE FEUVRE: Victoria, the Victorian Government is proposing to put forward projects for nine gicalitres.

10

MR O'FLAHERTY: Right.

MS LE FEUVRE: They haven't released any details of those projects as yet.

15 MR O'FLAHERTY: Right.

MS LE FEUVRE: So – but they made a commitment at ministerial council to – to start looking for those nine gicalitres as – you know, as part of the – the balance for the 605.

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MR O'FLAHERTY: Yes.

MS LE FEUVRE: You know, within the limits of exchange you need to recover 61 gicalitres of upwater to get the full - - -

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MR O'FLAHERTY: So that's the nine gicalitres, to have a shortfall between the 605 and the 650?

MS LE FEUVRE: Exactly. Exactly.

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MR O'FLAHERTY: So we haven't even got to the 450 yet.

MS LE FEUVRE: No. So the 61 gigs is the first tranche of the 450.

35 MR O'FLAHERTY: Yes.

MS LE FEUVRE: It's part of that – that - - -

MR O'FLAHERTY: Right. Yes.

40

MS LE FEUVRE: That pull, but it's required to - - -

MR O'FLAHERTY: Yes.

45 MS LE FEUVRE: To balance the 605 of offsets.

MR O'FLAHERTY: So that nine gicalitres: when was that announced?

MS LE FEUVRE: Well, at the last ministerial council - - -

MR O'FLAHERTY: Right.

5 MS LE FEUVRE: - - - the Minister put out a press release saying that they would look for those projects, but they haven't published any further detail - - -

MR O'FLAHERTY: Right.

10 MS LE FEUVRE: - - - of what the projects are.

MR O'FLAHERTY: Was there any indication of when that might occur or - - -

15 MS LE FEUVRE: I ask them this question fairly regularly, and I'm usually told "imminently", but, as I say, I'm not aware - - -

MR O'FLAHERTY: Sure.

20 MS LE FEUVRE: - - - of any detail actually being released.

MR O'FLAHERTY: You make some – this is on page 6 of your submission. You make some suggestions as to how this 450 gigalitres could be recovered. What I wanted to ask you some more questions on was the last dot point which starts:

25 *Other neglected opportunities exist.*

And there's a reference to a 2009 CSIRO analysis.

30 MS LE FEUVRE: Yes.

MR O'FLAHERTY: You, in your – you – this is in your footnote 16.

MS LE FEUVRE: Yes.

35 MR O'FLAHERTY: You refer to a CSIRO working paper.

MS LE FEUVRE: Yes.

40 MR O'FLAHERTY: We've managed to find, I think

MS LE FEUVRE: Yes.

45 MR O'FLAHERTY: - - - the published version of that paper. That should be behind tab 3 of - - -

MS LE FEUVRE: Yes.

MR O'FLAHERTY: - - - the folder in front of you. As I understand it, it might be easiest to talk about in terms of – this is on page 1032 to 1033 under the heading Three, Methods. You see that?

5 MS LE FEUVRE: Yes, got it.

MR O'FLAHERTY: On the right-hand column. This is a process of analysis – of analysing a particular agricultural area and assigning it zones of production. Is that right?

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MS LE FEUVRE: Yes, that's correct. Yes.

MR O'FLAHERTY: Where we've got different zones. Green zone is continuing irrigation but improving the infrastructure, which I take to mean things like what we would – no one would understand as efficiency projects now. Is that right?

15

MS LE FEUVRE: Yes, I think it would be a mix of on and off farm projects. So some – yes.

20 MR O'FLAHERTY: Yes, so in terms of - - -

MS LE FEUVRE: There would be – there's an element of rationalisation of the – of the delivery system - - -

25 MR O'FLAHERTY: Yes.

MS LE FEUVRE: - - - and then on-farm efficiency as well.

MR O'FLAHERTY: Yes. Yes, and then red zone is converting straight out buybacks. Is that - - -

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MS LE FEUVRE: Yes, I think that's what they anticipated.

MR O'FLAHERTY: And then converting that to dry land farming.

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MS LE FEUVRE: Yes.

MR O'FLAHERTY: And then you've got an amber zone. That's something which – so we've come across roughly what green zone and red zone entails, but amber zone is something that we haven't come across much on. Is that essentially sort of forming nature reserves in a sense, is it?

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MS LE FEUVRE: No, I mean, I think they envisage it as a kind of amenity value. I mean, the – the- the - - -

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MR O'FLAHERTY: Sure.

MS LE FEUVRE: The area that they tested this – you know, Swan Hill has got quite serious salinity issues in the area.

MR O'FLAHERTY: Yes.

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MS LE FEUVRE: So – and there's also, you know, considerable demand for properties. Got some nice properties along the river. You know, it has got some quite good – you know, people – it's a sought-after area for people to move into as well. So - - -

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MR O'FLAHERTY: In terms of the local amenity or tourism and recreational - - -

MS LE FEUVRE: Yes, that's right. Yes, exactly. There's potential - - -

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MR O'FLAHERTY: Right. Yes.

MS LE FEUVRE: - - - for tourism and recreational as well. And of course, then there's potential for land to be used for carbon credits for existing services or – you know, that's what I think they were envisaging, that there could be new – new uses brought to it. So I think, you know, it's – it's land which is – is marginal, you know, that – that - - -

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MR O'FLAHERTY: Yes.

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MS LE FEUVRE: - - - is – is not – you know, not – could be – could be – it could be – it could be included in the red or the green but could be better put, in their estimation, to other – other uses.

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MR O'FLAHERTY: Yes. And just so I understand what is envisaged by this sort of planning process, over the page on 1035, I'm deliberately skipping the formula. There's a reason why I did law and not maths. The decision tree model under heading 3.4.1 is essentially you set out ecological needs first. You then, where areas are, I suppose, corralled for those – that amber zone, is that – in terms of those what I call nature reserves.

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MS LE FEUVRE: Yes.

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MR O'FLAHERTY: And then it's a matter of determining which remaining areas can still be sustainably used for irrigation or which areas need to be converted to dry land farming. Is that – I know I've probably massively oversimplified that.

MS LE FEUVRE: You probably need to for me as well.

45

MR O'FLAHERTY: Yes, I've done that for my own benefit.

MS LE FEUVRE: Yes, certainly. Yes.

MR O'FLAHERTY: Yes. Does that – that's your understanding, roughly.

MS LE FEUVRE: Yes, I mean, basically – I mean, roughly it's a framework. You know, you apply various criteria to a landscape and then assign it to the appropriate zone, yes.

MR O'FLAHERTY: We've had evidence, quite a bit of evidence about targeted efficiency measures and targeted structural relief or targeted structural adjustments. This seems to be a good example to my mind of the detail of what that might look like.

MS LE FEUVRE: Yes, absolutely. It's a kind of – it's a rationalisation for then – then – okay, this is our land use and this is what we need to do. What then do we need to bring to the table to make it happen.

MR O'FLAHERTY: Yes. And finally, I think you make the point in your submission that with this targeted package actually increased agricultural profitability by 24 per cent.

MS LE FEUVRE: Yes, that was a conclusion that the CSIRO case study came to, that if you did it those would be the benefits you would get.

MR O'FLAHERTY: And with a reduction or return of about 20 per cent of the water to the environment.

MS LE FEUVRE: Yes. There has been a kind of small-scale version of this attempted by VicSuper in this very area where the CSIRO uses their test case where they've actually purchased land, they've reconfigured it. They've sold off some of the water. They're using it as a component of their super fund to actually – it's a farming fund within their super fund. And it's actually doing the sort of process that this envisages and they're making money out of it. So it's working in that small example.

MR O'FLAHERTY: Is this in the same Torrumbarry Irrigation Area or is this in a neighbouring one.

MS LE FEUVRE: Yes, it's near Kerang. Yes, it is. It is in a similar area.

MR O'FLAHERTY: Are you aware of any other area that have adopted a similar strategy?

MS LE FEUVRE: Well, there was a move towards it in the GMID as part of the modernisation process, how close were you to a backbone channel, you know, but the trouble is that there's two real issues was it. One is that governments don't actually like drawing lines on maps and saying you're in the red, you're in the green. It's a hard-headed government that's actually prepared to do that and say you're in and you're out. And the other thing is that, you know, channel systems have very

mixed users along them. They're not all small – small – sometimes they are but in most cases you get a mix of big users and small users and so it's really difficult to actually rationalise it.

5 MR O'FLAHERTY: And users of different kinds as well.

MS LE FEUVRE: Exactly. And some people - - -

10 MR O'FLAHERTY: A dairy farmer may have a very different - - -

MS LE FEUVRE: And if nine people on the channel want to close down and one person doesn't then you're stuck.

15 MR O'FLAHERTY: Yes. So you're not aware of any other, other than around that Torrumbarry Irrigation Area of anything large-scale, except for - - -

MS LE FEUVRE: Sorry, I meant to – this was – I was going to follow up and see what had happened, I might take that one on notice as to how far that actually got.

20 MR O'FLAHERTY: No. That's fine. All right.

THE COMMISSIONER: I just wonder if I could jump to - - -

25 MR O'FLAHERTY: Certainly.

THE COMMISSIONER: - - - some constraints questions.

MR O'FLAHERTY: Yes.

30 THE COMMISSIONER: You've drawn to my attention some aspects of the so-called 450 gegalitre upwater ambition. I gather from your submission that you suggest that part of the focus needs to be that that seems to be tied to constraints relaxation, as it's sometimes called. The Basin Plan calls it the easing or removal of constraints. Now, have I understood your submission correctly that in particular, that
35 has to do with the means by which environmental watering can proceed out of channel; correct?

MS LE FEUVRE: Yes.

40 THE COMMISSIONER: So as either to be or to simulate a flood breaking of the banks; is that right?

MS LE FEUVRE: Well, you're never going to have enough environmental water to do a big flood.
45

THE COMMISSIONER: Yes.

MS LE FEUVRE: This is all about small events. So - - -

THE COMMISSIONER: But out of channel.

5 MS LE FEUVRE: Out of – well, yes, that’s right. Getting some water onto the floodplain.

10 THE COMMISSIONER: And out of channel can be achieved or simulated by technology such as the Chowilla project, you understand, but that’s not a constraints easing exercise. The easing of constraints so as to permit out of channel involves water exceeding the banks and flowing out of channel; is that right?

15 MS LE FEUVRE: Yes. I mean, I could take the Lower Goulburn as an example, where we now have a beautiful red gum national park which has a strip along the riverbank and, you know, that can only – only small sections of that can be watered under current circumstances so in order to actually sustain the national park as an entirety you need to get water up into it.

20 THE COMMISSIONER: Well, now, the 450 gigalitres is occasionally, and perhaps for understandable reasons, seen as really relating to South Australian outcomes, but in schedule 5 of the plan which is where those outcomes are actually stipulated, some of them at least are plainly either Basin-wide or further upstream than South Australia.

25 MS LE FEUVRE: Yes.

30 THE COMMISSIONER: Including some that you’ve just mentioned such as opportunities for environmental watering of an additional 35,000 hectares of flood plain in South Australia, New South Wales and Victoria improving the health of forests and fish and bird habitat, improving the connection to the river, and replenishing groundwater. That’s the Basin Plan articulation of the matters you’ve just drawn to attention, I think.

35 MS LE FEUVRE: Yes.

MR O’FLAHERTY: And G as well.

40 THE COMMISSIONER: Then in G they refer to enhanced instream outcomes so that’s - - -

MS LE FEUVRE: You’re in schedule 5?

45 THE COMMISSIONER: Schedule 5 which you will find at page 216 of that print, if it has got page numbers down the bottom?

MS LE FEUVRE: Right. Got you.

THE COMMISSIONER: And in G you will see there's a reference to floodplain and habitats adjacent to rivers in the southern Murray-Darling Basin which obviously includes both Victoria and New South Wales. Now, do you understand or sorry, I'm trying to appreciate the force of your submission. Do you understand that in order to get sufficient flow ultimately discharging into the ocean, represented by the addition of the 450 gigalitre upwater as a long-term average annually, one of the challenges is the so-called constraints which would – which physically prevent that from occurring. You cannot achieve that amount of flow. Is that – I think that's what you - - -

10 MS LE FEUVRE: Yes. I think to achieve the outcomes for the Lower Lakes and the Coorong - - -

THE COMMISSIONER: There have to be - - -

15 MS LE FEUVRE: - - - you have to have all the tributaries, all the rivers working together and delivering water at the same time to flush the salt out.

THE COMMISSIONER: Which will involve from time to time and place to place breaking the banks.

MS LE FEUVRE: Yes. It will require higher flows than are currently permitted at certain points along the river system.

25 THE COMMISSIONER: Which means the flooding of private land with concomitant - - -

MS LE FEUVRE: Yes.

30 THE COMMISSIONER: - - - damage; correct?

MS LE FEUVRE: Yes. Yes, with impact, yes, sure.

THE COMMISSIONER: With impact.

35 MS LE FEUVRE: Yes.

THE COMMISSIONER: Certain crops will be ruined by it and some livestock may be stranded or deprived of fodder, etcetera.

40 MS LE FEUVRE: I question some of those things. I mean, a notice will be given. It's not – it's in the watering plan so you say okay, this year we may be flooding - - -

THE COMMISSIONER: That sounds like a minimum level of decency.

45 MS LE FEUVRE: Exactly. Yes. In September this year we're planning to do X. So the farmers would have notice. It's not like a natural flood.

THE COMMISSIONER: In an ideal world.

MS LE FEUVRE: Yes. So they can plan ahead for what they're going to do.

5 THE COMMISSIONER: In an ideal world, yes.

MS LE FEUVRE: The other thing which is really important to remember is, sure, flooding is a temporary inconvenience but there's also a long-term benefit to the farmer.

10

THE COMMISSIONER: I understand that. I should have mentioned as well there's salt transport which is seen as one of the explicit outcomes - - -

MS LE FEUVRE: Absolutely.

15

THE COMMISSIONER: - - - intended from 450 gigalitres which by definition benefits everybody along the river.

MS LE FEUVRE: Yes. Exactly.

20

THE COMMISSIONER: Now, does it then, according to your submission, amount to this: that unless the so-called constraints relaxation can take place, the 450 gigalitre upwater will not happen.

25 MS LE FEUVRE: It's not that it won't happen but you won't be able to get the benefits out of it that you could. So I mean - - -

THE COMMISSIONER: How could it happen unless the constraints are relaxed?

30 MS LE FEUVRE: I suppose you – it would have to be delivered in such a way that it didn't raise the river levels above its key.

THE COMMISSIONER: That would mean that you don't provide opportunities for environmental watering of floodplain.

35

MS LE FEUVRE: Exactly, yes.

THE COMMISSIONER: That's one of the outcomes.

40 MS LE FEUVRE: You could use the 450 gigalitres for other things but that would be a contravention of the Plan. The environmental watering at the moment is restricted to in channel outcomes by and large and watering selected wetlands where there's infrastructure to get it to.

45 THE COMMISSIONER: Now, the next thing I wanted to ask you is this. I think you have – I'm not sure whether your submission addresses this. The – do you understand that the addition of 450 gigalitres of environmental water above the 2750

benchmark can be made available only if social and economic outcomes are maintained or improved?

5 MS LE FEUVRE: Yes. I mean, there's a question of how you define those social and economic outcomes but, yes.

THE COMMISSIONER: Quite, yes.

10 MS LE FEUVRE: But yes, that's my understanding of the Plan, it has to be socially and economically mutually beneficial.

15 THE COMMISSIONER: Well then, behind that rather cosy expression, "relaxing constraints" there is the more concrete reality of people's properties being flooded. I think that's right, isn't it? Yes?

MS LE FEUVRE: Yes, but I mean, it would – the whole point about Constraints Management Strategy is that those – there would be compensation for - - -

20 THE COMMISSIONER: Quite. These what I was going to ask you.

MS LE FEUVRE: They would be compensable.

25 THE COMMISSIONER: Quite. So it sounds to me as if you accept that necessarily, bearing in mind the Plan's contemplation of constraints relaxation and overbank environmental watering, that it seems to assume or proceed on the basis that you can maintain or improve social and economic outcomes notwithstanding the flooding of private productive land, and you suggest that that is because, of course, those events would need to be fully compensated. Is that the idea?

30 MS LE FEUVRE: It's partly that but there's another aspect to this. That if you take measures so that you can deliver the environmental water, so you might, you know, shift a bridge or you might raise a road or you might - - -

35 THE COMMISSIONER: That's in order to be able to raise the flow - - -

MS LE FEUVRE: Yes, so - - -

40 THE COMMISSIONER: - - - over a bank – but out of channel, over a bank into land where otherwise the culvert is too low or the bridge is too low, etcetera, to permit use - - -

MS LE FEUVRE: Yes.

45 THE COMMISSIONER: - - - while the environmental watering is going on.

MS LE FEUVRE: But the point I'm trying to make is that managing constraints brings benefits as well as costs.

THE COMMISSIONER: I do understand that.

MS LE FEUVRE: It actually adds to protection if a natural flood occurs then you've got more protection against that flood because you're already set up. You
5 might have a levy bank in the right place so that – when an environmental flood
wouldn't get into, you know, where we don't want it to go. So, you know, there's a
lot of positive impact of this and some issues which have been hanging around for
years could be resolved by, you know, by doing a decent constraints management
project. So there's a lot upside but also a social and economic benefits from doing it,
10 as well as – as possible detriment.

THE COMMISSIONER: So you have this very challenging process of - - -

MS LE FEUVRE: Yes, I'm not saying it's easy.
15

THE COMMISSIONER: No, I know. A very challenging process of trying, as it
were, to net off things that are not obviously commensurable.

MS LE FEUVRE: Yes.
20

THE COMMISSIONER: One person has lost a crop.

MS LE FEUVRE: Yes. I mean, that's – that's obviously not a desirable outcome
for farmers to lose crops - - -
25

THE COMMISSIONER: No, no, no, no.

MS LE FEUVRE: - - - as a result of it. But on the other hand, I think with proper
planning you ought to be able to – to manage those types of impacts and, you know –
30 and produce benefits as well.

MR O'FLAHERTY: Mitigate those losses.

MS LE FEUVRE: Yes.
35

MR O'FLAHERTY: Yes.

MS LE FEUVRE: Absolutely.

THE COMMISSIONER: Well, they would need to be fully compensated.
40

MS LE FEUVRE: Well - - -

MR O'FLAHERTY: Well, is it a manner in which the timing on environmental
45 releases and the notice may be done such that a farmer may be able to get prior
notice in order to move equipment off so it's not damaged or harvest a crop before

the flows go through? It's that sort of thing that you're talking about, isn't it, about
- - -

5 MS LE FEUVRE: Yes, and, you know – and - - -

MR O'FLAHERTY: - - - lessening the impact.

MS LE FEUVRE: Yes, exactly.

10 MR O'FLAHERTY: And any shortfall, as the Commissioner has pointed out, can
be taken up with compensation.

MS LE FEUVRE: Yes. Yes. I mean, you know, I – I think there's a lot of concern
15 about this issue and, I mean, people have the experienced, you know, serious flood
damage. Some people have been inconvenienced by previous environmental flow
events. So, you know, obviously, people are worried about it. But on the other hand,
there's people who welcome it too, people who want to have their billabongs filled
up, you know, and who want to actually get water onto their property, see it as a
good thing.

20 THE COMMISSIONER: Yes.

MS LE FEUVRE: So, you know, it's not all - - -

25 THE COMMISSIONER: That's why flood plains are called flood plains.

MS LE FEUVRE: Yes, and – and – and if you – if you do farm on a flood plain - - -

30 THE COMMISSIONER: Yes.

MS LE FEUVRE: - - - you know, there's – there's costs and benefits to that, and
the – the – the benefits far outweigh the costs.

35 THE COMMISSIONER: Well, should I be thinking of these places and occasions
when private productive land is flooded? Should I be thinking of – and that is
something which represents a constraint because there is a social resistance to it.
Should I be thinking of that flooding itself being for environmental purposes? Or is
it really only a consequence of the – what I will call the transport or conveyance of
water intended, ultimately, to achieve outcomes all down the river to the mouth?

40 MS LE FEUVRE: Well, it's both. It's – I mean, if – to go back to that Lower
Goulburn floodplain example, you know, obviously, you get – you're supporting
those – those forests on that floodplain.

45 THE COMMISSIONER: Yes.

MS LE FEUVRE: But you're also, as the water flows out – out again - - -

THE COMMISSIONER: Yes.

MS LE FEUVRE: - - - providing water for those downstream benefits as well. So you're doing both.

5

THE COMMISSIONER: The 450 gigalitres, which is widely described, I think rather loosely, as water for South Australia - - -

MS LE FEUVRE: Yes, I don't subscribe to that view.

10

THE COMMISSIONER: Yes, certainly - - -

MS LE FEUVRE: I've never subscribed to that view.

15

THE COMMISSIONER: Certainly it's described in the plan as being much more than that, but it is also clearly described in the plan as being for those purposes.

MS LE FEUVRE: Yes.

20

THE COMMISSIONER: I mean, it literally culminates at the Mouth, in the ocean.

MS LE FEUVRE: Yes.

25

THE COMMISSIONER: Have I understood correctly your view of this, that a challenge of the 450 gigalitres upwater is getting it down the river?

MS LE FEUVRE: Yes, it is. I mean, if you don't do - - - - -

30

THE COMMISSIONER: And getting it down the river involves the possibility of flooding people's land - - -

MS LE FEUVRE: Yes.

35

THE COMMISSIONER: - - - in a situation that we describe as a constraint.

MS LE FEUVRE: I mean, in terms of - - -

THE COMMISSIONER: Is that right?

40

MS LE FEUVRE: Of meeting the objectives of the 450 - - -

THE COMMISSIONER: Yes.

45

MS LE FEUVRE: If you don't manage the constraints you won't meet your objectives. So, you know, if - - -

MR O'FLAHERTY: They go hand-in-hand.

THE COMMISSIONER: By managing the constraints, then, you mean making arrangements, avoiding social and economic harm, which will permit overbank events?

5 MS LE FEUVRE: Yes.

THE COMMISSIONER: Is that right? I've got that right?

10 MS LE FEUVRE: Yes. Yes, that would be right. Yes.

THE COMMISSIONER: And so right at the nub of it is, how do you avoid social and economic harm if the essence of the exercise is putting water where a private landowner, if he or she would prefer it not to be.

15 MS LE FEUVRE: Yes.

THE COMMISSIONER: Thanks.

20 MS LE FEUVRE: Yes. Yes, that would be a fair statement.

THE COMMISSIONER: Thank you. Well, as you say, it's - - -

MS LE FEUVRE: Although, not – not all - - -

25 THE COMMISSIONER: - - - strikingly easy, isn't it? Yes.

MS LE FEUVRE: Not all private landholders would hold that position, but some would.

30 THE COMMISSIONER: No, no, I understand that. No. No.

MS LE FEUVRE: Yes, some - - -

35 THE COMMISSIONER: And the - - -

MS LE FEUVRE: Some do.

THE COMMISSIONER: It is, after all, an aspect - - -

40 MS LE FEUVRE: Yes.

THE COMMISSIONER: - - - of private property, that - - -

45 MS LE FEUVRE: Yes. Yes. No, I - - -

THE COMMISSIONER: - - - to the extent that the law permits, you get to choose how it's used.

MS LE FEUVRE: Absolutely.

THE COMMISSIONER: Yes.

5 MS LE FEUVRE: Yes.

THE COMMISSIONER: Thanks.

10 MR O'FLAHERTY: And just to pick up on some of the discussion, we've had regard to one of the submissions made by Environment Victoria. This should be behind tab 2 of the folder in front of you. That's titled What Does the Draft Basin Plan Mean for Northern Victoria's Waters, and an analysis by – it's Environment Victoria. Now, it's undated, but - - -

15 MS LE FEUVRE: Yes.

MR O'FLAHERTY: - - - going on the references, I'm taking this to have been an analysis of the draft Basin Plan and that was leased in late 2011.

20 MS LE FEUVRE: That's correct.

MR O'FLAHERTY: Yes.

25 MS LE FEUVRE: Yes. Yes, I think it was written probably at the end of 2011.

MR O'FLAHERTY: Yes.

MS LE FEUVRE: Before the whole issue of constraints relaxation was - - -

30 MR O'FLAHERTY: Well, it's – it - - -

MS LE FEUVRE: Was – was a topic.

35 MR O'FLAHERTY: Because you were – the first page of the summary seems to foreshadow the issue of constraints, I think.

MS LE FEUVRE: Yes.

40 MR O'FLAHERTY: Where a key – this is in the second paragraph:

A key reason for failure to deliver water to the upper flood plain is operational constraints - - -

45 MS LE FEUVRE: Yes.

MR O'FLAHERTY:

- - - including river operating rules and physical barriers such as the potential to flood private land.

5 And then you – then the submission goes on to talk about the need to catalogue and characterise those constraints - - -

MS LE FEUVRE: Yes. Yes.

10 MR O’FLAHERTY: - - - such that they can be addressed. Your submission there was essentially, “We need something like a Constraints Management Strategy.”

MS LE FEUVRE: Exactly, yes.

15 MR O’FLAHERTY: I want to just ask you a few questions about this particular document.

MS LE FEUVRE: Sure.

20 MR O’FLAHERTY: The – and in respect of the assessment, if I could take you to page 6, I think it is, by way of example, this is the Goulburn River. That table there, I’m – I take that as a table that has been taken from the report, 2011 report which is entitled The Proposed Environmentally Sustainable Level for Surface Water, or what we’ve - - -

25 MS LE FEUVRE: Yes.

MR O’FLAHERTY: - - - described as the ESLT report.

30 MS LE FEUVRE: Yes, that would be right.

MR O’FLAHERTY: And I’ve looked at that report and for your reference, Commissioner, I think that table is replicated at page 136 of that report, which is exhibit RTE6. I had a question on that in the analysis portion of the Goulburn River because the last paragraph on that first column talks about system constraints.

35

MS LE FEUVRE: Yes.

MR O’FLAHERTY: And then there’s a reference to:

40 *Recent work by the Victoria Department of Sustainability and Environment suggests that flows of up to 40,000 megalitres a day are achievable at Shepparton within existing constraints, but this is not factored in by the MDBA.*

45 Just first of all, do you know what that reference to “recent work” was?

MS LE FEUVRE: Yes, that was – it is a long history to this project. You know - - -

MR O'FLAHERTY: Yes.

MS LE FEUVRE: - - - that before the Basin Plan was made, the Victorian
Department of DSE, as it was then, you know, did environmental flow studies on the
5 Goulburn and looked at what – what the requirements of that lower floodplain were.

MR O'FLAHERTY: Yes.

MS LE FEUVRE: And they considered flows, I think, of 20, 40, and 60 thousand
10 megs – megs a day through Shepparton.

MR O'FLAHERTY: Sure.

MS LE FEUVRE: And - - -
15

MR O'FLAHERTY: Is that at the gauge – there's a reference to a gauge at McCoys
Bridge. Is that - - -

MS LE FEUVRE: McCoys Bridge is downstream of Shepparton.
20

MR O'FLAHERTY: Downstream of Shepparton.

MS LE FEUVRE: Yes. Yes, so - - -

MR O'FLAHERTY: And there's another gauge at Seymour. Is that – that's
25 upstream, isn't it?

MS LE FEUVRE: Seymour is upstream, yes. So - - -

MR O'FLAHERTY: Yes. Yes.
30

MS LE FEUVRE: Yes, so there's lake then they're Seymour, then there's
Shepparton - - -

MR O'FLAHERTY: Yes.
35

MS LE FEUVRE: - - - and then there's McCoys Bridge - - -

MR O'FLAHERTY: Yes.
40

MS LE FEUVRE: - - - and then it flows down to – to the Murray. So I think their
thinking at the time was that they could put 40,000 megs through Shepparton. I
mean, at the moment that would not be – yes, it's above the minor flood level. So
- - -

MR O'FLAHERTY: Yes, my understanding - - -
45

MS LE FEUVRE: Yes.

MR O'FLAHERTY: - - - in terms of the – at McCoys Bridge, it's about 20,000. Is that – that's my understanding, and - - -

5

MS LE FEUVRE: At McCoys? You – what – the – the – the - - -

MR O'FLAHERTY: What the current constraints are.

10 MS LE FEUVRE: Yes, that's right.

MR O'FLAHERTY: Yes.

15 MS LE FEUVRE: I mean, this has now all completely fallen by the wayside and – yes, the – the – the government – the Victorian Government did – well, first of all - - -

MR O'FLAHERTY: Yes.

20 MS LE FEUVRE: - - - the MDBA and then the Victorian Government did look at raising the – the maximum level at Shepparton to 40,000 megs a day. There was a lot of community concern about that. It got pulled back to 35, then to 30 and now it's back to 20.

25 MR O'FLAHERTY: Right.

MS LE FEUVRE: So we're actually right now back where we started. We're now back at the stage of – to - - -

30 THE COMMISSIONER: What about the modelling that produced the ESLT? It assumed without testing removal of some constraints.

MS LE FEUVRE: No. The ESLT - - -

35 MR O'FLAHERTY: That would have post-dated this submission, I think.

MS LE FEUVRE: The ESLT model assumes that the constraints are there, so it would have assumed 20,000 megs a day at Shepparton. The Wentworth Group go into this in some detail. That's what's in the model. And then, you know, obviously,
40 if you're going to relax the constraint, you have to raise that level so that's permissible through Shepparton, and that's what the original Goulburn constraints project proposed to do. That project has now been withdrawn by the Victorian Government and replaced with the new Goulburn special area, special focus area, whatever it's called, and that maintains that 20,000 meg a day limit at Shepparton.

45

MR O'FLAHERTY: I wanted to also just ask you about – there's some reference in this document to a Northern Region Sustainable Water Strategy.

MS LE FEUVRE: Yes.

MR O'FLAHERTY: First reference I've found is over the page on page 9. This is in relation to the Campaspe River.

5

MS LE FEUVRE: Yes.

MR O'FLAHERTY: There's an implicit criticism, I think, in the sentence describing not setting specific objectives, but relying instead on that. Do I take it that that Northern Region Sustainable Water Strategy isn't sufficient to your – in your view?

10

MS LE FEUVRE: Yes. The northern – I mean, it's a Victorian Government strategy/ Sustainable Water Strategy, so it's supposed to provide a 50 year planning framework for water resources in various regions of Victoria.

15

MR O'FLAHERTY: And this is a process which the Victorian Government does with respect to all of its rivers, and this is the northern one, is it.

MS LE FEUVRE: Exactly. So this strategy was developed during 2007/8/9. I sat on the consultative committee of the strategy, so I was quite involved in the way it was developed, and what they did was for environmental flows they proposed a category approach where category 1 was basically minimal base flows.

20

MR O'FLAHERTY: What we might call low flows, is it, or - - -

25

MS LE FEUVRE: Probably worse than low flows, at the absolute minimum, and then category 6 was full environmental flow requirements.

MR O'FLAHERTY: So just - - -

30

MS LE FEUVRE: I think I refer here to a category 4 outcome. So they had a number – in the strategy they set a number. Category 1 was just extremely low flows. Category 2, you had a few freshes. Category 3 had a few summer freshes. Category – I can't remember exactly how it was, but category 4 had up to bank full. Five was something, and six was full environmental flow recommendations, and so they determined what category each river should have. So the Campaspe - - -

35

MR O'FLAHERTY: Just to unpick that, so the categories are designed at encompassing the extent of flows that were part of the flow regime.

40

MS LE FEUVRE: Yes, exactly.

MR O'FLAHERTY: But it wouldn't be - - -

45

MS LE FEUVRE: The components of the flow regime.

MR O'FLAHERTY: It wouldn't be that it would be at overbank flows all the time.

MS LE FEUVRE: Absolutely not.

5 MR O'FLAHERTY: It's just that they were aiming for that occasionally.

MS LE FEUVRE: That could occasionally happen. Yes, exactly.

10 MR O'FLAHERTY: Whereas in this particular one they're only aiming up to category 4.

MS LE FEUVRE: Exactly.

15 MR O'FLAHERTY: Which is instream with occasional overbank full flow. So they weren't going for category 6 which would be a much larger or medium funnel, would it, or - - -

20 MS LE FEUVRE: Yes. Would be all the components of the recommended flow regime.

MR O'FLAHERTY: So it's almost like a health guide. Category 6 is at proper full health.

25 MS LE FEUVRE: Yes.

MR O'FLAHERTY: Category 1 is - - -

MS LE FEUVRE: Life support.

30 MR O'FLAHERTY: - - - in critical condition.

MS LE FEUVRE: Yes. Life support. Exactly.

35 MR O'FLAHERTY: And they've gone for middle of the road.

MS LE FEUVRE: Yes, that's right. Some components of flow regime, but not on – so up to bank full, but no overbank flow components, and so that water recovery target which was set through that strategy was then exported to the Basin Plan and incorporated in that.

40 MR O'FLAHERTY: Yes. So your criticism is they've essentially just adopted that - - -

45 MS LE FEUVRE: Low.

MR O'FLAHERTY: - - - low bar, in a sense.

MS LE FEUVRE: Yes. Exactly. Exactly. And similarly for other rivers as well
.....

5 MR O'FLAHERTY: Yes. And I've taken you to one, but there's a number of
references to that strategy, and your criticism would apply equally to those.

MS LE FEUVRE: Yes.

10 MR O'FLAHERTY: You – and so there's that reference to the – well, there's a
proposal in that submission to a – what – something what I would say is
foreshadowing a Constraints Management Strategy. Have you had much to do with
respect to the MDBAs Constraints Management Strategy and its formulation and/or
implementation at all?

15 MS LE FEUVRE: Well, we – I mean, MDBA, they were required by the Basin Plan
to produce it within 12 months of the plan being made.

MR O'FLAHERTY: Yes.

20 MS LE FEUVRE: So we submitted to them, we talked to them, we did quite a bit of
work with them at that point, and, you know, we were quite reasonably happy with
what they were proposing. And then, you know, after that it was handed back to the
states to progress the project. And then it became more difficult because I think the
states were less committed to it than the MDBA, it would probably be not stretching
25 a point. And so – and also the landholder concerns were beginning to gain traction
and be more vociferously expressed, and so – and at the time we also had a Liberal
National State Government in Victoria who basically said, "Over my dead body
we're letting water be put over private land", so we had political resistance as well.
So at that point when it got handed back by the MDBA to the states the thing rather
30 floundered.

MR O'FLAHERTY: And I don't need to take to you it, but in terms of what was
envisaged by the Constraints Management Strategy which I think you said what they
proposed to do was good. It has fallen away in implantation. There was three
35 phases; the first of which was essentially a – almost a scoping study almost and
identifying in broad terms what the issues were in the various – I think they're
reaches, aren't they.

40 MS LE FEUVRE: Yes, that's right.

MR O'FLAHERTY: In terms of the compartmentalised aspects of the strategy.
That seems to have been done in terms of the annual reports identifying those matters
in broad terms. Would you agree with that?

45 MS LE FEUVRE: Yes, I mean, there's the – their work was, you know, constantly
challenged whether they've actually got it completely right.

MR O'FLAHERTY: Yes. In terms of the details, yes.

MS LE FEUVRE: But the MDBA in particular had a girl who ran the project at that time, and she put a lot of effort into community consultation. She really worked hard at it which was a shame when that effort – you know, the CMA took it over when it came back to the state government. They also put a fair amount of effort into it, into – but it was a really difficult project for them to manage without strong support from the government behind them.

10 MR O'FLAHERTY: The phase 2 of this strategy is called a feasibility assessment business case development and based on scale prioritisation.

MS LE FEUVRE: Yes. That's when the CMA took it over at that stage.

15 MR O'FLAHERTY: That's at the point of the handover, the states. Now, there's descriptions in what was envisaged about how that would come about in terms of there's reference in this strategy to a property bay, a property assessment with regard to landholder impact and mitigation options. To the best of your knowledge, has there been any areas in these reaches that have had a property by property assessment?

MS LE FEUVRE: I don't know about property by property.

MR O'FLAHERTY: Yes.

MS LE FEUVRE: I mean, they did a lot of – you know, they had a lot of meetings about it. A lot of landholders talked to them. Whether they actually went from – I'm not sure about that.

30 MR O'FLAHERTY: And we've heard evidence in respect of New South Wales and we will be hearing evidence in respect to Victoria from Ms Beer this afternoon about there's a suggestion at least in terms of particular – those particular areas there hasn't been.

35 MS LE FEUVRE: Yes.

MR O'FLAHERTY: That sort of – what you might envisage if you're proposing to flood a private – piece of private land, in my mind it would require a mapping exercise to identify to a particular landholder this area of your property will be inundated for X amount of time.

MS LE FEUVRE: Yes, that's right.

MR O'FLAHERTY: X amount of frequency with - - -

MS LE FEUVRE: Every three – you would expect 10 days every three years, and this is where it will come up to, kind of thing.

MR O'FLAHERTY: With this much notice.

MS LE FEUVRE: Yes.

5 MR O'FLAHERTY: And then assistance providing to those landholders as to assessing how much that might affect their operations and a discussion about tweaking that notice or what compensation might occur.

10 MS LE FEUVRE: To be fair to the CMA I think that they were waiting for the go ahead from government to do that.

MR O'FLAHERTY: Right.

15 MS LE FEUVRE: And they never actually got it. So I think that was the issue, that the government was not prepared to go to – take that step to actually do that individual consultation.

20 MR O'FLAHERTY: So they're prepared to do it. That would almost, well, almost goes without saying that would be necessary.

MS LE FEUVRE: Yes, that's right. I mean, I think the CMA were getting increasingly frustrated that they couldn't – they needed to be able to complete the business case, they needed to do that work and they weren't being given the go-ahead to do it.

25 MR O'FLAHERTY: No. You're not certain that you're aware of any areas in Victoria that have started that process.

30 MS LE FEUVRE: I don't know.

MR O'FLAHERTY: Sure.

MS LE FEUVRE: I don't know.

35 MR O'FLAHERTY: The other area, the only other area I wanted to just discuss with you is in respect of the Water Resource Plans. This is on page 13 of your submission. There's a reference to the draft Wimmera-Mallee Water Resource Plan and that it was quite a complex document. And I take it there was a three month consultation period provided for it?

40 MS LE FEUVRE: That one, yes, I think there was, yes.

45 MR O'FLAHERTY: You make reference to only 12 public submissions being received. Do I take it that there's an implicit criticism that three months may not have been quite enough.

MS LE FEUVRE: Well, no, it's not so much that. It was more the document itself was totally impenetrable so how do you engage with it. That was the issue. I mean, it sat on my desk for two months and I couldn't bear to open the damn thing. I knew it was just going to be a world of pain. So how do you engage with something like that.

THE COMMISSIONER: Where are we up to now in terms of the Wimmera-Mallee draft plan?

MS LE FEUVRE: The draft has been out for consultation. It has had the 12 submissions. There has been extensive dialogue between the Victorian Government and the MDBA about it and I think it has been revised quite significantly since the submission process.

THE COMMISSIONER: Has there been – is there any public information about how close it is to accreditation?

MS LE FEUVRE: The MDBA puts out quarterly reports on the progress of Water Resource Plans.

THE COMMISSIONER: Yes.

MS LE FEUVRE: They put one out in May in which they – I was just looking at it yesterday. They're expecting that one to be submitted for accreditation this year. So I don't think it will come back for public consultation again before it gets put to the Minister for accreditation. I think that – there was one consultation period on the draft and there's not to be another one on the final, as it were, on the revised draft.

THE COMMISSIONER: Thanks.

MR O'FLAHERTY: And just in terms of placing this plan, that's in the western part of northern Victoria, isn't it?

MS LE FEUVRE: That's right. Yes. Well, there's only, there's very little change.

MR O'FLAHERTY: I was going to ask, there's – my understanding – and correct me if I'm wrong, there's not a lot of water recovery.

MS LE FEUVRE: Absolutely.

MR O'FLAHERTY: In that area.

MS LE FEUVRE: There has been 23 gigalitres which has already happened. So, no, I mean that's why they did it first - - -

MR O'FLAHERTY: So in terms of the complexity of the recovery process, it's no Goulburn-Murray Irrigation District - - -

MS LE FEUVRE: No, it's more to do with the complexity of the instruments.

MR O'FLAHERTY: Yes.

5 MS LE FEUVRE: Because the Water Act in Victoria is not structured in the same way as the Commonwealth Water Act at all in any way, shape or form so the instruments which, you know, divvy up water, don't fit, to put it in really simple terms.

10 MR O'FLAHERTY: Yes. And so would you envisage that an area such as the Goulburn-Murray Irrigation District would be – could potentially be even more complex and more difficult in the processes but not necessarily the instrument itself.

MS LE FEUVRE: The problem for me is that because it's so complex you can't
15 really understand it.

MR O'FLAHERTY: Yes.

MS LE FEUVRE: So the Victorian Government and the MDBA could agree that
20 this plan actually reflects the intent of the Basin Plan, but I as an observer have got no idea whether they're right or not. So there's no – my concern about it is what's the sort of quality control on that? Who's actually – and I'm not sure the Minister is going to be any the wiser either. So, you know, how do you - - -

25 MR O'FLAHERTY: I very much doubt it, yes.

MS LE FEUVRE: - - - actually make – make – make this thing work?

MR O'FLAHERTY: That's one of the plans. How do you – do you know how the
30 others are progressing?

MS LE FEUVRE: Well, I mean, there – there's two service water plans, so the second one is the – is the northern Victorian, which is the rest of it, basically.

35 MR O'FLAHERTY: Right.

MS LE FEUVRE: And then I think there's the three groundwater plans.

MR O'FLAHERTY: Yes.

40

MS LE FEUVRE: So the second one, it has got a stakeholder – got a reference group who are being consulted in the development of the plan, and I think they're being sent it chapter by chapter to have input to.

45 MR O'FLAHERTY: Right.

MS LE FEUVRE: But we've got an election coming up in November in Victoria.

MR O'FLAHERTY: Yes.

MS LE FEUVRE: And so whether the government puts it out for consultation before the election or not is a moot point. You know - - -

5

THE COMMISSIONER: So what has the election got to do with the preparation of a WRP?

MS LE FEUVRE: Very little, but governments don't like to put out controversial documents in - within a couple months of an election. So with this one, you know, obviously, the SDL in - in the - in the Goulburn GMID in the Murray is much more controversial than the SDL in the Wimmera Mallee, which was, you know, very small change, which had happened with the agreement of the irrigators. So, you know, the - the - the - the content of the plan is - is, you know, debatable, is - is - is contestable.

15

THE COMMISSIONER: Well, that's why you have consultation.

MS LE FEUVRE: So - exactly.

20

THE COMMISSIONER: Isn't it?

MS LE FEUVRE: But they don't - governments hate doing that kind of consultation in the lead-up to an election. I mean, you're right, it has got no real bearing on it, but, you know, the plan - - -

25

THE COMMISSIONER: I'm not suggesting - - -

MS LE FEUVRE: - - - should be the same, but - - -

30

THE COMMISSIONER: I'm not suggesting it may not be political in the sense that it may be relevant to how somebody votes. I'm just inquiring how a minister could affect the progress of a process that is actually called for by law to occur.

MS LE FEUVRE: Yes, absolutely. But it is a political reality that governments don't like doing that.

35

THE COMMISSIONER: Well, leaving aside the anthropology of governments, have you actually come across any sign that there has been a slowing of a process that would otherwise have gone faster by reference to the impending election?

40

MS LE FEUVRE: Well, I think - I think, you know, the people who are responsible for writing it, you know, knowing that there's the election coming and, you know, obviously - well, there's the caretaker period but they - - -

45

THE COMMISSIONER: But this has got nothing to do with the caretaker convention, has it?

MS LE FEUVRE: I know. It's ahead of the caretaker period, but they still - - -

THE COMMISSIONER: But it's something that requires it to proceed.

5 MS LE FEUVRE: I know. They're – they're lacking direction from their minister.
That's – that's - - -

THE COMMISSIONER: But why does a minister – how does a minister give
direction to a WRP?

10

MS LE FEUVRE: I'm sorry.

THE COMMISSIONER: What I mean is there is no - - -

15 MS LE FEUVRE: Yes, I - - -

THE COMMISSIONER: I don't see any place for ministerial decision-making in
relation - - -

20 MS LE FEUVRE: Well - - -

THE COMMISSIONER: - - - to a WRP. Do you?

25 MS LE FEUVRE: It's not so much the – the decision-making. It's – it's whether
the government is prepared to – you know, the document is authored by the
department, the – the – the – the draft plan is a departmental document, and so it's at
the minister's discretion when that document is released for public consultation.

30 THE COMMISSIONER: Well, subject to the Minister's willingness to, as they
keep telling us, deliver the plan in full and on time, because there is a time limit for
the production of a WRP by the middle of next year.

35 MS LE FEUVRE: Yes, absolutely. But the inister knows that, but, you know, are
they willing to take a risk and put it out, you know, two months before an election? I
don't know. I have my doubts.

THE COMMISSIONER: Well, then there would will be a New South Wales
election in March.

40 MS LE FEUVRE: Exactly. Same problem will arise in New South Wales.

THE COMMISSIONER: Thank you.

45 MR O'FLAHERTY: That covered the specific questions I had arising from your
submission, Ms Le Feuvre. Was there other matters you wanted to raise with the
Commissioner that you wanted to make sure that were heard?

MS LE FEUVRE: Yes, there's just a new issue which has come up since I wrote the submission - - -

MR O'FLAHERTY: Sure.

5

MS LE FEUVRE: - - - concerning the Lower Goulburn, and you will be aware that a lot of water use is moving downstream to Sunraysia. So - - -

MR O'FLAHERTY: Yes.

10

MS LE FEUVRE: - - - water is moving away from the GMID down to Sunraysia and Mildura region to water – the bridge.

THE COMMISSIONER: And that's largely by trade.

15

MS LE FEUVRE: Yes, by trade.

MR O'FLAHERTY: Yes.

20

MS LE FEUVRE: Yes, absolutely, and some of it's allocation trade and some of it's entitlement trade. Both things are happening. And – but it's – so demand – downstream demand is growing, as – as we know, and it's having an impact on the Goulburn. The Goulburn River is delivering higher volumes of water in summer, particularly in periods of high demand when the weather is hot than is good for it. So some of the work that is being done by water holders to restore vegetation through environmental watering over winter is being destroyed by this demand of high flows in summer.

25

So, to put it in a bit broader perspective, you know, the – it's a well-loved river for recreation. People swim in it, canoe in it, boat in it, fish in it, etcetera, and now during the summer periods the sandbars where the kids go and play are now underwater. So, you know, in terms of the swimming venue, the water is churning along, and it's no longer accessible. So there's a real issue developing there which is – I mean, one of the objects of the Plan or the Water Act is to drive water to its highest value use, but, on the other hand, that's having consequences for the our river systems which are not anticipated. And so - - -

30

35

THE COMMISSIONER: Well, the reversal of the seasonality that you've referred to there.

40

MR O'FLAHERTY: Yes. Obviously, the reversal of seasonality has been a longstanding problem, and - - -

THE COMMISSIONER: That, obviously, has direct relevance to the environmental outcomes that the Plan is meant to protect.

45

MS LE FEUVRE: What I'm trying to allude to is that reversal is getting worse because of the increasing demands downstream, and, you know, some of the environmental watering activities which are to mitigate that impact, you know, are being wiped out by these high flows. So that's just an issue I wanted to bring to your
5 attention.

THE COMMISSIONER: Thank you.

MS LE FEUVRE: I guess that another issue which continually frustrates me is, you
10 know, this discussion of social and economic impacts that the benefits of recovering water for the environment are always underestimated. You know, in many of the economic studies, the social studies we hear a lot about impacts. We don't hear much about benefits, and, you know, we don't hear much about the fact that tourism is growing in the Basin, that the value of tourism is about to surpass the value of
15 irrigated agriculture, you know, and that depends on having river systems people actually want to come and visit. They don't want to visit dried-up river beds. They want to see water flowing down. So, you know, those kinds of things tend to get forgotten when we're considering the Plan.

20 THE COMMISSIONER: Certainly, this Commission has heard a deal of evidence similar to what you've just put because it's interesting that what you've just mentioned lends itself to measurement in money terms.

MS LE FEUVRE: Yes.
25

THE COMMISSIONER: But it's social and economic, and not all social outcomes lend themselves to being measured in money terms.

MS LE FEUVRE: Yes, absolutely.
30

THE COMMISSIONER: And so, alas, at least to my observation so far, that's even more likely to be left out of the count.

MS LE FEUVRE: Absolutely. Yes. Those kind of – those wellbeing values.
35

THE COMMISSIONER: Yes, thanks.

MS LE FEUVRE: Yes. Yes.

40 MR O'FLAHERTY: Thank you very much, Ms Le Feuvre.

THE COMMISSIONER: I have benefitted greatly from your material, and I'm much obliged for your attendance. It has really helped.

45 MS LE FEUVRE: My pleasure.

THE COMMISSIONER: Thanks.

MS LE FEUVRE: Thank you for the opportunity.

MR O'FLAHERTY: Thank you.

5

<THE WITNESS WITHDREW [1.08 pm]

THE COMMISSIONER: We will adjourn until 2.15.

10

MR O'FLAHERTY: Thank you, Commissioner.

15

ADJOURNED [1.08 pm]

RESUMED [2.15 pm]

20 MR O'FLAHERTY: Commissioner, just before I call Ms Beer, I will just tidy up from the evidence before and I will tender tabs 1 through 3 of the folder relating to Ms Juliet Le Feuvre.

25

THE COMMISSIONER: Thank you.

MR O'FLAHERTY: I call Ms Jan Beer.

30

<JAN ROBERTA BEER, SWORN [2.15 pm]

<EXAMINATION-IN-CHIEF BY MR O'FLAHERTY

35 THE COMMISSIONER: Thank you. Please sit down.

MR O'FLAHERTY: Ms Beer, you're a – you operate a – I understand, a grazing and cropping property on the – is it the Yea River? How do I pronounce that, sorry?

40

MS BEER: Yea.

MR O'FLAHERTY: The Yea River. Is that right?

45

MS BEER: No, a beef cattle fattening enterprise.

MR O'FLAHERTY: Right. Okay.

MS BEER: Excuse me if I suck these or I will cough.

MR O'FLAHERTY: No, that's all right. I've been having coughing in my left ear all morning from Senior Counsel so I quite understand. Just so we can place your
5 property and where it is in relation to – the Yea is a tributary of the Goulburn River.

MS BEER: Second largest tributary to the upstream Goulburn.

MR O'FLAHERTY: Could Ms Beer be shown the Goulburn constraints measure
10 business case investigations document. We will go to this because it does have a somewhat helpful map. If you go to pages 18 and 19, there's the diagrammatic representation on page 18 and then 19 we can see the township of Yea and then the Yea River going – flowing from south to north. Whereabouts on the river is your
15 property?

MS BEER: From the township of Yea we're about seven ks just south on the river of that.

MR O'FLAHERTY: Okay, there's a fork in the river there. Is it between Yea and
20 that fork or is it after that?

MS BEER: Yes, it is.

MR O'FLAHERTY: It's between there, is it?
25

MS BEER: Yes.

MR O'FLAHERTY: Now, it won't come as a huge shock that most of my questions
30 will be related to the constraints measure and what's proposed and the impacts on your property.

MS BEER: I would hope so.

MR O'FLAHERTY: The – to summarise what is proposed, and let me know if I've
35 got this wrong, is that – and I will do it in parts. The Yea River is what can be called as an unregulated tributary; is that right?

MS BEER: That's correct.

MR O'FLAHERTY: And it forms one of many tributaries that are unregulated in
40 the sense there's no storage on the top of them that feed into the Goulburn.

MS BEER: That's right. Also there is no irrigation to speak of on any of those
45 streams.

MR O'FLAHERTY: Right.

MS BEER: There is one in the upper regions of the Yea which is the Strawberry Runners Group which grow 95 per cent of the strawberry runners for Australia.

5 MR O'FLAHERTY: Right. And so other than that irrigation property, it's mainly grazing and cropping.

MS BEER: No, there's very little cropping. It's mainly beef and sheep.

10 MR O'FLAHERTY: Right.

MS BEER: Quite a few lifestyle properties now, too.

15 MR O'FLAHERTY: Sure. As I understand the constraints or the – what is proposed, which is the subject of this constraints project, is that natural higher flows in the unregulated tributaries, it is proposed that those flows are to be supplemented from releases from Lake Eildon?

MS BEER: That's correct.

20 MR O'FLAHERTY: Such that this is commonly referred to as piggybacking.

MS BEER: It has been called piggybacking, hydro cues, enhanced environmental water delivery. They're all meaning the same thing.

25 MR O'FLAHERTY: Yes. And the and so the – sorry, I withdraw that. All right. And so the – and you referred to the hydro cues in page 1 of your submission and so you've – I should perhaps have gone to that first. You provided a submission to the Royal Commission.

30 MS BEER: Yes.

MR O'FLAHERTY: That should be behind tab 1. It's undated but I imagine it was sometime in the middle of this year that you provided it?

35 MS BEER: Yes.

40 MR O'FLAHERTY: And at the risk of oversimplifying your concern, in a nutshell do I take it that the concern that you have in respect of your property is that the releases from Lake Eildon will cause a backing up of the natural flows down the Yea River.

MS BEER: The backing up only occurs about one and a half to two ks on the – from where the confluence to the Goulburn is on each of the tributaries.

45 MR O'FLAHERTY: Yes.

MS BEER: It's not so much the backing up. We're approximately 15 ks upstream on the Yea from the confluence. What happens is when you've got a very high Goulburn River flow and you've obviously got a flood coming down the Yea River that water cannot get away very quickly. So it's not a backing up. It's a slowing
5 down of the draining process.

MR O'FLAHERTY: That's probably what I meant. I probably just didn't use the right - - -

10 MS BEER: Yes. So the backing up at the confluence is different to what we experience which is a slowing down of the draining process. That's what causes you to be inundated for longer.

MR O'FLAHERTY: So rather than the flushing of those what are often, I
15 understand, fairly rapid floodwaters; is that right?

MS BEER: They're very quick. The floods will rise within – when you get a rain event up in the mountains we will get a flood in 12 hours. It will come down in, say, a couple of days and go again.
20

THE COMMISSIONER: What is it that slows it down?

MS BEER: When you've got the high flow in the Goulburn River, say, from when they're going to piggyback, so they release water from the weir, your Goulburn River
25 is up here. Until you get the flood – when you get the flood coming down the Yea River or the tributaries, it can't get away as quickly because it's hitting a very high flow in the Goulburn, and so that slows the draining process down.

THE COMMISSIONER: So what we're talking about is a flow higher than would
30 be generated by the rain.

MS BEER: Yes.

THE COMMISSIONER: A high generated by a release.
35

MS BEER: Yes.

THE COMMISSIONER: Designed to piggyback.

40 MS BEER: That's right.

MR O'FLAHERTY: The – and the intent, as I understand it, and the actual implementation, putting that to one side, but the intent would be to allow the flow down those tributaries and then and then only then the flows from the Eildon Dam
45 would be used to supplement it.

MS BEER: No.

MR O'FLAHERTY: That's as I understand the intent, is it not? No?

MS BEER: No. With enhanced environmental water delivery which is part of the
SDLs, it's a project, the intent is six to seven days prior to a forecast rain event or
5 flood in the tributary, to start releases from the Goulburn so that they then pick up on
the tributary flows. Otherwise you can never coincide the tributaries down – all the
way down to Shepparton. So - - -

THE COMMISSIONER: The intent, as I understand it from the business case, is to
10 increase the frequency of overbank flows.

MS BEER: To increase the frequency and the duration.

THE COMMISSIONER: Yes.
15

MS BEER: They're the two things which will kill us.

THE COMMISSIONER: Yes. So if I understand correctly, the constraints
measure, as it's called, has as its very purpose increasing the frequency and duration
20 of overbank flows.

MS BEER: Well, yes, and the volume. They're talking about minor. If I could just,
because as Juliet Le Feuvre stated, the proposal for the different flows has changed a
lot.
25

THE COMMISSIONER: Yes.

MS BEER: Can I just read this one to you. So the latest proposal is, sorry, it was
25,000 target at Shepparton, it's now 20, but the peak flow of 30,000 at Shepparton,
30 one to three times in 10 years to add to what they say are the natural flows that occur,
which will be an average of say seven for a minimum five day duration at
Shepparton. But that means our duration will be much higher. So that the flow at
Alexandra would be 10,000. Sorry, the buffer flow at Alexandra is 15,000, the
buffer flow at Shepparton is 40,000 and at Seymour is 35,000. The problem is that
35 with that is a moderate flood at Seymour is 38,000 so that's a fairly big high flow.

THE COMMISSIONER: Well, now what I'm trying to grasp is where you
understand the planning is at the moment for this. The government has proposed by
a business case a constraints measure which is designed to increase the frequency
40 and duration of overbank flows in order to achieve certain flood plain inundation.

MS BEER: Correct.

THE COMMISSIONER: In order to achieve that, a mixture of operating rules and
45 strategy is proposed which you regard as certain to increase inundation in your
locality.

MS BEER: Might I say - - -

THE COMMISSIONER: Yes.

5 MS BEER: Not just in my location. In the location of most of those upstream tributaries - - -

THE COMMISSIONER: Yes, I'm sorry, I accept that. I'm not suggesting you're putting a laser beam on your own property but your property is affected.

10

MS BEER: Yes.

THE COMMISSIONER: As many others would be, I take it. Now, if I understand correctly, you've drawn to attention that what you apprehend is a result of the deliberately increased flow at the confluence of the Yea and the Goulburn; is that correct?

15

MS BEER: Mmm.

20 THE COMMISSIONER: The only way of avoiding that consequence, I take it from your submission, is not to increase the flow at the confluence of the Goulburn and Yea beyond what rainfall produces.

MS BEER: It's not to increase the releases from Eildon, not to – you're not increasing the flow at the confluence. It starts up at Eildon weir.

25

THE COMMISSIONER: I understand that but it's because it increases the flow at the confluence that there is an effect in the tributaries; is that right?

30 MS BEER: Because that flow is building all the way down.

THE COMMISSIONER: I understand that, but it's because of that that there's an effect up the tributaries; is that right?

35 MS BEER: Yes. The effect is because they're releasing the water from Eildon six to seven days before a forecast tributary flood event.

THE COMMISSIONER: Yes.

40 MS BEER: When they have perfect forecasting. So you've got the flood coming down the Yea, you've got new releases, higher releases coming down the Goulburn.

THE COMMISSIONER: Yes.

45 MS BEER: They hit together.

THE COMMISSIONER: That's the very intention of the strategy proposed.

MS BEER: The intention is more to get those higher flows to the lower Goulburn floodplain.

5 THE COMMISSIONER: I understand that, but you can only get them higher if they start upstream.

MS BEER: That's correct, yes.

10 THE COMMISSIONER: So what do you – is it your position that the whole strategy is misconceived and - - -

MS BEER: Yes.

15 THE COMMISSIONER: - - - there should not be releases from Eildon to combine with rain-fed flood events down the tributaries in order to achieve these overbank effects? They need to be achieved some other way. Is that the effect of your submission?

20 MS BEER: I think the whole thing is fraught with danger for all of us. I did send you a PowerPoint of what happened.

THE COMMISSIONER: No, I've seen that, and I've read your - - -

25 MS BEER: Yes.

THE COMMISSIONER: - - - references to the risks and dangers.

MS BEER: The - - -

30 THE COMMISSIONER: So that's why I'm trying to - - -

MS BEER: Yes.

35 THE COMMISSIONER: I'm trying to ascertain. As you see it, a strategy that combines – that seeks to combine timed Eildon discharges with predicted rain-fed flooding down, or high water down the tributaries, all in order to produce further downstream environmental watering above the banks, is, as I understand your submission, in your view, fundamentally misconceived and should not happen. Is that correct?

40 MS BEER: That's exactly right.

45 THE COMMISSIONER: Do you have in mind that there is some other way that environmental watering by overbank events could be achieved downstream?

MS BEER: David Papps who I know you're talking to next week, has stated that he can achieve all his ecological targets with 2,750 in channel. What are we doing? Why - - -

5 THE COMMISSIONER: So when you say "in channel", you mean without any overbank event?

MS BEER: Yes.

10 THE COMMISSIONER: So are you talking there about the pumping into overbank land or - - -

MS BEER: You will have to ask Mr Papps that.

15 THE COMMISSIONER: Right.

MS BEER: But that's a statement he has made, and perhaps there's a question that - - -

20 THE COMMISSIONER: So do you understand that as meaning that on your understanding of what Mr Papps has said, there doesn't need to be overbank environmental watering or whether it can be achieved by some other way than flows?

MS BEER: No, that it - he made the statement to us he can achieve all his
25 ecological targets with the 2,750 in channel and he would prefer to do that than to spend decades fighting with farmers. That's the exact words he used to us.

THE COMMISSIONER: I'm trying to understand how you understand that. Do
30 you understand that as meaning there is no need to have overbank events at all or what?

MS BEER: Yes, I do.

THE COMMISSIONER: Right. So what is your understanding, then, of the
35 propositions advanced in the business case that overbank events are now occurring so much less often than they used to, that there has been an effect on the environment? How do you understand those statements? Do - - -

MS BEER: There are - there are a number of reasons why flooding is occurring less
40 naturally.

THE COMMISSIONER: Yes.

MS BEER: And it's not purely from irrigation taking water.
45

THE COMMISSIONER: I'm sure it's not. It's - we're talking about a heavily regulated system.

MS BEER: Yes, we are, but could I just tell you that the constraints was based on historical flow and data for the last 114 years: 1895 to 2009. It was based on flood data for the last 55 years: 1960 to 2014. Now, up until the start of the Millennium Drought – sorry – in 1997, on our property during the – especially the 70s, 80s, 90s, early 90s, we would receive anything from one to five floods each and every year. They would come up and they go down very quickly, and didn't really affect us apart from having to shift cattle, etcetera.

10 THE COMMISSIONER: And this is what I call rain-fed events. Yes.

MS BEER: Purely natural.

THE COMMISSIONER: Yes.

15 MS BEER: There has been a definite step change in climate since that time in nineteen – from 1997 on.

THE COMMISSIONER: And in your part of the country, is it wetter or dryer?

20 MS BEER: In our part of the country we would now be lucky to get a flood once in every four to five years. One flood.

THE COMMISSIONER: So overall it's dryer, then.

25 MS BEER: It is much dryer. What – what concerns me is the MDBA have made flawed assumptions and they're modelling on data which is out of date. There - - -

THE COMMISSIONER: So this is another aspect of perhaps the misuse of an average then.

30 MS BEER: Yes, it is. I mean, it just simply does not – we're on an – on an unregulated system which does not use irrigation, so what comes down is natural. There's nothing else that's taking that water. And that's a big step change to go from one to five floods every year to now getting one flood every four to five years.

35 THE COMMISSIONER: And we're talking about the Yea down to its confluence with the Goulburn; is that right?

MS BEER: That's right.

40 THE COMMISSIONER: Yes.

MS BEER: That's right.

45 THE COMMISSIONER: Yes.

MS BEER: Could I just say also – and I might have put that submission in under my name, but I do represent the Upper Goulburn River Catchment Association, which is a group of up to 70 landowners.

5 THE COMMISSIONER: Yes.

MS BEER: Also if – and I'm sure you might be aware that the Victorian Climate Initiative has said quite a lot about the reduced rainfall and the effect that has on reduced run-off into catchments. The other thing that reduces – has reduced our rainfall significantly – and this is a map which I can show you if you want – our region has experienced very significant bushfires, 2006, 2007, the high country fires, and the five big tributaries to the Eildon up in the great divide were very significantly impacted with 677,000 hectares burnt. We – our shire, Murrindindi Shire, was the centre of the Murrindindi Black Saturday fires. Practically, our whole Yea River catchment was burnt to the ground, virtually.

THE COMMISSIONER: The loss of the leaf canopy has had an effect, has it?

MS BEER: It wasn't just the leaf canopy. It was everything.

THE COMMISSIONER: Yes. No, no, I mean in terms of the effect on the rainfall.

MS BEER: Yes. So - - -

25 THE COMMISSIONER: Has there been a run-off effect, or actually precipitation effect?

MS BEER: I think it's part of the run-off effect in that you get a rapid run-off for a few years, but you can see it now. The vegetation is fairly luxuriant now, and for the next – and science has researched it. For the next 120 years you get a reduced rainfall run-off. And that is all part of it.

THE COMMISSIONER: That's all the run-off, yes.

35 MS BEER: The run-off is vastly reduced because those trees are sucking all the - - -

THE COMMISSIONER: Yes.

MS BEER: Sorry, the water up.

40 THE COMMISSIONER: And they're at that stage in their life - - -

MS BEER: They are.

45 THE COMMISSIONER: - - - where they are taking up more. Yes.

MS BEER: Yes. So there's – there are facts which the MDBA have not considered at all. There are a lot of things when they've modelled the constraints they have not taken into account and one was in one of my documents, where there are a list of uncertainties. There's very little gauging, monitoring in our system. So 45 per cent
5 of the Yea catchment is ungauged. I think 57 per cent of the gauge – of the catchment between Toorale and Eildon is ungauged. There has been no daily sub-step monitoring, that is, because our rivers are so flashy and unpredictable, you need to monitor them on an hourly basis - - -

10 MR O'FLAHERTY: Yes.

MS BEER: - - - not a daily basis. With one catchment, there's a thing called the peakiness ratio value in a catchment.

15 THE COMMISSIONER: The peakiness?

MS BEER: The peakiness ratio value of a catchment.

THE COMMISSIONER: What does that measure?

20

MS BEER: And that tells you how quickly the – the run-off comes down.

THE COMMISSIONER: And reaches its maximum.

25 MS BEER: Yes, and there's one, Hone Creek which is a tributary to the Goulburn at Molesworth where the Molesworth choke is. It has a very small catchment, 187 square kilometres, but it has got a peakiness catch ratio of about 40 per cent.

THE COMMISSIONER: Meaning that - - -

30

MS BEER: Meaning that you've only got to get a big thunderstorm up in the mountain and it cuts the main highway, the Goulburn Valley Highway, which is our tourist route to Eildon and to Mount Buller. All of those things in our area are so unpredictable.

35

THE COMMISSIONER: Now, this is apropos the MDBA having its assumptions or understandings or information incomplete or wrong. Now, and in particular, I gather, you're pointing out that part of the constraints is the undesirability signified by the owner's unwillingness to have flooding upstream of the confluence in the Yea
40 by reason of what I'm going to call loading up the Goulburn.

MS BEER: That's right.

THE COMMISSIONER: Have I captured that correctly?

45

MS BEER: That's right.

THE COMMISSIONER: What do you understand – and take your time, I’m really interested to hear the explanation – has been the evolution or development, if you like, chopping and changing of the proposals, official proposals to deal with that aspect of the constraint?

5

MS BEER: Because I was on the technical – Technical Advisory Group which met with the MDBA for 18 months to two years with a group of approximately eight or nine other landowners and business owners, and that included also a representative from Murrindindi Shire, sometimes one from Mitchell Shire and - - -

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MR O’FLAHERTY: What year was that? Was that before the Constraints Management Strategy came about, or it was after?

MS BEER: No, that came after they – they wrote the constraints strategy.

15

MR O’FLAHERTY: Yes.

MS BEER: And then it was up to – no, the MDBA - - -

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MR O’FLAHERTY: This was from about end of 2013 onwards, was it?

MS BEER: It was, I think, about 2014 to - - -

MR O’FLAHERTY: Yes.

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MS BEER: To 2016. Like - - -

THE COMMISSIONER: So what, in your telling of it, was the proposal to - - -

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MS BEER: Yes.

THE COMMISSIONER: - - - address your constraint?

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MS BEER: The MDBA, in a way, were quite good in that they – they listened to us, and we told them that 40,000 was far too much. We would be flooded to the eyeballs. They went away and did flood data mapping, realised it was too much, so then they brought it back to – there has been so many different levels – 30,000.

THE COMMISSIONER: This is 30,000 at Shepparton, is it?

40

MS BEER: Yes.

45

MR O’FLAHERTY: It is a – I think there’s two in the Goulburn region in terms of locations modelled or identified, and one that I refer to with Ms Le Feuvre was at McCoys Bridge, which is downstream of Shepparton. That’s right?

MS BEER: That’s right.

MR O'FLAHERTY: And the modelled relaxed constraint, which is the subject of the 2012 report, is 40,000. That was the original proposal.

MS BEER: That's right.

5

THE COMMISSIONER: At McCoys or Shepparton?

MR O'FLAHERTY: At McCoys.

10 MS BEER: At McCoys. But to get - - -

THE COMMISSIONER: What's the equivalent of that at Shepparton?

15 MS BEER: Well, at Shepparton it would have to be higher because as it goes downstream to McCoys, there's not – there's evaporation but there's attenuation. It spreads.

THE COMMISSIONER: Well, that's what I'm asking. So - - -

20 MS BEER: Yes.

THE COMMISSIONER: - - - if it's at 40 at McCoys, it's what approximately at Shepparton?

25 MS BEER: I can't tell you exactly - - -

THE COMMISSIONER: Yes.

MS BEER: - - - what that would be.

30

THE COMMISSIONER: Higher than - - -

MS BEER: It would have to be higher than 40, which would – it wouldn't work. You would be flooding Shepparton.

35

THE COMMISSIONER: Now, if we just think about the Shepparton levels, they've reduced to – after feedback, including your own, they've reduced it from 40 to, what, 30? And then what?

40 MS BEER: To 25 - - -

THE COMMISSIONER: Yes.

MS BEER: - - - to 20 - - -

45

THE COMMISSIONER: Yes.

MS BEER: - - - at Shepparton.

THE COMMISSIONER: Yes. Now, at 20, what do you understand to be the effect of, or the prediction that the modelling produces in relation to inundation upstream of the Yea? Upstream in the Yea.

MS BEER: Could I just say one thing, though?

THE COMMISSIONER: As many as you like.

MS BEER: 20 is not a proposal by the MDBA. 20 is the proposal by the Water Minister – Victorian Water Minister, Lisa Neville, who has realised the enormous socio-economic jointly pacts there would be.

THE COMMISSIONER: Yes. Yes, I am talking about the proposal by the government. Yes.

MS BEER: Yes, 20,000 at - - -

THE COMMISSIONER: Well, has there been modelling of - - -

MS BEER: No.

THE COMMISSIONER: - - - how that might produce inundation?

MS BEER: No. What happened, the constraints strategy was thrown out in 2016.

THE COMMISSIONER: By “thrown out”, you don’t mean disseminated, you mean scrapped, do you? Scrapped.

MS BEER: I mean, the business case was thrown out because it could not supply. It was put up as a supply measure for the SDLs.

MR O’FLAHERTY: This was referred to in your submission, I think, where there was an original business case - - -

MS BEER: Yes.

MR O’FLAHERTY: - - - but it didn’t recover - - -

MS BEER: It didn’t - - -

MR O’FLAHERTY: - - - enough water - - -

MS BEER: It was too expensive.

MR O'FLAHERTY: - - - from the government's perspective for an SDL offset project, so they - - -

MS BEER: Yes.

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MR O'FLAHERTY: - - - redid it.

MS BEER: It was to supply – it only could supply three to four gigalitres - - -

10 MR O'FLAHERTY: Yes.

MS BEER: - - - for a mitigation cost of what they thought would initially be 31 to 47 million but blew out to nearly 104 million. So that got thrown out, and it's now at the stage where there is a Goulburn key focus project which is now sitting in
15 Canberra, and has been for quite some time, and we don't know where it's going. It's at a standstill, and the last any of us heard about a Goulburn constraints business case was in January 2016. Nothing has happened since.

THE COMMISSIONER: So what you understand to be sitting, as you say, in
20 Canberra is some iteration of proposals that you haven't seen or - - -

MS BEER: We have not had any input into that second case at all, none.

THE COMMISSIONER: I take it you're not satisfied with that state of affairs.
25

MS BEER: No, no.

THE COMMISSIONER: Have you expressed your dissatisfaction to the
30 government?

MS BEER: Yes. Especially to DELWP which is Department of Environment,
Land, Water and Planning.

THE COMMISSIONER: What's the most recent response they've made to your
35 complaints?

MS BEER: They just say it's sitting in Canberra and it's waiting for – it has to have approval by the other Basin states and Federal Government and then it has to come back to Victoria who then put further comment back.
40

THE COMMISSIONER: Now, do you understand that to be government comment or public comment?

MS BEER: Government.
45

THE COMMISSIONER: So do you expect that there will be any further consultation with the public?

MS BEER: They say that if 20,000 is decided on it will go to the community, it will be based on starting at the bottom and working up to whatever, about 20,000 level and it will only – it will only go forward if the community agrees with it. My opinion is the Victorian Government don't want it, quite frankly, because they know that it – look, 20,000 – 20,000 at Shepparton, it's all about the constraints in the 450 are totally intertwined.

THE COMMISSIONER: Yes. Quite.

10 MS BEER: And the 450, whatever you say, Julia Gillard stood on the wharf at Goolwa and said "South Australia, this is your 450" when she made that decision. If you only put 20,000 down to Shepparton there is no way in the world you can get 80,000 at the South Australian border.

15 THE COMMISSIONER: That's 80,000 as - - -

MS BEER: 80,000 megalitres per day.

THE COMMISSIONER: Per day, yes.

20 MS BEER: It's just not possible to get it because – the experienced river operators report, and I do believe them because they're running the rivers all the time, they stated that you must have 160,000 megalitres per day upstream coming out of three of the four main river systems to give you 80,000.

25 THE COMMISSIONER: At the border, yes.

MS BEER: So 20,000 is not going to work.

30 THE COMMISSIONER: Because it's not enough.

MS BEER: No. I think what is the problem – they're sort of trying to retro-engineer it. They made this big decision, we will go for the constraint strategy, relax constraints, throw in the 450 to get it and that's how we will get the 450 down there with the relaxed constraints. They had no idea whether you could relax constraints, no idea whatsoever. And as I think – I don't know whether I included the statement our landowners have made that they will in no way negotiate easements.

40 THE COMMISSIONER: No. You have included that, yes. Yes, I've read that.

MS BEER: It is just – these are not – if you're talking 40,000 which is what you would have to have at Shepparton to get anywhere near your 80,000 that is not a small overbank flow for any of us. That's major overbank flooding.

45 THE COMMISSIONER: Have you got any experience or do you know of anybody with any experience on how you would value an appropriate price for an easement to permit that to happen?

MS BEER: Yes, we have an experienced valuer at home who I have spoken to. All I can tell you is that land in our area up there is fairly expensive. We're – it's location, location, location. We're on rivers. We're fairly close to Melbourne. It's picturesque. We're close to Eildon for skiing and water. We're close to the snow.
5 You're looking at anything from 15 to 25,000 an acre to buy. Obviously, your river country is your most productive.

THE COMMISSIONER: When it's not inundated.

10 MS BEER: When it's not inundated. You know, we accept natural floods and that's what makes it productive. But also too, if the land is inundated for too long and your pasture dies, the cost to sow that pasture down is far more than the costs that the MDBA came up – I worked it out and I rang a contractor just yesterday actually. And it's approximately \$550 to \$600 per acre.

15

MR O'FLAHERTY: Of re-sowing?

THE COMMISSIONER: To re-sow?

20 MS BEER: To re-sow. Because you're looking at your spraying – you're cleaning up first and the cleaning up is massive. You're looking at your spraying. You've got to sow it down again with a clean-up crop or a cheaper – using cheaper seed. That's in for 12 months to clean your paddock up. You will go back and spray it again and then you put your perennial pasture back in. And that perennial pasture, the good
25 quality seed is approximately \$200 a kilo. It's a very expensive business, I can tell you.

THE COMMISSIONER: So that's why I was asking. I know a little bit about valuation but I can't get my head at the moment around how you would price an
30 easement to permit inundations to happen that may have that as a consequence.

MS BEER: Well, I'm not sure if you understand the method they wish to use for
- - -

35 THE COMMISSIONER: I'm sure I don't.

MS BEER: - - - valuation. It's a one-off upfront payment. That's the only mitigation, compensation.

40 THE COMMISSIONER: That's exactly what I'm wondering about. How would you price that?

MS BEER: I have no idea. I have no idea. The other thing they're working on is you would be paid, in a method of disaggregation, so if there's an environmental
45 flow and your natural flood comes to here but the environmental flow comes to here, you only get paid the difference between there and there.

THE COMMISSIONER: When you say paid, what do you understand the MDBA's proposal to be by way of payment?

5 MS BEER: One-off upfront payment.

THE COMMISSIONER: Any other alternative to – that's for an easement, a permanent easement.

10 MR O'FLAHERTY: There is discussion in the business case - - -

MS BEER: None that I've seen.

15 MR O'FLAHERTY: - - - where landowners have suggested event-based compensation.

THE COMMISSIONER: I know, but it rather suggests considerable uncertainty at more or less at every point.

20 MR O'FLAHERTY: Yes.

MS BEER: And those – that compensation they're basing on a buffer flow on.

THE COMMISSIONER: On a buffer flow.

25 MS BEER: On the buffer flows that they've stated. The buffer flows are slightly higher and they are basing the compensation on three years out of 10 inundation for a period of inundation up to seven days, I think. But it's all so up in the air. No one knows this. No one can tell us the time that we would be inundated in the upstream area. They want the high flows five days plus peak at Shepparton, but what's the
30 duration of inundation for us?

THE COMMISSIONER: So have you seen mapping or modelling?

35 MS BEER: I've been mapping of flood areas.

THE COMMISSIONER: To try and answer that question.

40 MS BEER: Yes, they've done flood mapping in the upstream Goulburn areas and I can't tell you how many times they've got it wrong.

THE COMMISSIONER: You've anticipated my next question. I gathered from some things that you've written that you not all that impressed with the accuracy of the mapping and the modelling.

45 MS BEER: No one was. They were getting closer to it towards the end. I don't think they understood the way the floodplain floods. It doesn't just come up and run over the bank. It comes up to a certain point and there will be break-out points and

so what happens first your billabongs will fill up, your lagoons, the old river course and there's always old river courses and they fill up and that's what they talk about with interrupted access. Once that fills up, you have no way of getting down onto the flats. The highest point of the river plain is always the river bank itself. So it
5 fills up all those other ephemeral wetlands and areas first and then it comes flooding over. And I don't think the MDBA quite understood that.

THE COMMISSIONER: Well, now, are you satisfied that that point has been made sufficiently clearly to them - - -
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MS BEER: I think so because - - -

THE COMMISSIONER: - - - if they wished to understand it.

15 MS BEER: We told them again and again and again.

THE COMMISSIONER: Again, I got that impression from your submission.

MS BEER: I honestly think the constraint strategy has turned out to be almost too
20 hard to be able to be implemented.

THE COMMISSIONER: And I gather as well from what you've written and said to me, and if it were implemented at a reduced level, it wouldn't be worth doing.

25 MS BEER: It's not going to achieve those environmental objectives that they have said they want to get 80,000 to the South Australian border to flush the Mouth, to get rid of the salt. 20,000 at Shepparton will not do that. It will in no way do that.

30 THE COMMISSIONER: You combine it with presumably, I will call it releases from Dartmouth and Hume; is that right? If 20 won't be a big enough contribution down the Goulburn, what would be?

MS BEER: You have to go back to your 40,000 minimum at Shepparton.

35 THE COMMISSIONER: I presume that's probably why they started with 40, did they?

MS BEER: Yes, but you've got to realise, too, how the system works, that - and they have said themselves and it's true, the Murray and the Goulburn are the drivers
40 of the system to get that amount of water down the end.

THE COMMISSIONER: Yes.

MS BEER: You take one of those out and it's not going to work. The Goulburn
45 provides that peak, peakiness, and the Murray provides the volume.

THE COMMISSIONER: Yes.

MS BEER: And you've got to have the two for it to work. So as I see it, I just don't understand how they think the constraints have worked, can work. I know - - -

THE COMMISSIONER: Well, do they think it's going to work?

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MS BEER: I quite honestly don't think the Victorian Government Minister water – Minister for Water, Lisa Neville thinks it can work because I know they say the same thing, delivered on time and in full, and we're so sick of hearing that, but they're not pushing it. It's at a standstill.

10

THE COMMISSIONER: And if it were – if that constraints measure were approved, it would, as I understand it, still depend upon owners agreeing to some regime. Is that how you understand it?

15 MS BEER: Yes. We are considered the constraint.

THE COMMISSIONER: No, I understand that. That's why earlier I referred to it as the undesirability reflected in the unwillingness of owners to suffer the inundation which would be involved in increasing the flow at the confluence, yes. Well, then, for any – it's 2018 now and there's 2024 is a so-called reconciliation time, all measures have to be such that will be operating by mid-2024. From what you tell me, you don't expect that the constraints will be able to have been relaxed by 2024.

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MS BEER: No. They won't. And the last meeting we had with the Goulburn-Broken CMA who were the proponents for the Victorian Government of this constraint, we were told that in 2016 they would now need – there would be an awful lot of work still needed to be done. They would need three years to implement further installation of monitoring, gauges, real time telemetry for run-off rainfall, stream flows and they would need five years to get sufficient data to be able to then start modelling.

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THE COMMISSIONER: It doesn't sound like 2024, does it?

MS BEER: It's not going to happen. I can't see any possible way that it can happen. I can't see really any possible way they're going to get the 450.

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THE COMMISSIONER: No.

MS BEER: 450 cannot happen and the Victorian Water Minister has said it is not going to come from on-farm efficiency structures because the Goulburn-Murray Irrigation District is on the brink of collapse because so much water has been taken out of the irrigation consumptive pool that it's at the stage where it's struggling to continue. It relies on fixed feeds rather than water delivery, with the oncoming drought, and the forecast is not good. We are supposed to be looking at a worse year next year. The encroaching drought will see – will see the collapse, unfortunately, of the Goulburn Murray Irrigation District, and not only it, a number of other irrigation

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districts too. You can ask any number of irrigators up in that area and they are desperate.

5 THE COMMISSIONER: Now, that is part of the point you're making that efficiency measures being on farm savings will not be a foundation for the 450 upwater.

MS BEER: And – and I can't see where else they're going to get the 450 from.

10 THE COMMISSIONER: Well, that's why we've been talking about the constraints measure which you've already described as - - -

MS BEER: Yes.

15 THE COMMISSIONER: - - - not likely to be achieved. Who was it who suggested you would need five years of data after you've got your measure - - -

MS BEER: Geoff Earl from the Goulburn Broken Catchment Management Authority. He's now retired. I can't give you his correct title.

20

THE COMMISSIONER: That's all right. That's all right.

MS BEER: I can't remember it, but he was in charge of it. The other - - -

25 THE COMMISSIONER: Am I being unfair in asking you this: does that sound as if that measure, that form of the constraints measure is being planned in the wrong order? That is, planned first, information later, rather than the usual order of information first, then plan.

30 MS BEER: Yes, they've started – they – they haven't started from the bottom up.

THE COMMISSIONER: Yes.

MS BEER: They should have started - - -

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THE COMMISSIONER: Because these are data that would enable you to know whether it would work properly.

MS BEER: Exactly. And it should have been done first.

40

THE COMMISSIONER: Yes. Maybe you and I are just dull, linear thinkers. We would rather have the information before we make the – reach the conclusion.

45 MS BEER: Well, Commissioner, if you – if you haven't got the information to monitor the system, how can you manage it?

THE COMMISSIONER: No.

MS BEER: And they haven't.

THE COMMISSIONER: No, I don't – that's why I asked am I being unfair in
5 looking at it this way? You obviously don't think so. No. No, I don't. The other
things is, nor do they have the operational tools or systems in place to be able to –
even if they got these flows, to be able to manage all the different river valley
systems.

10 MR O'FLAHERTY: And that's, in part, due to the lack of that real-time - - -

MS BEER: Exactly.

MR O'FLAHERTY: - - - monitoring you were talking about.

15 MS BEER: Exactly. The – well, the other thing is that they still use paper
spreadsheets to plan their water deliveries. Can you imagine – you know, this is a
business, we have three – the Commonwealth Environmental Water Holder alone has
\$3.3 billion of water plus, and they're working it out on spreadsheets? Well,
20 shouldn't they have spent some money getting operational systems in place so that
they can coordinate each of the river valleys? It just seems absurd. The other thing –
sorry, while I'm skipping to something else – is compensation or mitigation has – has
not happened in the tributaries, so people along the tributaries apparently are not
going to be compensated anything. They have not gone into any cost estimates at all
for the tributaries.

25 THE COMMISSIONER: So that's – you mean people in your position?

MS BEER: My position, yes.

30 MR O'FLAHERTY: And just on - - -

MS BEER: It's only on the main stream – main stem of the Goulburn that they've
estimated that 140 million – so if you work it out for the tributaries, that's going to
blow out three times.

35 MR O'FLAHERTY: And just on that, the business case that I showed you earlier,
there are cost estimates, or estimated costs, and maybe if I, just to help you, just to
bring – take to you page 92 of that document. That's the one with the map that's
open. No, it's - - -

40 MS BEER: Yes.

MR O'FLAHERTY: - - - a separate document.

45 MS BEER: This one?

MR O'FLAHERTY: With the map. That's the one, yes.

THE COMMISSIONER: The business case?

MR O'FLAHERTY: That's the business case, Commissioner, yes.

5 THE COMMISSIONER: Phase 2 investigations.

MR O'FLAHERTY: Yes, page 92. Now, this is a series of tables. Do I take it from what you've just said that we're correct – I would be correct in interpreting these cost tables going from Eildon to Yea, Yea to Goulburn weir, and then downstream of
10 Goulburn weir respectively, that is purely cost estimates relating to properties that about the Goulburn River rather than any other river.

MS BEER: Yes, it's nothing to do with the tributaries.

15 MR O'FLAHERTY: Yes. So those private land mitigation actions in respect of each of those aspects only relate to those and none of the tributaries.

THE COMMISSIONER: Has anyone told you, from the government that is, that, in effect, the inundation of land on the Yea doesn't matter, is not treated as a constraint,
20 is not treated as something that needs to be mitigated?

MS BEER: They've told us – I harped and harped on it at the Technical Advisory Group meetings, that they investigate the tributaries. They did some small investigation, but I – they just didn't seem to understand. They – they investigated the backing up influence - - -
25

THE COMMISSIONER: Yes. Yes.

MS BEER: - - - at the confluence.
30

THE COMMISSIONER: Yes.

MS BEER: Which is, as I said, one and a half to two ks on each of the rivers.

35 THE COMMISSIONER: Yes.

MS BEER: And they said that they couldn't see that further up the river there would be any higher inundation. That was not what I was trying to explain to them. It was the fact that the water stays up longer, so you get a greater duration of inundation.
40 So instead of it going down in three or four - - -

THE COMMISSIONER: Because you've drawn to attention I think something that has to do with peakiness, doesn't it? It comes up quickly and goes down quickly.

45 MS BEER: Yes. Yes.

MR O'FLAHERTY: And this is upsetting that natural - - -

MS BEER: Yes. So we're getting, instead of three or four days - - -

MR O'FLAHERTY: - - - process.

5 MS BEER: - - - at the most, you're getting seven/eight/nine days or whatever.

MR O'FLAHERTY: Yes.

10 THE COMMISSIONER: So if I were to stress the difference between the extent spatially of inundation and the duration temporarily of inundation, that's a point you're trying to make, is it?

MS BEER: The other point that - - -

15 THE COMMISSIONER: So that the duration is increased - - -

MS BEER: The duration.

20 THE COMMISSIONER: - - - by their - - -

MS BEER: Yes.

THE COMMISSIONER: - - - proposed - - -

25 MS BEER: Yes.

THE COMMISSIONER: - - - increased flow.

30 MS BEER: Definitely.

THE COMMISSIONER: Even if the physical extent is not.

MS BEER: No.

35 THE COMMISSIONER: Right. Thank you.

40 MS BEER: The physical extent won't be impacted because we won't get the influence of the Goulburn up that far, but the duration definitely will be. The other point is that to get this water down to Shepparton they're talking about not just one event. They're talking about two to three peaks. So obviously - - -

MR O'FLAHERTY: Is that two to three releases from Eildon? Is that what that relates to?

45 MS BEER: Well, I can't see how else they're going to get - - -

MR O'FLAHERTY: Yes.

MS BEER: - - - two to three peaks.

MR O'FLAHERTY: Yes.

5 MS BEER: You're not going to get it down in that – the tributary.

MR O'FLAHERTY: No.

MS BEER: But - - -

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MR O'FLAHERTY: No.

MS BEER: So - - -

15 THE COMMISSIONER: Sorry, and to finish that thought, and?

MS BEER: So the two to three peaks will increase the duration naturally, because you get your peak release, and then it starts to come down, and then, whoops, it's up again, so your water can't get away again.

20

THE COMMISSIONER: Now, what – has there been any response to your repeated efforts to explain that the duration is extended to an extent that is damaging to your land?

25 MS BEER: Only that the result of that small investigation they did towards the end of the meeting saying that they didn't think the backing up or the extent of flooding would be increased, and I just about tore my hair out because I thought, "That is not what I tried to explain to you."

30 THE COMMISSIONER: So you have explained to them duration?

MS BEER: Mmm.

35 THE COMMISSIONER: Has there been any response to the duration point that you've made?

MS BEER: They don't think it will make any difference.

40 THE COMMISSIONER: Right. Now, do you understand that as meaning that they don't think it matters or they don't think it happens?

MS BEER: They haven't actually investigated the right thing. They've investigated a backing up and an increase in inundation, not the duration.

45 THE COMMISSIONER: Yes, thank you. And all this is being done and debated without any modelling, I take it.

MS BEER: No, they've - - -

THE COMMISSIONER: Have you been made aware of any modelling that would
- - -

5

MS BEER: No, they've - - -

THE COMMISSIONER: - - - look to the duration question?

10 MS BEER: Well, they've done modelling, but the modelling has been for the
duration down at Shepparton.

THE COMMISSIONER: No, that's what I'm asking.

15 MS BEER: Not up our area.

THE COMMISSIONER: So there's been no modelling for your - - -

MS BEER: Well, they can't - - -

20

THE COMMISSIONER: They don't have the data.

MS BEER: They can't figure it out.

25 THE COMMISSIONER: Yes.

MS BEER: No, and they don't have the data for it. They don't have the daily - - -

30 MR O'FLAHERTY: They don't have the gauging stations as well

MS BEER: No, we don't have the gauging stations. I mean, the closest gauging
station to me is what they call Devlins Bridge, which is 20/25 ks upstream in the
Yea. The Yea River comes in and the Murrindindi River comes into the Yea as a
tributary, which is another fast-flowing mountain stream. The gauge in that is way
35 up in the headwaters.

THE COMMISSIONER: Yes.

40 MS BEER: When we get a flood, you have to – you have to know from experience
or talking to people upstream how much is coming down, and usually if there's a lot
of water coming down someone will say to you, "There's a lot of water coming
down. You had better do something."

45 THE COMMISSIONER: But - - -

MS BEER: But you can't rely on the gauges.

THE COMMISSIONER: As you understand the constraints measure, the so-called efficiency measure designed to contribute to the 450 gigalitres, is one that is required to be achieved without economic harm?

5 MS BEER: Yes.

THE COMMISSIONER: And as I understand it, your repeated contribution to the discussion described in your submission to me is to point out that there is economic harm by the increased duration of the inundation of your land; correct? That's right?

10

MS BEER: That's right.

THE COMMISSIONER: What do you understand to have been the suggestion or suggestions from the government as to how to mitigate that economic harm, if any?

15

MS BEER: I think it's laughable.

THE COMMISSIONER: So what has it – but what has the proposal been? I presume they're not going to send you a blank cheque.

20

MS BEER: No. Well, we don't know. They just say that mitigation will be in the form of a one-off upfront payment, so - - -

THE COMMISSIONER: So this idea of - - -

25

MS BEER: - - - I guess it's a cheque of some sort.

THE COMMISSIONER: This idea of an easement.

30

MS BEER: Yes.

THE COMMISSIONER: Yes, but not a blank one.

MS BEER: Yes.

35

THE COMMISSIONER: No.

MS BEER: But don't forget in all of this is public infrastructure too in our Murrindindi Shire. There would be caravan parks.

40

MR O'FLAHERTY: Public roads and bridges.

MS BEER: Yes, a lot of roads and bridges. I do have a letter, which I found later which I hope I can give to you, which was a letter to the – to Minister Neville about the impacts that the Shire would suffer and a reply from Minister Neville as well, so I

45

- - -

THE COMMISSIONER: That would be convenient if we could have that. We will arrange that, thanks.

MS BEER: I – I will give that to you.

5

THE COMMISSIONER: Now, what is it that you wanted to show me on the map here?

MS BEER: That was the – the fires and - - -

10

THE COMMISSIONER: The extent of the fires?

MS BEER: The extent of the fires. Did you want to look at that?

15

THE COMMISSIONER: Unless there's something particular, I won't – I'm not sufficiently expert to be able to - - -

MS BEER: No.

20

THE COMMISSIONER: - - - translate that to hydrology.

MS BEER: Well, I've – I've told you probably about that. The other - - -

25

THE COMMISSIONER: Now, make sure I've got that point correctly. The fires, major distraction of the forest and the undergrowth has produced a massive regrowth in the cycle of which there has already been observed, and can be expected for some time to come, depleted run-off into the watercourses. Have I got it?

MS BEER: Correct.

30

THE COMMISSIONER: Right. Thank you.

MS BEER: Particularly in the Yea River.

35

THE COMMISSIONER: Thanks.

MS BEER: Which in the catchment area in the mountains of the Yea River, the rainfall is 1,400 to 2,000 millimetres every year. When that area is burnt to a crisp, it's – obviously has the effect that I told you about.

40

THE COMMISSIONER: Thanks.

MS BEER: And that's – that's not just my opinion. That has scientifically been investigated.

45

THE COMMISSIONER: Yes. Right.

MS BEER: There are a number of, also, comments made by politicians that state the delivery of the 450 would not be allowed under legislation if it did have socio-economic impacts. And if I could just read you what Senator Ruston, the Assistant Water Minister said, and she's - - -

5

THE COMMISSIONER: This is the passage set out in your submission, I think.

MS BEER: I'm not sure. These were - - -

10 THE COMMISSIONER: Let me just pick it up.

MR O'FLAHERTY: Tab – behind tab 1, page 11, I think we might find that.

THE COMMISSIONER: Yes.

15

MS BEER:

THE COMMISSIONER: Is that the very end of your submission:

20 *The Federal Government will not be funding any of the activities –*

etcetera.

MS BEER: Which tab am I looking at?

25

MR O'FLAHERTY: It should be tab 1. You're on tab 2 now. That's the one, yes.

THE COMMISSIONER: That's the quote with which you finish your submission, is that correct?

30

MS BEER: That is but one of them.

THE COMMISSIONER: If there's another one, tell me now.

35 MS BEER: Well, Tony Burke said in February 2012 when he was Water Minister:

40 *There are some pie in the sky view of what can be done with environmental water but there are genuine capacity constraints in the landscape and that needs to be acknowledged and we don't do anyone a favour if we accrue volumes of water and have the impact that may have on communities and discover they can't actually be used.*

45 Well, holey moly, isn't that what has happened? The explanatory statement of the Water Amendment (Special Account) Bill which is the one specifically brought into legislation for the 450 and the constraints states that:

1.775 billion set aside to enable water to be recovered and constraints to be removed without negatively impacting on the wellbeing of communities in the Basin.

5 THE COMMISSIONER: Yes. Quite.

MS BEER: So there are a number. Again, Senator Ruston says that:

10 *The recovery of 450 gigalitres of water and the environmental health – and environmental and health of the river outcomes are to be delivered will not have any socio-economic detrimental impacts on your community. We cannot inundate your land and cause damage to it unless we have an agreement that you will accept in the delivery of these outcomes that your land is going to be inundated. We cannot do that. It is legislated to say we cannot do that.*

15

THE COMMISSIONER: Yes. No. No. Quite so.

MS BEER: So I can't see how constraints can get up. And therefore, why recover the 450 gigalitres if you can't deliver it?

20

THE COMMISSIONER: Well, you won't recover it.

MS BEER: Sorry?

25 THE COMMISSIONER: You won't recover it.

MS BEER: No.

THE COMMISSIONER: Yes.

30

MR O'FLAHERTY: Just to cover off – tie up some loose ends in respect of some of the documents that you've provided to the Commission, the photos that we did refer to which were taken in the spring of 2010, were they a result of what – a similar operation that is proposed in these constraints?

35

MS BEER: Yes.

MR O'FLAHERTY: Where natural flows from tributaries are piggybacked on - - -

40 MS BEER: That was a natural flood in 2010, yes.

MR O'FLAHERTY: Was that also the subject of a piggybacking flow - - -

MS BEER: No, no. The piggybacking they say will not occur until all of these - - -

45

MR O'FLAHERTY: All this is all - - -

MS BEER: - - - easements are in place. No.

MR O'FLAHERTY: All right. And in your submission, you talk about the GHD cost analysis and do I take it your concern is, and that's – you've provided the
5 Commission with what I think is a PowerPoint presentation.

MS BEER: Yes.

MR O'FLAHERTY: Dated January 2016 and that in conjunction with another
10 PowerPoint presentation by the Goulburn-Broken Catchment Management Authority, was that at one of these consultation meetings - - -

MS BEER: Yes.

15 MR O'FLAHERTY: - - - that that was presented at?

MS BEER: That was at one of the Technical Advisory meetings.

MR O'FLAHERTY: Right.
20

MS BEER: But it was also presented in the last community meeting they ever had which was January 2016. They were both presented.

MR O'FLAHERTY: Yes. All right. And I take it you don't have a – anything
25 other than that from GHD, you don't have a report that was provided at all?

MS BEER: No.

MR O'FLAHERTY: And my understanding of your criticism of the GHD
30 announcement is it has taken one or maybe a few properties by way of analysis and then extrapolated from those across the affected areas as to produce cost estimates.

MS BEER: Yes, because, look, they always continue to tell us that legislation tells us there's a timeframe and we must stick to it. And so we were told that they didn't
35 have time to do property-by-property assessments so therefore they have never been done. So they took two to three farms and tried to work out in our area what their – that is, what the costs were, and they did the same with what they called the specialist businesses, which were – we have trout farms, we have a potato farm, we have turf farms. I don't know what businesses they calculated it on. And that's –
40 then they extrapolated it across the - - -

MR O'FLAHERTY: Yes. Did they indicate that they would need to do that property-by-property assessment but they just didn't have time?

45 MS BEER: They've always said they would do property-by-property but it has never occurred.

MR O'FLAHERTY: It hasn't occurred yet?

MS BEER: No. I don't think it ever will.

5 MR O'FLAHERTY: And do you understand that that GHD cost assessment, does that have the same issue that we – I think we identified in the business cases – did they consider the tributaries, the properties along the tributaries in that - - -

MS BEER: No.

10

MR O'FLAHERTY: - - - cost assessment? Or they had the same flaw, in a sense, they're only considering riparian owners across the – on the Goulburn River.

MS BEER: On the main Goulburn stem. Nothing to do with tributaries and they
15 didn't intend to do them.

MR O'FLAHERTY: And do I take it that when you've raised this that they are, their response has been you're not affected?

20 MS BEER: Yes.

MR O'FLAHERTY: Were they able to explain – I presume they weren't able to explain sufficiently for your purposes but were they able to explain at all as to why they weren't affected?

25

MS BEER: Why we weren't? Well, because what I explained before, that the backup only occurred one and a half to two ks and the inundation didn't increase, but they didn't take on board about the fact that duration was a problem.

30 MR O'FLAHERTY: That covers the specific questions that I had, Ms Beer. Were there other matters you wanted to raise with the Commissioner this afternoon?

MS BEER: Could I just say when we had the Technical Advisory Group meetings, Janet Pritchard from the Murray-Darling Basin ran them, in conjunction with
35 Goulburn-Broken CMA being there as well.

MR O'FLAHERTY: Right.

MS BEER: And Janet was very good at the meetings. She gave us all a very good
40 say, she took down all our thoughts, she went away with it, and we thought okay, there will be some adaptation to their strategy here and - - -

MR O'FLAHERTY: You felt listened to at least from her.

45 MS BEER: Sorry?

MR O'FLAHERTY: You felt listened to.

MS BEER: Yes, we did. They listened and they did try with the flood mapping but they always got it wrong. And the proposed flows did come down but invariably when we would get – see a document, it would have ignored things that we had said and I said to Janet, you know, we told you all this, why isn't it in the report. And her
5 comment was because when I go back and hand in the report, it gets edited and edited again and edited again as it goes further up the chain of command.

MR O'FLAHERTY: Can you remember an example of an instance in which that
10 happened?

MS BEER: No, sorry, I can't. I should have had some examples there but it was very, very frustrating for us.

MR O'FLAHERTY: Yes.
15

MS BEER: And you felt you were going over the same points again and again to try and get them listened to. Can I just say a few other things - - -

MR O'FLAHERTY: Absolutely.
20

MS BEER: - - - if no one has got questions.

MR O'FLAHERTY: Go right ahead.

MS BEER: I did write down a few things here. My suggestion would be that with
25 the 2,750 gegalitres, once they have acquired that water, they analyse what the ecological objectives they have achieved are before they attempt to go anywhere near the 450 gegalitres. And in doing so, they implement all the complementary measures which have been ignored to a fair extent, the carp eradication, the cold water
30 curtains, the fishways, prioritise wetlands, enhance particular habitats, restocking with fish. We have never seen a document – a singular document that gives the negative impacts of what they have been trying to achieve environmentally.

But we continually see and hear of them such as bank slumping, bank erosion, gum
35 trees falling in, sedimentation in the river. And there are a lot more but we only ever see from the MDBA how many more fish are in the system, how many birds are breeding. We want to see a document that shows the negative impacts because there are some. Could we suggest that they first optimise real time river flows and synchronise flows between major river valleys before they go and do anything else.
40 Because as I've said, they've spent billions of dollars with the sole purpose of acquiring a water volume and that seems to have been a blinkered focus to acquire water volume. And they've not spent money on the necessary operational tools. And I think that just about covers it because I've talked about the installation and implementation of real time telemetry monitoring and gauging which is absolutely
45 necessary.

MR O'FLAHERTY: Yes.

MS BEER: So that's all I have.

MR O'FLAHERTY: Well, thank you very much, Ms Beer, for appearing this
afternoon. We've – we haven't – we've definitely received all the materials and - - -

5

MS BEER: I will give you those letters.

MR O'FLAHERTY: - - - take those into account and there may be, I think, some
follow-up queries arising from I think you refer to some correspondence so we will
be in touch. But thank you very much for your time.

10

MS BEER: Thank you.

THE COMMISSIONER: I'm much obliged. It's very useful. Thanks.

15

MS BEER: Thank you for your time in giving me the opportunity and just one last
thing. We are the citizen scientists and farmer scientists and we walk the land each
and every day. We see the rivers each and every day, every day, every season, every
year and we see what's happening. It's not something that's modelled on a
computer. We know what's happening.

20

THE COMMISSIONER: Yes.

MS BEER: Thank you.

25

THE COMMISSIONER: Thank you.

MR O'FLAHERTY: Thank you.

30

<THE WITNESS WITHDREW

[3.27 pm]

THE COMMISSIONER: We will adjourn to here tomorrow at 10 o'clock. Thank
you.

35

MATTER ADJOURNED at 3.27 pm UNTIL WEDNESDAY, 29 AUGUST 2018

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