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**TRANSCRIPT OF PROCEEDINGS**

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O/N H-921939

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

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

**ADELAIDE**

**2.03 PM, THURSDAY, 2 AUGUST 2018**

**Continued from 31.7.18**

**DAY 17**

**MR R. BEASLEY SC, Senior Counsel Assisting, appears with MR S. O'FLAHERTY,  
Junior Counsel Assisting**

MR BEASLEY: I might start, Commissioner. I can deal with some evidence before I need the document that is coming up.

THE COMMISSIONER: Certainly.

5

MR BEASLEY: Before we begin, we acknowledge this land that we meet on today as the traditional lands for the Kurna people and that we 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 the living Kurna people today. We also pay respects to the cultural authority of Aboriginal people visiting and attending from other areas of South Australia and Australia that may be present here today. Commissioner, we have Mr Grant Rigney from the Ngarrindjeri Regional Authority to give evidence today.

15

**<GRANT RIGNEY, AFFIRMED**

**[2.04 pm]**

**<EXAMINATION-IN-CHIEF BY MR BEASLEY**

20

ASSOCIATE: Please state your full name.

MR RIGNEY: My name is Grant Rigney. Thank you.

25

THE COMMISSIONER: Please sit down, Mr Rigney.

MR BEASLEY: Mr Rigney, you are the Chairman of the Ngarrindjeri Aboriginal Corporation?

30

MR RIGNEY: Yes.

MR BEASLEY: And you are on the Ngarrindjeri Native Title Management Committee.

35

MR RIGNEY: Yes.

MR BEASLEY: You are also a Director of the MLDRIN Confederation?

40

MR RIGNEY: Yes, I am.

MR BEASLEY: You've had two terms on the Basin Community Committee.

MR RIGNEY: That's correct.

45

MR BEASLEY: And you've been involved in Ngarrindjeri water issues since 2002.

MR RIGNEY: That's correct.

MR BEASLEY: And the Ngarrindjeri Regional Authority has supplied a submission to the Commission dated 9 May 2018?

5

MR RIGNEY: That's correct.

MR BEASLEY: Was that drafted by you?

10 MR RIGNEY: Yes, part of.

MR BEASLEY: And who – did it have any contribution by other people?

15 MR RIGNEY: Yes, Steve Henning and Daryle Rigney, Professor Daryle Rigney.

MR BEASLEY: Who are they are?

20 MR RIGNEY: They are our two Chairpersons of our Ngarrindjeri Research Management Planning Committee.

25 MR BEASLEY: All right. That submission is behind tab 1 of the brief in the Ngarrindjeri Regional Authority, and I tender that. So I tender Submission to the Murray-Darling Basin Royal Commission from Ngarrindjeri Regional Authority Inc, 9 May 2018. I'm also – there's other documents I will tender, but there is another submission in the brief, Commissioner, behind tab 7, that I'm going to ask Mr Rigney some questions about. Mr Rigney, you're aware of a submission that the – that was drafted, I think, by the – Ngarrindjeri lawyers are Berg Lawyers; correct?

30 MR RIGNEY: That's correct.

MR BEASLEY: Have been for a long time.

MR RIGNEY: Yes, over 20 years.

35 MR BEASLEY: And, no doubt with input from people on the Ngarrindjeri Board, he drafted a submission of 16 April 2012 to the MDBA concerning the proposed Basin Plan?

40 MR RIGNEY: That's correct.

MR BEASLEY: Do you have any involvement in that submission?

MR RIGNEY: Yes, I did.

45 MR BEASLEY: All right. So who else was involved in preparing that submission, outside of Mr Berg and yourself?

MR RIGNEY: Daryle Rigney again, Steven Henning, at that time I'm pretty sure Uncle Tom Trevor was still with us. There were also members of our think tank, as we call it, and our leadership group, so there were various parties from different member organisations within the Ngarrindjeri country.

5

MR BEASLEY: All right. That submission is behind tab 7 of the brief, Commissioner. I tender it. It's Submission to Murray-Darling Basin Plan from Ngarrindjeri Regional Authority Inc, Submission by Ngarrindjeri Regional Authority and on behalf of the Ngarrindjeri People in relation to the proposed Basin Plan dated 16 April 2012.

10

THE COMMISSIONER: Could I just note that there's a reference to part 14 of the Basin Plan, which I'm reading – as I think I am meant to – as a reference to chapter 10, part 14.

15

MR BEASLEY: Yes. I'm going to come to that, because the Ngarrindjeri have an agreement with South – with the State of South Australia, which is their preferred method of consultation, engagement and involvement in water issues, ahead of parts – sorry, sections 10.52 and 10.53 of the Basin Plan, but I will come to that.

20

THE COMMISSIONER: Thank you.

MR BEASLEY: Mr Rigney, the Ngarrindjeri hold a native title determination outcome in relation to the waters of the Murray River up to, I think, a little bit beyond Murray Bridge and also the Coorong and the Lower Lakes.

25

MR RIGNEY: That's correct.

MR BEASLEY: That was a determination made on 14 December 2017.

30

MR RIGNEY: That's correct.

MR BEASLEY: And are you currently involved in negotiations in relation to an ILUA?

35

MR RIGNEY: Yes, we are, the ILUA is within the – within the actual consent determination.

MR BEASLEY: Right. And if I take you to tab 2 of the folder you've got, if you look at tab 2 of that folder, you will see a document that was prepared for the CSIRO back in August 2011, Economic and Cultural Values of Water to the Ngarrindjeri People of the Lower Lakes, Coorong and Murray Mouth. Before I go to the Native Title area, can I just take you to page (vii) of that document. You will see in the heading there Water and Ngarrindjeri People, it contains a summary of the importance of water and the central nature of water to Ngarrindjeri existence. That's a matter that you wish the Commissioner to take regard to?

45

MR RIGNEY: Absolutely, yes.

MR BEASLEY: I hesitate to use those words “have regard to,” but I will in any event. Page (ix) of this document – sorry, (viii) and (ix) of this document contains a series of recommendations. Point 7 on page (ix):

*The allocation of cultural water to Indigenous nations in the Murray-Darling Basin be supported and understood as critical in the rehabilitation of the lands and waters that provide the foundation for Indigenous wellbeing. Indigenous nations need to make their own decisions about how Indigenous allocations are used.*

That’s still one of the core desires of Ngarrindjeri people to have an allocation of water for, in broad terms, a cultural flow?

MR RIGNEY: Absolutely.

MR BEASLEY: And the central part of that, I’m right, is it’s not so much what amount of water that is reflected in a volume, in terms of gigalitres, it’s in terms of an outcome for your land?

MR RIGNEY: That’s right exactly right.

MR BEASLEY: An ecological outcome for your land.

MR RIGNEY: Yes, which will have an outcome for the people.

MR BEASLEY: Yes. In other words, restoration of degradation of the Coorong and any other parts of your land.

MR RIGNEY: Absolutely.

MR BEASLEY: All right. I will come to that in more detail later. What I wanted to take you to is the Native Title area, in terms of the claim, if you go to page 12 of the document I’m on. You should see the map there outlining, in broad terms, the Native Title claim.

MR RIGNEY: That’s correct.

MR BEASLEY: If I take you to the document, tab 9, and you go to figure 2 on page 6, which is actually the second page of the extract of this document. You should actually see the – you will see on the map located under the Lower Lakes and the Coorong area, Ngarrindjeri and others Native Title determination. That’s the area that was actually determined as part of Native Title claim.

MR RIGNEY: That’s correct.

THE COMMISSIONER: Is the determination in evidence?

MR BEASLEY: I'm going to tender it. Perhaps I can do that now.

5 THE COMMISSIONER: Thanks.

MR BEASLEY: So I'm tendering extract from the Native Title Register  
Determination Reference Federal Court number SAD 6027/1998, NNTP number  
SCD 2017/002. Date of effective determination, 14 December 2007. Name of the  
10 determination is Sumner v State of South Australia.

THE COMMISSIONER: 2017?

MR BEASLEY: [2017] (Ngarrindjeri Native Title Claim Part A). Relative parts,  
15 Commissioner, are at paragraphs 4, 5 and 10, and probably 14 as well.

THE COMMISSIONER: So there's no commercial use - - -

MR BEASLEY: No.  
20

THE COMMISSIONER: - - - under clause 11. And there's nothing exclusive under  
clause 12. What are the references to water? There's - apart from, implicitly -  
there's 10(c).

25 MR BEASLEY: Yes.

THE COMMISSIONER: Implicitly 10(d), I think.

MR BEASLEY: Yes. 4:  
30

*subject to the items 1, 2, and 3 and 4 in schedule 6 and the terms of these  
orders, native title exists in the land and waters described in schedule 3.*

THE COMMISSIONER: The waters, yes. But that's when you - - -  
35

MR BEASLEY: And I should probably tender schedule 3, then, although it is - - -

THE COMMISSIONER: If that's only a more particular exposition of what the  
plan shows, I don't need that.  
40

MR BEASLEY: It is. I don't think there's any value in it being before - - -

THE COMMISSIONER: But it's the - it's the subject to these terms of orders in 4,  
which is a very common drafting device in these determinations. It means that in  
45 order to understand the content of the title you have to look to what the Act  
contemplates, namely questions of exclusivity and exclusions, and the general  
limitations in clause 11, that's quite a common form itself.

MR BEASLEY: Yes. And 14(e) contains a reference to the Natural Resources Management Act 2004 South Australia, which is the Act under which water entitlements are allocated in this State.

5 THE COMMISSIONER: Yes. In any event, everything is subject to the laws, which I think obviously means the laws being of the State and Commonwealth, see 12 and 13(b).

MR BEASLEY: Yes.

10

THE COMMISSIONER: Thanks.

MR BEASLEY: Can I take you back to the document behind tab 2, Mr Rigney. You've actually got it open now but can you go to page 6. This is a part of this  
15 report to the CSIRO in 2011 entitled 3, 'The Cultural Value of Water'. Again I think this sets out in more detail the central nature of water to the Ngarrindjeri existence. Without reading all these pages out, this is another aspect of the importance of water to the Ngarrindjeri that you would ask the Commissioner to take account of.

20 MR RIGNEY: Absolutely.

MR BEASLEY: All right.

25 THE COMMISSIONER: I'm sorry. How should I pronounce the name of the waters? The Yarluwar-Ruwe – what is it?

MR RIGNEY: Yes. Yarluwar-Ruwe.

30 THE WITNESS: Yarluwar-Ruwe.

MR RIGNEY: Yes. Yarluwar is sea; Ruwe is country.

THE COMMISSIONER: Thank you.

35 MR BEASLEY: I will tender that document Economic and Cultural Values of Water to the Ngarrindjeri People, the Lower Lakes, Coorong, and Murray Mouth, dated August 2011 to the CSIRO.

40 THE COMMISSIONER: Thank you.

MR BEASLEY: The Ngarrindjeri have an agreement with the State of South Australia, Mr Rigney?

45 MR RIGNEY: That's correct.

MR BEASLEY: It's – I think it's abbreviated to be called the KNYA agreement.

MR RIGNEY: That's correct.

MR BEASLEY: Kungun – have I pronounced that correctly.

5 MR RIGNEY: Yes. Kungun Ngarrindjeri Yunnan, listen to Ngarrindjeri speaking agreement.

MR BEASLEY: Yes. That's what it means?

10 MR RIGNEY: Yes.

MR BEASLEY: That's behind tab 5. Were you involved in negotiations in relation to that agreement?

15 MR RIGNEY: Yes.

MR BEASLEY: And it sets out – it's an agreement between various – what's the Ngarrindjeri Tendi Incorporated?

20 MR RIGNEY: The Ngarrindjeri Tendi is our traditional governing body.

MR BEASLEY: Right. And the Ngarrindjeri Heritage Committee?

MR RIGNEY: Yes. Still in existence, still in place today.  
25

MR BEASLEY: And its role is?

MR RIGNEY: All heritage issues within Ngarrindjeri country.

30 MR BEASLEY: Right. And Ngarrindjeri Native Title Management Committee sounds like something to do with your Native Title claim.

MR RIGNEY: Yes.

35 MR BEASLEY: I'm a genius.

THE COMMISSIONER: You think I can draw that inference?

MR BEASLEY: Well, I was just concerned. And the other parties to the agreement  
40 are the Crown in the right of South Australia, Minister for Aboriginal Affairs and Reconciliation, Minister for the – is there still a Minister for the River Murray here?

MR RIGNEY: Yes.

45 MR BEASLEY: Perhaps I can ask someone else.

MR RIGNEY: David Speirs.

MR BEASLEY: And the Minister for Agriculture, Food and Fisheries. This sets out your – the Ngarrindjeri’s people preferred method of engagement, consultation, but I think most importantly involvement in any of the processes regarding the use of the water resources and your land?

5

MR RIGNEY: That’s correct.

MR BEASLEY: Including your preferred – the preferred way that both the MDBA and the State Government should consult, engage and involve the Ngarrindjeri people in relation to water issues?

10

MR RIGNEY: That’s correct.

MR BEASLEY: All right. You will see, Commissioner, it has got a number of commitments and obligations beyond what’s in the Basin Plan, in terms of you will see a heading ‘Commitments by the Minister to the Ngarrindjeri’ in Part 3, which includes an allocation of 50 gegalitres of fresh water. 4, support of the Ngarrindjeri Regional Authority concerning exchanges of information, proper consideration of the interests of the Ngarrindjeri. Consultation requirements in part 5 of the agreement which involve, crucially, involvement by the Ngarrindjeri in planning and implementation processes in relation to management plans for water resources and waters. Quarterly meetings, 52. Are those meetings taking place at the moment?

15

20

MR RIGNEY: Not at present.

25

MR BEASLEY: Right. When was the - - -

MR RIGNEY: We are hoping to reinvigorate them very soon.

30

MR BEASLEY: When was the last meeting?

MR RIGNEY: I haven’t been on the Ngarrindjeri Regional Authority Board for a period of time.

35

MR BEASLEY: I see. So you don’t – you haven’t – have you ever attended these meetings?

MR RIGNEY: Yes. I’ve been to previous meetings, yes.

40

MR BEASLEY: Right and to your knowledge, when was the last meeting?

MR RIGNEY: To my knowledge it would have been 2017, early 2017.

MR BEASLEY: Early ’17?

45

MR RIGNEY: Yes.

MR BEASLEY: Right. All right.

THE COMMISSIONER: So they've not been quarterly, to put it mildly?

5 MR RIGNEY: No. They haven't.

MR BEASLEY: Are you aware of a reason for that?

10 MR RIGNEY: I think there's a few factors involved in that. Some of those factors have been on Ngarrindjeri's side of things at the same time.

MR BEASLEY: Yes.

15 MR RIGNEY: A change in government certainly is one of those other factors that came into it, and the issues going on particularly around the State with the water processes where it was a major issue as well as were – Ngarrindjeri will be pushing very hard into a lot of areas, particularly around stable diversion limits and so forth.

20 MR BEASLEY: Right. So you are talking about the supply measure projects for South Australia.

MR RIGNEY: Supply measures, but we had treaty on the table at the time as well. There were other negotiations platforms that we were hoping to synergise from other areas that didn't eventuate.

25

MR BEASLEY: Yes. I'm going to come to it, but I know the Ngarrindjeri have been involved in extensive consultation with relevant people from state government departments in relation to the South Australian Water Resource Plan that affects your land; is that correct?

30

MR RIGNEY: That's correct.

MR BEASLEY: That has been ongoing – an ongoing process of consultation.

35 MR RIGNEY: It has.

MR BEASLEY: And there's a separate statement of commitments in relation to those processes?

40 MR RIGNEY: That's correct.

MR BEASLEY: I will come to that in a minute. You will see at part 6 of this agreement there's clauses in relation to commitments in relation to how negotiations are to take place. So I'm right, aren't I, that the Ngarrindjeri's preference is for a framework like this above anything that's in the current Basin Plan, the part the  
45 Commissioner mentioned before, 10.02 and 10.53?

MR RIGNEY: Yes.

MR BEASLEY: And you're familiar with all of those - - -

5 MR RIGNEY: Yes, yes.

MR BEASLEY: - - - "have regard to" obligations in those parts of the Basin Plan. Can I take you to - to do this chronologically, I would like to take you back to the submission made in 2012 concerning the proposed Basin Plan, which is behind tab 7.  
10 So this was a - you've already said this was a submission drafted with your legal adviser.

MR RIGNEY: Yes.

15 MR BEASLEY: And also with your input to the MDBA in the year in which the Basin Plan was enacted.

MR RIGNEY: That's correct.

20 MR BEASLEY: I think the Basin Plan was enacted in November 2012. This is April 2012. So after the - sorry, after the publication of the ESLT report, Commissioner, but prior to the Basin Plan being enacted. I want to focus on the four points that are made on page 1 of this submission. The first being that the MDBA has not engaged with Ngarrindjeri respectfully. Are you able to elaborate on that?  
25 What's asserted there?

MR RIGNEY: From my perspective, and from our leadership perspective at that time, we had an agreement platform with the state, with the KNYA agreement. We were encouraging the state to push this process in engagement at a Federal level.  
30 This had been a strategy going way back to 2002, when we had our Kungun Ngarrindjeri Yunnan agreement in place with local government, with Alexandrina Council, and the strategy really was that were we not getting anywhere at the state or Federal level. The one and two tiers of government, so we concentrated on the third level of government, at local. And we solidified these agreements with a few of the  
35 local councils which - really, it was an enforcer for us to push into the State, and that's how the KNYA Agreement came about - place in 2009.

MR BEASLEY: What would have been the local councils that were in that?---Alexandrina Council, Murray Bridge Council.  
40

MR RIGNEY: Yes.

MR BEASLEY: And the Coorong District Council are now a current also signatory to the Agreement and we have negotiation platforms - - -  
45

MR BEASLEY: They're the local government areas that cover your lands?

MR RIGNEY: That's correct.

MR BEASLEY: Yes. Right.

5 MR RIGNEY: So we were looking at local governments within our Native Title claim within Ngarrindjeri country itself. I should say within the Native Title claims that Ngarrindjeri does go a lot further up, but that's another story altogether. So we had this platform of KNYA processes and we were encouraging the state to push that platform into the Federal level.

10 MR BEASLEY: So when you say you were encouraging the state to push that platform for the Federal level, am I right in assuming that what you were asking the State to do was say, "We are happy with the agreement we have got with you."

15 MR RIGNEY: Yes.

MR BEASLEY: And how that operates. "We would like you to encourage the MDBA to engage with us in the same way."

20 MR RIGNEY: Yes. That's right.

MR BEASLEY: Right.

25 MR RIGNEY: So we were looking at solidifying that agreement and foundationalising as a contract law at all tiers of government.

MR BEASLEY: All right.

30 MR RIGNEY: And that didn't happen with the MDBA.

MR BEASLEY: Right. And is that the core of the claim that you weren't dealt with respectfully?

35 MR RIGNEY: Absolutely.

40 MR BEASLEY: All right. I also notice that this document says that the focus of the authority should have been upon understanding cultural principles associated with water, considering those cultural principles prior to and apart from the use of water, and by listening and working with Indigenous people to translate or negotiate the differences. I assume that there was a concern that that didn't take place.

MR RIGNEY: No, it did not.

45 MR BEASLEY: All right. Point 2 on this page says:

*The MDBA has focused on the recording of oral histories of individuals living on the river rather than the engagement of Ngarrindjeri as a community.*

Can you elaborate on that concern?

MR RIGNEY: In a lot of space right across government in many areas, when they're looking for a good news story or to get something across the line they will  
5 target certain individuals who they know that will potentially come on board with them in their aspirations of how they want to put terminologies into the documentation and saying they have representation, whereas not representative of all the people. It's just individuals speaking on their concerns. We're speaking as a collective, as a country, as the Ngarrindjeri People: they come to the appropriate  
10 peak bodies.

MR BEASLEY: Right okay. So the concern was not going to the peak representative body that speaks on behalf of the entire community.

15 MR RIGNEY: Absolutely.

MR BEASLEY: But a form of – is it, what, cherry picking people to get - - -

MR RIGNEY: In some cases that does happen, yes.

20

MR BEASLEY: Right. Point 3:

*It has engaged researchers to compile such oral histories who are unfamiliar with Ngarrindjeri notwithstanding the MDBA have been advised that this  
25 process is wrong.*

Can you elaborate on that?

MR RIGNEY: Well, what we're basically saying there is we are one of the most  
30 researched peoples in the world, Aboriginal people in this country, it's always non-Indigenous people researching the Indigenous people and telling them how it is in today's environment or under their sciences as they see it today. We have Indigenous academics and scholars on a worldwide scale, even within this nation of Australia, who are Aboriginal. We want to have capacity and autonomy to build our  
35 nation groups for their purposes of caring for their country and their people. We have these obligations. So we want controlled methodologies of research done by Indigenous nations' peoples for their people, not non-Indigenous people writing it for us.

40 MR BEASLEY: I'm getting the feeling that the researchers that were engaged were white people, were they?

MR RIGNEY: The majority of them were and there are a couple – there's only one  
45 Indigenous ecologist that I know in the country, Bradley Moggridge, and Brad has done work in these areas but, again, he has also conformed to a terms of reference of how those engagement mechanisms are done, too, and that doesn't – is not a cultural match with the Ngarrindjeri people.

MR BEASLEY: And point 4 is:

5                   *The Basin Authority has failed to devise methodologies for engagement with  
Ngarrindjeri which would result in an understanding of cultural interests  
associated with water.*

Can you expand on that.

10           MR RIGNEY: And, again, it's not allowing Ngarrindjeri to write the methodology  
of how their country is shaped and how it is formed through their ideology. It's  
again people coming in and saying to us, "This is how it is." So it's about  
controlling the space for us, because it has been controlled by others for too long and  
we have seen the degradation and the impact it has had on our people, so we want  
change.

15           MR BEASLEY: After you lodged this submission was there, to your knowledge,  
any – were any of these points addressed in a way that was satisfactory to the  
Ngarrindjeri prior to the Basin Plan being legislated?

20           MR RIGNEY: No, not really. I mean, there were a few tokenistic efforts on behalf  
of MDBA at the time when they were looking at tools that could be utilised for  
nation groups to be using within the Water Resource Plan platform and also about  
water quality and the amounts of water quantity as well that would be required. And  
most of those researches that were done were offshore. They were looking at into  
25           research within British Columbia in Canada, particularly and a tool called the land  
use and occupancy mapping model, so they tried to integrate this model from another  
nation group in Canada and tried to implement it within the Murray-Darling Basin  
itself, and it didn't match a lot of the groups, because there was – it just didn't work  
for that group, it wasn't a cultural match for them, and the tool wasn't readily  
30           available for them to actually implement.

So there were some tokenistic measures put in place, but that's not what we were  
looking for. We were looking for researching dollars to be pumped into nations who  
had the capacity, such as my nation group does with our research unit based out of  
35           Flinders University, and we have a couple of Australian Research Council grants  
going on with repatriation and nationhood governance, on a world-wide scale with  
Harvard and UTS ..... Arizona state law, Melbourne law. We have a – we have a  
variety of institutions around the world that we can tap into and network. So we had  
the capacity to do it, we just were never given the chance or the resources to do it.

40           THE COMMISSIONER: When you say the efforts that were undertaken were  
tokenistic, do you mean that they were inadequate, if well intended, or do you mean  
they were inadequate and cynically intentioned?

45           MR RIGNEY: I think they were adequate to groups that could match the tool that  
was actually offered.

THE COMMISSIONER: It's just your word "tokenistic".

MR RIGNEY: Yes. I would say tokenistic - - -

5 THE COMMISSIONER: It has a range of meanings, some of which are sinister, some of which might not be, and I just wanted to know whether you intended me to understand a sinister meaning to that?

10 MR RIGNEY: Yes. it was a bit sinister, on my behalf. I just got sick of banging on the door of the Murray-Darling Basin Authority trying to explain to them, "Here is a framework that works for the nation. It is a match for us. We have the capacity and we had the agency to do it." All we needed was the resources, but they went down another pathway and looked for a model offshore. That's what my cynicism is about.

15 THE COMMISSIONER: I wasn't actually suggesting it was your cynicism. I just want to find out, when you say tokenistic, do you mean they were not sincere in trying to do something, albeit in a way different from the way you would want to do it, or do you mean that they chose something which you firmly believe was  
20 inadequate?

MR RIGNEY: I – I think that they believed, in their mindsets, that they had an opportunity for something that might work within the Murray-Darling Basin, but from my perspective and from the Ngarrindjeri's perspective, we didn't see that  
25 happening.

THE COMMISSIONER: I understand.

30 MR RIGNEY: And we were a bit angry about it, because we thought those resources could have been best utilised in another pathway.

THE COMMISSIONER: Thank you.

35 MR BEASLEY: I want to ask you some questions about the supply measure adjustment projects for South Australia. I think perhaps the most important in terms of your land is the South East Flows Restoration Project, which is a project you're familiar with.

40 MR RIGNEY: Yes.

MR BEASLEY: And I think, in terms of the actual concept of the project itself, you've been aware of it since not long after its inception, in some ways.

45 MR RIGNEY: Yes, that's correct.

MR BEASLEY: And has that involved meetings and discussions with government – South Australian government officials?

MR RIGNEY: Yes, absolutely it did.

MR BEASLEY: Yes. People from .....

5 MR RIGNEY: Yes, at that time.

MR BEASLEY: Were they – were these regular meetings?

MR RIGNEY: Yes, they were.

10

MR BEASLEY: And who attended, from Ngarrindjeri, the meetings?

MR RIGNEY: The Ngarrindjeri Regional Authority, our peak body had an  
organisation set up underneath that peak body called the Ngarrindjeri Yarluwar-  
15 Ruwe program, and within that Yarluwar-Ruwe program we would have different  
project officers that worked within different areas within our deliverables with state  
and our contracts with the state. So we had members who were – you know, three or  
four staff that were sitting on that South East Re Flows working group. So we were  
20 updated about all the issues that were happening on the project with the on ground  
work and the heritage issues and so forth.

MR BEASLEY: And were you able to make submissions and consult in relation to  
any particular issues of significance to the Ngarrindjeri? You just mentioned  
25 heritage issues, were you able to make submissions and discuss those matters?

25

MR RIGNEY: Yes. We came to an agreement with the state around a contract for  
heritage works within that whole program itself. So it was a package. But this also  
comes out of the negotiations that were done with the Ngarrindjeri with the state .....

30 in particular, in the Murray Futures Program that was set up for South Australia.  
And within that Murray Futures programs you had various projects like South East  
Flows, the Riverine Recovery Program, and the Coorong Lower Lakes Murray  
Mouth programs as well. So we had dialogue in all of those areas. We had a  
business case that we put up as Ngarrindjeri to the state that went up with the state's  
35 business case to the Federal Government for the resourcings, and they both got over  
the line. So we had a framework around how we could actually deliver those  
programs and services from a Ngarrindjeri perspective in caring for our heritage  
issues, making sure that our country is being looked after properly.

MR BEASLEY: Yes.

40

MR RIGNEY: So we had measures put in place and contracts put in order from  
those resourcings.

MR BEASLEY: And what happened with your business case?

45

MR RIGNEY: Our business case got up also, so we were allocated a certain amount of resourcing to deliver the programs that we deemed were viable within the framework of the SA Government's programs.

5 MR BEASLEY: All right.

THE COMMISSIONER: Could I just ask – have you got that folder in front of you? Could you turn to tab 2, please.

10 MR RIGNEY: Tab 2.

THE COMMISSIONER: Yes. Which is the August 2011 Economic and Cultural Values of Water, etcetera, etcetera, paper.

15 MR RIGNEY: Yes,

THE COMMISSIONER: I take it you had a hand in that, did you?

MR RIGNEY: No, not this document. I had some input into it.

20

THE COMMISSIONER: That's what I mean.

MR RIGNEY: Yes.

25 THE COMMISSIONER: And you're certainly familiar with it?

MR RIGNEY: Yes.

30 THE COMMISSIONER: Would you turn, please, to page 8. On the foot of that page, there's a quotation introduced by the line:

*Grave concern has been expressed –*

do you see that.

35

MR RIGNEY: Yes.

THE COMMISSIONER: It's a quotation from a book by someone whose name is D. Bell. I don't know - - -

40

MR RIGNEY: Diane Bell.

THE COMMISSIONER: Diane. Is that a book you recommend?

45 MR RIGNEY: Absolutely.

THE COMMISSIONER: Thank you.

MR RIGNEY: Ngarrindjeri Wurruwarrin.

THE COMMISSIONER: Yes. The beginning of the quotation reference to the fresh water used to come from the southeast, from the next town down at Kingston  
5 right through to Mount Gambier, and that water kept the Coorong alive, etcetera.

MR RIGNEY: Yes.

THE COMMISSIONER: Is that a reference to the hydrology which is the object or  
10 the subject matter of the South East Flows Restoration Project?

MR RIGNEY: That's one of them, yes.

THE COMMISSIONER: What else is there?  
15

MR RIGNEY: Well, we've, my Uncle George Trevorrow – he has – he has passed away a few years ago now – is our Rupelli, which is our head clansperson of the Tendi. He's – he voted by the Elders of our nation into that - - -

20 THE COMMISSIONER: That is Rupelli.

MR RIGNEY: Yes. i, yes, at the end. Rupelli. And Uncle George used to always tell the scientists who were doing research down that way, whether it was ..... or Adelaide University, or whoever, that the Coorong used to flow from the south to the  
25 north, and no one ever believed him. And he said – he explained to these scientists for years that it did do that and he swam in that as a child when there were floods going through there. Strangely enough, years later down the track they actually did agree that the Coorong - - -

30 THE COMMISSIONER: This is why I'm asking because the expression quoted from the book is the fresh water used to come from the southeast.

MR RIGNEY: That's right.

35 THE COMMISSIONER: And I do apologise, I had not read sufficiently closely the references to the South East Flows Restoration Project. It doesn't mean a flow in the south-easterly direction, it means in the opposite direction?

MR RIGNEY: That's correct.  
40

THE COMMISSIONER: Okay.

MR RIGNEY: Through the ephemeral lakes system.

45 THE COMMISSIONER: We are talking about the same formerly natural phenomenon which is now the object of some people seeking to restore it, at least in part.

MR RIGNEY: That's correct, the southern lagoon.

THE COMMISSIONER: Thank you.

5 MR BEASLEY: I'm reading from the project business case:

10 *The South East Flows Restoration Project will construct the South East Flows Restoration Project Channel, which will use a combination of widening existing drains totalling approximately 81 kilometres, and newly constructed drains totalling approximately 12 kilometres, to divert additional water from the upper south-east into the Coorong South Lagoon. This will provide fresh water to reach the Coorong from the south-east drains via Salt Creek. This fresh water will be in addition to the estimated median flow of 29.7 gigs from existing projects.*

15

So that's a short description of the project.

THE COMMISSIONER: Thanks.

20 MR BEASLEY: I wanted to come to that next, though. In terms, though, you've given an indication of consultation and engagement in relation to the project itself, but in terms of the processes that the government – State government has to go through with the MDBA in relation to supply measures projects such as lodging a feasibility study and preparation of a business case, such as what has been put in  
25 front of you, did you have any involvement in those matters.

MR RIGNEY: We did see the feasibility study, from my recollections.

30 MR BEASLEY: Right. And the business case.

MR RIGNEY: No.

MR BEASLEY: When did you first see the business case?

35 MR RIGNEY: Haven't seen it.

MR BEASLEY: Haven't seen it until right now or - - -

40 MR RIGNEY: No, I haven't – I haven't actually seen this document myself.

MR BEASLEY: All right. So Ngarrindjeri weren't involved in any aspect of preparing the business case for the SDL adjustment measure?

45 MR RIGNEY: Not from my understanding that I know of.

MR BEASLEY: All right. Okay. I will tender that eventually.

THE COMMISSIONER: You can tender it now, if you like.

MR BEASLEY: Everyone prefers it if I do it that way, because we don't end up with a bank of about 30 things that are going to be tendered on any given morning.

5

THE COMMISSIONER: Including me in everyone.

MR BEASLEY: All right. See, you're always putting me off tendering things, but all right, I will do it. South East Flows Restoration Project, Sustainable Diversion Limit Adjustment Supply Measure, phase 2 submission, Murray Features: Coorong, Lower Lakes and Murray Mouth Recovery Project, I will tender. There is also – I don't want to refer to it at the moment but one of these documents, produced under compulsion to the Senate, the MDBA advice on the South East Flows Restoration Project Business Case, Proponent South Australia – is there a date on this? No date. Produced to the Senate. I will tender that as well. For some reason got a title at the top right corner, document 33. That must have been 33 in the documents produced to the Senate.

THE COMMISSIONER: In relation to that document, on its second page, in section 4.1, third paragraph, there's a reference to the MDBA's advice on the phase 1 assessment. Is that advice that is in any way available to this Royal Commission?

20

MR BEASLEY: The answer to that is I don't know.

THE COMMISSIONER: Right. And then – something is summarised from that in the following terms:

25

*The SDL adjustment potential of this project will also be dependent on further investigations of whether less water can be called from Hume as a result of south-east flows.*

30

Now, that – just attending to the fact of that having been said – whether it be true or not, I'm not asking about at the moment.

MR BEASLEY: That's good.

35

THE COMMISSIONER: The fact of that being said suggests that at the time – whatever it was – that this was written those investigations had not yet occurred.

MR BEASLEY: No.

40

THE COMMISSIONER: Is there any published information or any other information available to this Royal Commission as to whether those further investigations have been completed since those words were written?

45

MR BEASLEY: Well, to my knowledge, no. But I don't know whether they have or they have not.

THE COMMISSIONER: On the other hand - - -

MR BEASLEY: If I was going to have a bet, I know what I would say, but I won't.

5 THE COMMISSIONER: But, on the other hand, that is an expression that I note in the statement, the fact of which I think I can note, which may well be referring – perhaps referring only – to investigations by South Australia.

MR BEASLEY: That's possible.

10

THE COMMISSIONER: In which case - - -

MR BEASLEY: In fact, that's probably likely, given the nature of this process.

15 THE COMMISSIONER: So could we just make sure that we have sufficiently marshalled information from South Australia concerning those further investigations, please.

MR BEASLEY: We haven't done that and that's one of the reasons.

20

THE COMMISSIONER: We may have them, but what I'm saying is can we just see if we can identify them.

MR BEASLEY: That's one of the reasons I was hesitant to tender these documents at the time that you pressured me into it, but we will do that.

25

THE COMMISSIONER: I would have thought the tender has turned out to be very valuable.

30 MR BEASLEY: It has. I wanted to ask you about the Water Resource Plans, in particular what's called the Draft Water Allocation Plan for the River Murray Prescribed Watercourse, which is the Water Resource Plan for your land. That is, as you said before, a matter in which you have had many meetings, many regular meetings with the State Government.

35

MR RIGNEY: Yes, absolutely.

MR BEASLEY: People from the State Government.

40 MR RIGNEY: Yes, we have.

MR BEASLEY: And there's a statement of commitment between the Ngarrindjeri Regional Authority and the Department of Environment, Water and Natural Resources, the South Australian Murray-Darling Natural Resources Management Board, and the Southeast Natural Resource Management Board that has been entered into in 2015.

45

MR RIGNEY: That's correct.

MR BEASLEY: And it's largely based on the agreement from 2009 - - -

5 MR RIGNEY: That's correct.

MR BEASLEY: - - - in terms of the way it operates. I've noticed in this agreement it – in many instances, it mentions Aboriginal interest in relation to water in the draft Water Resource Plan. What it really is, is – as I would read the document, and is this  
10 your understanding, it's a first step. It doesn't allocate a flow - - -

MR RIGNEY: No.

MR BEASLEY: - - - to the Ngarrindjeri.  
15

MR RIGNEY: No.

MR BEASLEY: But it provides some form of framework for that to happen - - -

20 MR RIGNEY: Absolutely.

MR BEASLEY: - - - at some stage in the future.

MR RIGNEY: Yes.  
25

MR BEASLEY: And that was an agreed first step, was it - - -

MR RIGNEY: Yes.

30 MR BEASLEY: - - - in relation to this Water Resource Plan.

MR RIGNEY: Yes. Timeframes weren't fitting in well at that time.

MR BEASLEY: Yes. And we know recently there has been a publication by – on  
35 behalf of MLDRIN and NBAN of some documents and guides in relation to cultural flows.

MR RIGNEY: That's correct.

40 MR BEASLEY: You're familiar with those publications, 'Cultural Flows: a Guide for First Nations', etcetera.

MR RIGNEY: Yes, I was a research committee member for the flows for nearly  
45 four years.

MR BEASLEY: All right. So – sorry, four years you were involved in that.

MR RIGNEY: Yes, the project went for six, I was on the committee for – itself for four years, though.

MR BEASLEY: As a representative of Ngarrindjeri or in some other capacity.

5

MR RIGNEY: As a representative of MLDRIN.

MR BEASLEY: As a representative of MLDRIN. And I think that the – am I right that the Ngarrindjeri is no longer part of this cultural flows project?

10

MR RIGNEY: That's correct. I was the chair of the Murray Lower Darling River Indigenous Nations at the time when the research first kicked off.

MR BEASLEY: Yes.

15 MR RIGNEY: I was on the research committee. We had eight components to the research itself and the component one was a desktop study review, what literature was out there. Unfortunately, when that came back in, there wasn't one reference to any of our documentation from Ngarrindjeri, which we were quite disappointed in. The second component of that research was the methodology of the research.

20 Unfortunately, the committee wanted to go down a pathway where they opened it up for any organisation to bid for the tender for that methodology process for the component, and they ended up on going down that pathway where I was trying to argue back into the point as I said earlier: we have scholars that are Indigenous that can actually do this work for us, so it was controlled and it's written by Aboriginal people for Aboriginal people.

25

And unfortunately that didn't happen, so I took it back to my nation group, my leadership, and my leadership advised me to pull off of the Ngarrindjeri's proponent of supporting the National Cultural Flows Research, and so we did. But I still stayed on there as a director of the MLDRIN confederation, not representing Ngarrindjeri.

30

MR BEASLEY: Right. All right. The three documents which, Commissioner, we have already seen, tabs 15, 16 and 17 are the Aboriginal core documents folder. They provide a – what – and you don't have to agree with the way I phrase this, so if you have a different way of describing them, please let us know, but the way I read them is a high level framework document is a guide to Aboriginal nations as to how to get a cultural flow allocated to them through either a Water Resource Plan or some other legal instrument.

35

40 MR RIGNEY: That's correct.

MR BEASLEY: All right. And that is the goal of the Ngarrindjeri in relation to the draft State Water Resource Plan for the River Murray that I've discussed with you?

45 MR RIGNEY: Yes.

MR BEASLEY: And what's the purpose of wanting – sorry, not what's the purpose. What are the purposes of an allocation of water to the Ngarrindjeri in a Water Resource Plan under the Basin Plan?

5 MR RIGNEY: It could be a multitude of things.

MR BEASLEY: Yes.

10 MR RIGNEY: It could be for economic development, first and foremost, to build our agencies and our capacity of our own nation groups, creating jobs for our own people at the same time. Many spin-offs come out of those things, and socio-economics and health indicators and bridging the gap, and so forth, and we know we can measure these things through our Yarluwar-Ruwe processes as well. So we can be looking to back-end some water onto extra flows going down into the Murray  
15 Mouth to keep the dredges out of that system so we can actually try to reset it to a natural flowing system, as it once was in the past. We may never ever get back to the past, but we can actually – certainly add extra water to benefit the outcomes of our country.

20 MR BEASLEY: Is that the ultimate goal, environmentally, for your waters, your part of the River Murray, the Coorong, the Lower Lakes?

MR RIGNEY: Not just - - -

25 MR BEASLEY: What is the ultimate ecological goal?

MR RIGNEY: Not just environmentally, it's about spiritually as well.

30 MR BEASLEY: No. Of course. You tell the Commissioner all of the goals. I mentioned environmental, you feel free to talk about spiritual.

MR RIGNEY: It's the right - - -

35 MR BEASLEY: Answer first what are the environmental goals and then tell the Commissioner what are the other goals.

40 MR RIGNEY: Well, the environmental goals are – you know, I don't think you need to be Blind Freddy to see that. We want to reset these biodiversities and the ecologies in our country. We want to see our fish spawning as they once were, our animals coming back down to drink. Fresh quality water out of the Coorong, not this super saline stuff that we're living in today's environment. It's slowly dying. You can smell the impact of what's happening in the Coorong and people in the city don't get to see that. They live within their four walls and not seeing what degradation is happening to country. What happens to country happens to you.

45 To me as a person, as a Ngarrindjeri, I am that tree, I am that rock, I am that plant. I cannot be separated from it. It is me and I am it. This is the difference in our

societies; we don't see what others are seeing. Unfortunately, we have to live in this world where it's about capitalism, it's about economics. We are forced into that process. Yes, they are mechanisms that they tried to assimilate. We know the history, but we don't teach the history, we don't teach the truth in this country. We like to hide it. We like to keep it away. What we are trying to do is build our agency to build that truth. We have this process in Australia called reconciliation. What the hell is that?

Me as a Ngarrindjeri, I don't need to reconcile with no person in this country. It's about non-Indigenous people reconciling with the First Peoples of this land. It's about telling the truth. Then we can actually have reconciliation as a people moving forward. We believe we have a pathway. If we have allocation of water we can reset the processes for our people. We can reset history for our people and this is what we're about, this is why we fight for it, because it's not just about Ngarrindjeri, it's about our community, and we know white fellas are never going to go away. How do we live in synergy with each other to have happiness? How do we live with our country and have happiness? We believe we have pathways to do that. We want to be recognised for our rights, our human rights, and we want to be recognised as Ngarrindjeri.

20

MR BEASLEY: I think you mentioned that you have had regular meetings and consultations and engagement with relevant people from the State government in relation to the draft Water Resource Plan.

25 MR RIGNEY: That's true.

MR BEASLEY: But one area you've mentioned to me where you feel constrained or hampered is a lack of resourcing.

30 MR RIGNEY: Absolutely.

MR BEASLEY: Can you explain that to the Commissioner?

MR RIGNEY: We believe that we have – from a Ngarrindjeri perspective we have always been the ones guiding government and how we move to the next step forward within water reform, particularly from the processes of legislation and through the Basin Plan, chapter 10 part 14. And we keep saying to the state and also the Murray-Darling Authority and the Department of Agriculture, "This is not just about chapter 10 part 14. This is about the whole of the Basin Plan." It's about the risk assessment, the risk management of that process. So we're having issues with how we go about the engagement, because we are not allocated the resources to show the tools that we have and the ..... that can come out of it.

MR BEASLEY: What tools are you talking about?

45

MR RIGNEY: We have a Yannarumi Assessment mechanism. It's a tool we utilise as Ngarrindjeri to assess who we are as a people, our country, our spirituality, our

water, our quality, our socio-economics, our health indicators. We have a tool that can be used in a variety of different ways. We are looking for resources, and we ask the state, and we ask the Federal Government for resources to implement this tool into water resource planning. It didn't happen. We had to go to a third party outside  
5 again. And, fortunately through our fantastic partners - - -

MR BEASLEY: Who are you talking about the third party?

MR RIGNEY: The third party is the partnerships that we have developed through  
10 our Research Policy Planning Unit into the Gwydir Institute. And the Gwydir funded us resources for the Yannarumi Assessment which we are currently doing at this moment.

MR BEASLEY: And this is all part of ultimately hoping to achieve a flow for  
15 Ngarrindjeri people?

MR RIGNEY: Absolutely it is. Absolutely it is.

MR BEASLEY: Right. And do you know who the people at Gwydir that are  
20 working - - -

MR RIGNEY: We haven't had our first meeting as yet.

MR BEASLEY: Okay, this is brand new.  
25

MR RIGNEY: Yes, brand new.

MR BEASLEY: All right. When was this agreement reached?

MR RIGNEY: It was reached about six months ago, but it has been about two and a  
30 half years in the making, trying to get there.

MR BEASLEY: Right. All right. Okay.

MR RIGNEY: And sorry, just on the Gwydir project itself, Ngarrindjeri are one of  
35 the senior partners as are the Department of Environment and Water. We have this relationship with DEW as one of the agencies of the state. And we do have a very good partnership with that particular department. But we want to try to mimic what we have actually put in place with that one agency across all sectors of our other  
40 agencies as well.

MR BEASLEY: All right. Did you take the opportunity – it doesn't matter if you  
45 didn't, but you probably aware that MLDRIN have made a submission to the Commission and NBAN.

MR RIGNEY: Yes, I have.

MR BEASLEY: And that representatives from those peak bodies have given evidence to the Commission.

MR RIGNEY: Yes, I understand that.

5

MR BEASLEY: Yes. And have – did you – you are aware of the views they have expressed about the requirements in both the Water Act and the Basin Plan too – and I'm obviously paraphrasing this very broadly, have regard to Indigenous issues?

10 MR RIGNEY: Yes, I do.

MR BEASLEY: And do you share the same view that that's not a strong enough form of commitment in terms of considering Aboriginal issues in relation to water resources?

15

MR RIGNEY: Absolutely. Absolutely I do.

MR BEASLEY: And would adopt something like what they have submitted to the Commission in relation to those matters?

20

MR RIGNEY: I think any wording other than 'having regard to' is a lot stronger.

MR BEASLEY: And you're aware of the publication, the Basin Authority has put out as to the meaning of "have regard to" in relation to Aboriginal issues?

25

MR RIGNEY: No, I haven't actually read that yet.

MR BEASLEY: All right. Tab 13.

30 MR RIGNEY: I have seen the document, but I haven't read it.

MR BEASLEY: All right. Can the witness please be given the Aboriginal core documents folder, tab 13. That is not the document: so it's tab 13 in mine, exhibit RCE102.

35

THE COMMISSIONER: Tab 12?

MR BEASLEY: There's probably - - -

40 THE COMMISSIONER: I think it's tab 12.

MR BEASLEY: Not in mine.

THE COMMISSIONER: It is in mine, and therefore it might be in the witness's.

45

MR BEASLEY: Yes, you're probably right. You haven't seen that document before, see Basin Plan Water Resource Plan Requirements position statement 1B interpreting 'have regard to'?

5 MR RIGNEY: Yes.

MR BEASLEY: You haven't read that document before?

10 MR RIGNEY: No, I haven't read it. I have seen - - -

MR BEASLEY: All right. If you go to page 4 of the document, you will see at the top Category A do you see that.

15 MR RIGNEY: Yes.

MR BEASLEY:

20 *A requirement to have regard to a specified matter, with no additional requirements.*

And if you go over the page, to page 5.

MR RIGNEY: Yes.

25 MR BEASLEY: - - - you will see sections 10.52, 10.53 and 10.54 are ticked as category A. They are all matters concerning having regard to various Aboriginal issues concerning the water resources. I see you're laughing. It is unusual that category A is the lowest requirement, but leaving that matter aside, a requirement to "have regard to a specified matter, with no additional requirements," certainly falls  
30 short of your agreement with the South Australian Government that we have gone through.

MR RIGNEY: Absolutely.

35 MR BEASLEY: And you would be looking for something stronger than that along the lines that was submitted by NBAN and MLDRIN.

MR RIGNEY: Absolutely.

40 THE COMMISSIONER: Just in case anyone is in any doubt, this position statement 1B has, so far as I'm concerned, no status, authority, whatever, concerning the meaning of the statute.

45 MR BEASLEY: The fact that - - -

THE COMMISSIONER: It expresses some anonymous public servant or servants' view of what the law means.

MR BEASLEY: It's not what I would turn to, to construe either the Water Act or the Basin Plan.

THE COMMISSIONER: I don't think anyone serious would.

5

MR BEASLEY: Well, they might consider it.

THE COMMISSIONER: Well - - -

10 MR BEASLEY: This is their interpretation of those words.

THE COMMISSIONER: Well, I don't know that that's true. We don't know whether that's true. To be fair, not everything in the document stands out as being wrong. However, there is - - -

15

MR BEASLEY: No.

THE COMMISSIONER: - - - if I may say so, a ponderousness about construing a well-known phrase and dividing it into categories that the statute simply doesn't support.

20

MR BEASLEY: With all due respect, for construction to be dealt with by a box that's ticked is – I don't think I need to say anything more, do I?

25 THE COMMISSIONER: No, you don't. My views in this regard are not provisional. This is not a useful document, and is not a sensible way for people to approach the question.

MR BEASLEY: I'm sorry. I would put it higher. I think it's an entirely disrespectful document that should not be on the website.

30

THE COMMISSIONER: I understand the submission.

MR BEASLEY: Yes. I wanted to take you to – in the same folder, I'm sorry, Mr Rigney, you will see at tab 18 there's a document headed 'Without Prejudice'. Now, I'm just – I don't know who has done the paginated – the tabbing here, but someone is going to – you know where their name is going.

35

MR RIGNEY: Am I on the wrong tab?

40

MR BEASLEY: Tab 18. There we go. 'Without Prejudice Government Offer'. This is a – I think an offer that you are familiar with that came – I nearly said flowed out of, but came out of the recent, what do we call it, non-disallowance of the SDL adjustment and out of the Northern Basin Review where there is a commitment – funding commitment for Indigenous – I'm taking you, sorry, to page 3, 3C:

45

5                    *Funding commitment for Indigenous investment on water involving, (1)  
commitment of \$40 million over four years to administer through the  
Indigenous Land Corporation or other suitable organisation a program to  
support Basin Indigenous communities investing in cultural and economic  
water entitlement and associated planning activities*

Were you involved in the negotiations around this?

10            MR RIGNEY: No, no.

MR BEASLEY: When were you made aware of – when it was publicly announced or before that?

15            MR RIGNEY: Basically when it was publicly announced – to be truthful, a month before the deal was made between David Littleproud and Tony Burke so they could get the SDL adjustment through the Senate, this was a part of the deal and I must be up-front I was on a phone link up with Tony Burke and his Chief of Staff, and I wanted guarantee from Tony, from a ..... perspective before they supported the SDL adjustment in the House. Tony couldn't give me that guarantee, which I knew very well he couldn't. But what he could - - -

20            MR BEASLEY: Sorry, I didn't – it may be me. What was the guarantee you were seeking?

25            MR RIGNEY: We were looking for a guarantee of resourcings for cultural flow water.

MR BEASLEY: Right.

30            MR RIGNEY: Now the Labor Party, we know for years have been keen since they've been out of power to try to get this as one of their big ticket box items. So we, from MLDRIN's perspective and the Northern Basin Aboriginal Nations, NBAN Confederation, we were looking for some guarantees from the Federal Government before they supported this process.

35            THE COMMISSIONER: You mean Federal opposition?

MR RIGNEY: Sorry?

40            THE COMMISSIONER: You mean the opposition?

45            MR RIGNEY: The opposition at that time, sorry, yes. So Tony did go to David Littleproud and put this deal on the table, which I didn't know what the deal was, and no one in our Confederation at that time did – both Confederations – but we knew this was going to be mooting up around this potential amount of resourcings. So we didn't see this until it was actually publicly announced though.

MR BEASLEY: All right. Did the Ngarrindjeri have a position on the SDL adjustment proposal prior to this – the agreement between the Labor Party and the Liberal Party?

5 MR RIGNEY: We were just concerned about – yes, we did, we were concerned around the baselines and the modelling of the SDL adjustment itself.

THE COMMISSIONER: Now, I don't want to disappoint anybody's expectations, but you've used the word "guarantee". Do you proceed today on the basis that there  
10 is a guarantee?

MR RIGNEY: This is a done deal, from what I understand.

THE COMMISSIONER: When you say "done deal".  
15

MR RIGNEY: The money is guaranteed. Yes.

THE COMMISSIONER: It's subject to what Parliament may decide from time to time, surely?  
20

MR RIGNEY: I think this is money that has been carried over.

THE COMMISSIONER: It's subject to what Parliament may decide from time to time. Parliament can stop an appropriation being spent.  
25

MR RIGNEY: Yes, they may. We're in the negotiations at this present moment with the Department of Ag, Prime Minister and Cabinet's office and also Indigenous Lands Corporation about the resourcings themselves.

30 THE COMMISSIONER: So you say that there are arrangements in hand as we speak?

MR RIGNEY: Yes.

35 THE COMMISSIONER: I'm just trying to think which term of reference this fits within, apart from 13.

MR BEASLEY: Well, it fits within any – almost everything we discuss fits within the term of reference regarding achieving the objects of the Basin Plan.  
40

THE COMMISSIONER: Yes.

MR BEASLEY: And the Water Act.

45 THE COMMISSIONER: No, I understand. So this is the - - -

MR BEASLEY: This is about money.

THE COMMISSIONER: So this is the – those aspects of the Water Act and Plan which involve the requirement variously expressed.

MR BEASLEY: It's the default ..... 13. Everything fits within 13, I think.

5

THE COMMISSIONER: No. I'm not allowing you to say 13. Very well. So if this, what you call guarantee, comes to pass, do I take it from your evidence that you would regard that as a good thing?

10 MR RIGNEY: I think \$40 million for economic development for nations in this country is better than what we've had in the past.

THE COMMISSIONER: No, I understand that 40 is larger than zero, but would you regard, if this guarantee comes through, that that would be a good thing or not?

15

MR RIGNEY: I think it would be a good thing.

THE COMMISSIONER: Thank you.

20 MR BEASLEY: One concern you have, though, about it – as I understand it – is for this amount of money to be administered through the Indigenous Land Corporation.

MR RIGNEY: Yes, MLDRIN do have a concern in that area.

25 MR BEASLEY: And I think Mr Woods may have given evidence about wanting to set up a trust, like a cultural water holder and a trust with trustees to administer the fund.

MR RIGNEY: Absolutely.

30

MR BEASLEY: And that's your position and Ngarrindjeri's position too?

MR RIGNEY: Absolutely it is, yes. Just on that.

35 MR BEASLEY: Yes. Go on.

MR RIGNEY: From MLDRIN's perspective that allocation of those resourcings, they are for the nation groups to be utilising in programs and projects that fit within their space or their country of what their aspirations are. I am not here to build up the capacity of the Indigenous Lands Corporation as a statutory organisation of government. That's not what we're here about. And for me, I'm a bit disappointed with the Department of Ag because I see this as a process where they're upping the ante for the Indigenous Lands Corporation, whose lands assets depreciated by over \$500 million, and they have opened up their portfolio to view them as a water holding body as well as a land holding body. So I have some real concerns around that area.

40

45

MR BEASLEY: All right. I only wanted to ask you – I think we’ve covered almost all of the matters in your actual submission to the Commission. There’s one matter I did want to cover from your submission, though, at page 3. So we need to go back to tab 1. You’ve got your submission there.

5

MR RIGNEY: Yes.

MR BEASLEY: It’s in tab 1 of that folder. I’ve noticed at the bottom of page 3 that you’ve said that the Ngarrindjeri consider that the 1,500 gegalitre cap on buybacks will undermine the progress of water recovery. Is my understanding right that that’s – the concern that the Ngarrindjeri has that other proposals for water recovery such as efficiency measures and supply measures you don’t have the same level of confidence - - -

10  
15 MR RIGNEY: No.

MR BEASLEY: - - - in relation to a buyback of an actual water entitlement.

MR RIGNEY: Absolutely don’t have confidence in that process at the moment. I’m still trying to find where they’re going to find the extra 70 gegalitres of water from the Northern Basin Review, at this present moment in time, so I have some real concerns around those particular areas and the current investigation is still going on in New South Wales of alleged water theft. We still don’t know the amounts. We still don’t know how that affects the sustainable diversion limit. And, I’ve mentioned this many times before, they’ve only allowed a five per cent up, five per cent down on each SDL.

We don’t know how much water has been taken. If the figures are huge, it could be blowing five per cent by a lot more than that. And they haven’t got current legislation in order for adaptive management as a part of that, and I thought that would have been a really – program logic 101 is a process around mitigating any type of risk assessment to the Basin Plan.

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35 MR BEASLEY: All right. I want to ask you now, is there is there anything you feel that I haven’t covered or that you would like to cover in more detail? I will give you the opportunity to talk to the Commissioner now about anything along those lines.

MR RIGNEY: Thank you. Yes, I would just like to add we, as the Ngarrindjeri Nation, we believe that we are a leading group in the space around water reform in this country. We believe wholeheartedly that we have tools and mechanisms and frameworks in order for these things to further complement the outcomes of the Basin Plan. I do believe we need a Basin Plan, we do need a Plan. But we have some big gaps in the Plan, particularly around compliance. Basin States have been allocated a lot of money in these areas around the first 10 years to do these particular outcomes pertaining to the Plan and they haven’t been done, and there are major gaps everywhere.

But we, as Indigenous nations, are still left at ground zero. We still don't have an allocation, we still don't have a right, we are negated from the Water Act. It just says it references to the Native Title Act. What does that mean to the water? There is no landmark case in Native Title in this country around fresh water, so it's going to  
5 have to be something that needs to be challenged at the end of the day. But we as Indigenous people are sick of challenging. We want people to treat us as we should be treated as human beings in our own country. And we're still not included in the Australian Constitution, which is another issue altogether.

10 Treaty has been taken off the table at the state-wide level. We are still the first and only first nation group in the world that don't have a treaty mechanism with their First Peoples. It is a disgrace and it needs to change. And we believe that we have the tools to make that change and we just want an opportunity.

15 THE COMMISSIONER: Thank you.

MR RIGNEY: Thank you.

20 THE COMMISSIONER: Could I ask something which is completely on a different scale from what you've just told me. It's a detail, perhaps, or a characteristic of the South East Flows Project. As I understand your written and spoken evidence, and other material about that project, it is designed to go some distance to restoring fresh water flows from the south east so as to attempt to achieve some of the dynamic effects of those flows from time to time at different levels - - -

25 MR RIGNEY: That's correct.

THE COMMISSIONER: - - - in the whole of the Coorong system; is that right?

30 MR RIGNEY: Yes. They're trying to, particularly the southern end of the lagoon, where we're super saline, they are trying to reset the ecology and the biodiversity in that area, but it will take decades.

35 THE COMMISSIONER: Yes. And as I understand it the barrage flows, in light of the kind of observation you've just made, have not proved to be adequate in that regard.

MR RIGNEY: No. There is nowhere near enough water coming over.

40 THE COMMISSIONER: So when that project is described as being complementary to, rather than as a replacement for the barrage flows, should I understand it that in your opinion the barrage flows should continue unabated?

45 MR RIGNEY: Absolutely.

THE COMMISSIONER: Even if the South Eastern Flow Project is instituted?

MR RIGNEY: It must continue unabated, but they must up the ante of the amount of water that's coming down as well.

5 THE COMMISSIONER: Well, that would mean that the South East Project could never be an SDL adjustment project, wouldn't it?

MR RIGNEY: I cannot see how it can be an SDL adjustment on surface water. It could only be an SDL adjustment, potentially, on groundwater.

10 THE COMMISSIONER: Thank you. I did – I should have made that clear, for surface water, yes. Because you can't see how it justifies reducing releases from Hume.

MR RIGNEY: Not at all.

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THE COMMISSIONER: Thank you.

MR RIGNEY: I can't see any collaboration.

20 THE COMMISSIONER: Thank you.

MR BEASLEY: In case there's any doubt, I'm tendering the Water Resource Planning Statement of Commitment between the Ngarrindjeri Regional Authority and, amongst others, the Department of Environment, Water, and Natural Resources, which is an agreement dated 31 July 2015, and I will also tender draft Water Allocation Plan for the River Murray Prescribed Watercourse and I would like to tender the copy that has got these flags. It's a tender copy because they flag relevant parts of the draft Water Resource Plan to Mr Rigney's evidence.

25 30 THE COMMISSIONER: Thank you.

MR BEASLEY: Thank you.

MR RIGNEY: Thank you.

35

THE COMMISSIONER: I'm much obliged for your attendance and your evidence. Thank you.

40 MR RIGNEY: Good. I hope it goes somewhere, I really do. I don't want to see it sitting on a shelf gathering dust.

THE COMMISSIONER: I think I'm the only person who can't make a response to that.

45 MR BEASLEY: Now, we're adjourned until – I'm not sure.

THE COMMISSIONER: Until a date to be notified.

MR BEASLEY: Yes.

MR RIGNEY: And can I hand all this paperwork back? My bag is pretty heavy  
already.

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MR BEASLEY: You can. You don't need to take it with you.

**<THE WITNESS WITHDREW**

**[3.16 pm]**

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MR BEASLEY: Yes, a date to be fixed.

THE COMMISSIONER: Yes. And be published on the website.

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MR BEASLEY: Yes, it will.

**MATTER ADJOURNED at 3.16 pm ACCORDINGLY**

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