

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON CLYDE RIVER WATER MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON WEDNESDAY 11 AUGUST 2004.

Mr STEPHEN SINCLAIR MACKEY, SECRETARY, CLYDE WATER TRUST, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Hall) - Stephen, as you are aware, we had a day of hearings at Bothwell yesterday and we are cranking up again today. We have your written submission, and I would invite you to add anything or embellish anything that you have said.

Mr MACKEY - Based on the previous submission that I put in, I would just like to make some clarification on some of the points. Really what I was trying to point out in the submission was that there is probably a better way of trying to distribute the water or get a better allocation for all concerned, and that is based on the Meadowbank scheme that has been put in by the trust at a substantial cost. The scheme itself, if it was extended by about a kilometre or 1.5 kilometres, could pick up Stuart Archer and Rob Parsons. Effectively from the allocations that have been provided, you will come up with an additional 1 667 megalitres of water. If those are taken out from the Meadowbank scheme, the bottom end then has surety of supply. Well, when I say surety of supply, the two things that could fail in that regard would be if the pumps fail or if the Derwent River runs dry. The second possibility is reasonably remote, I would like to think.

Mrs SMITH - There would be bigger problems than the Clyde water scheme if that happened.

Mr MACKEY - Substantially more. If we then look at the other and redistribute the allocation from Meadowbank and put it into the equation to come up with the 8 265 that have been allocated by the minister, that increases those allocations but it also gives those ones a 75 per cent surety of supply based on the 5 000 megalitres of water that can be redistributed. In going through the allocations that have been provided, and with a redistribution, eight irrigators would obtain a better allocation than that recommended by Andrew Beattie. Andrew Beattie's recommendation was the higher recommendation of all the recommendations that were undertaken. If you then go down to subcommittee B's recommendation, a redistribution would mean that 15 irrigators would get a better allocation than is being provided by subcommittee B. In doing that there would need to be a split between the irrigation districts, so there would have to be an irrigation district that was actually made up of those that obtain water out of Meadowbank and those that obtain water out of Lake Sorell and Lake Crescent, and I think it would not be rocket science to work out how that could be done.

Mr WILKINSON - Can I ask how much extra you believe it would cost, Stephen, to increase the pumping facility of the Meadowbank proposal to get it up to those two other properties?

Mr MACKEY - Regrettably it is only guesswork, but I would say you were probably looking at about \$150 000 or thereabouts.

The other issues have been predominantly in relation to the elections of the trust. As you may or may not be aware, the trust was to hold elections within two years of the act coming into place. That was extremely difficult, based on the fact that it was supposed to be done by regulation. The regulations were not done until I think June the year after, so in other words they did not come into effect until June 2002. Then to try to run the election by July of that year was just as difficult because the time frame requires 28 days. If you tried to run it within that period I think you might have achieved 26 or 27 days, which is a little bit of a farce in that regard. The other issue in relation to the election itself I take it is, this being the first election of the Clyde Water Trust, I think the Government takes the view that it is not the first election of the trust. The reason I say that I take it as the first election of the trust is based on the fact that the trust were appointees when it first came into effect. They were the warden and a councillor from Hamilton and a warden and councillor from Bothwell. Subsequently there was another thing that came into play and it was called amalgamation of local government which then brought the Central Highlands into the equation and therefore there were some amendments done to bring it into play as to how the trust was functioning as it has up until now.

When I say the first election, if you look at it, if there is an irrigation right that has been distributed and there has been an interim allocation of one megalitre per property or per irrigation right, the act is fairly silent in regard to interim allocations. So if you then look at the legislation, it says that technically all property owners within the irrigation district could be entitled to vote.

That is not really the intention but it is not clear. It could have been conducted under the provisions of the Local Government Act which actually gives plural voting. If a company owns a property therefore they have a right to vote on behalf of the company and in their own right. This is where I see some confusion needs to be sorted out as to who can vote at the election.

The first election of the trust, if we go through this it can either be done by an electoral roll of the trust, which is not clear, and the other point is it can be done by the minister and that is the irrigation allocations that have been provided but, as I said, its interim allocations are silent within the legislation.

The issue also needs to be that there needs to be an electoral roll. The first provisions of this were the electoral roll actually closed 48 hours prior to the poll taking effect. To me that is a little bit of a farce in the fact that it should be that, under the provisions of the Local Government Act, the electoral roll opens, closes, then nominations are called for, candidates to be either councillors or in this case let us say trustees, so that needed to be changed and I note that they have actually made that change to 10 days so part of it has been picked up.

The other issue was that the trust was to hold the election, have a period for the election which meant that there were three staff involved in conducting an election. To me that is a bit of a joke; it should be done by the Electoral Office and it should be by postal vote, and I think those amendments have been undertaken.

Basically that is a little bit of a summary of the submission that I have put in.

CHAIR - Thanks, Stephen, I will open the session to members.

Mr FLETCHER - Mr Mackey, how long have you been associated with the Clyde Water Trust?

Mr MACKEY - Since 1985.

Mr FLETCHER - Are you an honorary or a paid servant of the trust?

Mr MACKEY - Paid.

Mr FLETCHER - You are a paid servant of the trust. Are members of the trust, honorary, paid or honorary with expenses?

Mr MACKEY - Honorary.

Mr FLETCHER - Who carried your position prior to your being appointed in 1985, are you aware?

Mr MACKEY - The previous Council Clerk at Bothwell, Robert Biffan. There was an eight-month period between Robert finishing and my starting and there was another person there.

Mr FLETCHER - So has it generally been the rule that the clerk or the town manager of the municipal area has been the CEO of the Clyde Water Trust?

Mr MACKEY - That's my understanding, yes.

Mr FLETCHER - Are you satisfied that during your term of office the records of the trust have been faithfully and accurately recorded?

Mr MACKEY - As far as I am concerned, yes.

Mr FLETCHER - Did you wish to pursue that minutes question further at this stage?

Mrs SMITH - No, I request for them to be tabled. You just keep going and I will put my request to Mr Mackey.

Mr FLETCHER - Firstly I need to have on the record the nature of the business. Is it a partnership? Is it a corporation? Is it a trust? What are the rules that bind the trust? Do you have a constitution or a trust deed that binds the action of the trust members?

Mr MACKEY - No. The trust was formed under the Clyde Water Act 1898. Those savings provisions then float straight across into the Water Management Act 1999. So the trust is in effect bound by the requirements of those pieces of legislation. There was a prior act but I am not exactly sure, 1873 or something along those lines.

Mr FLETCHER - So it would be fair for the committee to assume that given common business practice or trust practice, the minutes of the trust would become binding on the trust until they were subsequently rescinded or amended by a later decision?

Mr MACKEY - Yes, I would say that is correct. But then again if we talk about policy, policy changes from time to time and it is the enactment of that policy.

Mr FLETCHER - How is policy determined in your term of tenure?

Mr MACKEY - Through a decision of the trust.

Mr FLETCHER - So in actual fact a decision of the trust, a resolution of the trust or a motion passed by the trust and subsequently confirmed at a later meeting sets the policy of the trust?

Mr MACKEY - I would say yes to that.

Mr FLETCHER - The policy of the trust as determined in 1976 would be binding on the trust until such time as a later motion rescinded that or changed that?

Mr MACKEY - I suppose that would really be determined on how that policy was actioned by the trust in future years.

Mr FLETCHER - So are you suggesting that inferior management regime overrides a decision of the trust, is more important than the decision of the trust to set a policy?

Mr MACKEY - No I wouldn't say an inferior action of the trust. I would say it was how the policy of the trust was determined at future dates and whether there are other things that came into play that changed that decision.

Mr FLETCHER - So any of those things to which you refer would be minuted and would be recorded in the minutes and would be the new policy and override the previous policy, is that what you're saying?

Mr MACKEY - I would assume that if a decision that was made by the trust was to override a policy it would most probably be minuted, yes.

Mr FLETCHER - Okay.

Mr MACKEY - But in saying that, there are actions external to those policies that may affect the decision and how the implementation of that could be taken into effect.

Mr FLETCHER - Can you give me an example of that situation?

Mr MACKEY - You may have a policy, like the 1976 decision, that says they have priority of use. You might find that there are different cropping regimes that commonsense says may need to play but you couldn't pull that policy completely into effect.

Mr FLETCHER - What you are suggesting to me there is that reasonable management practice, I am not suggesting anything other than that, in fact overrides the policy

decision of the trust. Even though there has been no other management decision recorded in the minutes that changes the policy, the practice of the board in doing certain things makes that earlier decision redundant.

Mr MACKEY - Yes, it could do.

Mr FLETCHER - What precedent would you give for that?

Mr MACKEY - It really depends on the situations that arise at the time. Everyone likes to think that a policy that is set in place is done on decisions or reasons at that time or that point in time. There can be other things that come along that mean that part or all of the policy may not be in the best interests to be implemented in that way and therefore commonsense may need to prevail in some cases.

Mr FLETCHER - So if the board members feel so inclined they can ignore the policy decision?

Mr MACKEY - Whether it is ignore the policy decision but trying to get down to specifics in relation to the 1976 decision, I can only assume that in some instances where that policy has not been totally implemented it has been through consultation with irrigators as to who can and who can't turn off, and whether it is more prudent for everyone to come down to a lower level of usage.

Mr FLETCHER - If I carry your proposition forward to a further end, you are in fact arguing to me, I think, that the end justifies the means; as long as the outcome is achieved, it doesn't matter how you get there. You can ignore the policy of the corporation provided the end justifies the means of doing it.

Mr MACKEY - I suppose you could take the instance in relation to European carp, and I suppose if you took that into the letter of the law based on the policy, there could be a fair few irrigators - European carp has been there since 1995, or thereabouts - who in the last nine years may not have got any water at all. Is that the best way to run an irrigation district or provide for the sustainable future of agriculture?

Mr FLETCHER - Well, I am wanting to determine from you, as the chief executive officer of the trust, or as the business manager or the recorder of the history of the trust, principally whether the managers and the trust members have adhered to a policy as recorded in the official minutes, or whether they have gone their separate ways making judgments about day-by-day circumstances to reach an end, which means that the official minutes and the official policy is not worth a damn.

Mr MACKEY - It might be seen to be the situation, but I think in all issues of decisions and policies and the revocation of policies it is based on the fact of whether it had been totally or wholly implemented before a revocation actually comes to the table.

Mr FLETCHER - In your term of tenure as the paid senior business manager, is there a full record of all the minutes of all the official meetings that took place in that period?

Mr MACKEY - To the best of my knowledge the minutes are correct.

Mr FLETCHER - Could we ask you, as the manager, to table or to provide for consideration of the committee, those minutes?

Mr MACKEY - Of the trust?

Mr FLETCHER - Yes.

Mr MACKEY - Yes.

Mrs SMITH - From which dates? You'd better clarify.

Mr FLETCHER - I am asking Mr Mackey about his term of tenure over which he has some control, so this is post-1985. My next question goes to his judgment or his knowledge of the records, I suppose - not directly an area for which he was responsible, but the minutes of the trust from the period 1976 through to 1985 when he took office. Are you of the belief that there is a full record of minutes of meetings that took place during that period of time?

Mr MACKEY - I believe yes.

Mr FLETCHER - All right. Could we then simply ask that those minutes be tabled for the consideration of the committee?

Mr MACKEY - Yes.

Mr FLETCHER - And then the third time frame is pre-1976, which is a very long period of time. Do you have any confidence about the accuracy and the availability of the minutes pre-1976 and how far back they might go when we could clearly say that they are an accurate record and they are comprehensive? Would that go back five years, 10 years or all the way back to?

Mr MACKEY - There are records in archives, so off the top of my head I couldn't answer that question.

Mr FLETCHER - Okay, thank you.

Mr WILKINSON - Just on that, have you seen the records prior to 1976 of the minutes of the Clyde Water Trust?

Mr MACKEY - I have seen some, yes, and I have copies of some.

Mr WILKINSON - And they date back to when approximately?

Mr MACKEY - Thanks for the question.

Mr WILKINSON - Thanks for the question, but can't answer it?

Mr MACKEY - Not off the top of my head, no. A fair while.

Mr WILKINSON - A long time?

Mr MACKEY - A fair while.

Mr WILKINSON - Are we able to get also a copy of what you have prior to 1976?

Mr MACKEY - Yes.

Mr FLETCHER - Could we ask you for details with regard the financial position I suppose before that could you as the official business manager, if that is a reasonable description, put on the official record the status of the Clyde Water Trust at this stage?

Mr MACKEY - The minutes of the trust?

Mr FLETCHER - No, the status, where are you at? You have abandoned or you have closed down or you are in receivership or whatever?

Mr MACKEY - No, what has happened is that the Clyde Water Trust still exists. The control of that is by the Rivers and Water Supply Commission at this stage and that is until we get the issue of where and what the irrigation rights are going to be, whether the trust and the irrigators make the decision that the actual final running of the trust comes under the Rivers and Water Supply Commission, or whether the trust subsequently comes to holding an election and continues in perpetuity.

The trust has made a decision, or the trustees have made the decision, to stand aside and Rivers and Water Supply Commission is running the trust at this stage. That is my understanding of it.

Mr FLETCHER - Mr Mackey, how was that position determined? Is there an official minute of the trust that says, 'We are subject to certain conditions, are taking an action', or has that been a gentleman's agreement?

Mr MACKEY - In effect it was a discussion with the Rivers and Water Supply Commission through the minister, for that decision to be taken by the trust. The letter was signed by the Rivers and Water Supply Commission and the trust for them to stand aside and for the Rivers and Water Supply Commission to run it up until wherever we come to the decision of how the trust is going to be finally made.

Mrs SMITH - If I might extend on that, is it your interpretation that the Government only intends that the Rivers and Waters Commission will manage this until these issues are sorted and then there is an expectation that some form of trust, company or whatever will take back over management of that particular facility?

Mr MACKEY - Yes, that is my understanding.

Mr WILKINSON - And with your experience in the trust as to what has happened since 1985, how should the members of the trust be elected? Should there be one from the north, one from the south of the scheme, two independent farmers, a government employee - what should the make-up be as far as you are concerned?

Mr MACKEY - The end decision should be up to the irrigators. The point being is whether under the legislation it says that there will be an election to the trustees. That will be from irrigators. Whether that is the best way to go is something that the trustees and the irrigators need to determine.

I think in my submission I made the comment that there are to be five trustees. I think I made the point that two of those should be irrigators, two of those should be independent persons with knowledge in irrigation, and the chairperson of the trust should be either a Rivers and Water Supply nominee or a nominee from the minister, to continue to run the trust as a trust. There was the possibility of doing it as a company. I do not see that that is in the best interests of the irrigators or the trust in itself. I think the best interest is for the trust to be managed or the irrigation district to be managed with local input into its functioning.

CHAIR - Are you aware of the status of the Cressy, Longford and Winnaleah schemes, how they are run at the moment?

Mr MACKEY - Not totally, no.

Mrs SMITH - Would you support the concept that with 21 irrigators who have entitlements to be members of the trust, that to return to previous processes would see pecuniary interest as an issue, that you have people who are utilising water having to make decisions on behalf of others who are making application. Do you see from your experience that that has been and could be a problem into the future?

Mr MACKEY - I don't see that it would. It may be interpreted that it has been in the past, but I think you would find that in the best interests of irrigators, and to get away from the possibility or the interpretation of pecuniary interest and self-interest, that it would be better to have it so that the irrigators were not the majority on the trust in the future. That is my personal opinion.

The other way is if it was done by all irrigators within the irrigation district - and they were all irrigators. Some decisions need to be made that are hard and fast. Those would be the issues of the irrigation rights that are provided, a policy or procedure in relation to what happens if there is not enough water available for distribution, and how each or some of those wind down their actual allocation from the licence over the period of time when there's not enough water about. But if it was to be by all irrigators, in the end those things would have to be hard and fast so that there can be no manipulations in relation to those parts of the irrigation rights and the distribution of water.

Mrs SMITH - If we look at the history of the trust in the past, one of the significant issues is the pre and post-1976 concept. We do have in evidence a copy of the minutes of 21 July 1976, about which we are making a presumption at this stage until we check against the minutes that that was when the irrigation policy was made by the trust. That formed two properties who had sought permission to expand, subject to all existing licence requirements having to be met prior to the applicants being permitted to use water for their proposed extensions, and the future policy for the irrigation schemes was as outlined in the previous resolutions. So we make the presumption that became the policy of the trust at that time.

Then on a meeting of the trust in 1998, again there was a comment, as part of the condition, that the owner agrees to restrict or terminate drawing of water in the event of water shortage in accordance with trust policy. I make a presumption that in 1998 that is still the policy of 1976, and yet here in 2003 - or in 1999 when the issue of allocations came up - 1976 seems to be the big issue in the dispersing of water, and whether or not that policy has continued on through 1976 up to 1998. How many farmers were informed of that with formal notifications of approvals or otherwise? Would you like to make some comment on that?

Mr MACKEY - In regard to the irrigation rights on the 1976 decision, legal advice has been sought by the trust which shows that the 1976 decision - I suppose whether we class this as a pun or not - doesn't hold water. Quite frankly, three legal opinions say that the pre-1976 decision is not, I would say, technically a contractual arrangement. Therefore there is no reason to take that into account in the issuing of the irrigation rights. Needless to say, there's going to argy-bargy over this issue for ever and a day unless there is actual clarity put into that debate as to whether it does or whether it doesn't.

Needless to say, we have a legal opinion, I can only assume that you may have a legal opinion to the contrary from the others who are suggesting that that is not the case. I have not seen that. When we do the water allocations or when they are finally signed off, if that issue is not totally and utterly put to rest one way or the other, then the issuing of irrigation rights now, in the future or whatever time, unfortunately is going to be a waste of space. It needs to be determined.

Mrs SMITH - Are you in a position to table the brief that was given to the solicitors, and table the advice that came back to the trust. I accept it if the Trust believes that should be tabled in committee because of some legal issues, but do you have copies of the brief that was given, the original questions asked to be answered?

Mr MACKEY - I do not have those with me at the moment, but I am prepared to table all the legal advice that the trust has.

Mrs SMITH - And the brief that was given to them to obtain that legal advice?

Mr MACKEY - All the information that I have that pertains to it.

Mrs SMITH - Thank you. Do you request that that be held in committee, or are you prepared for it to be tabled as a public document?

Mr MACKEY - I think it should be in the committee. The legal advice that was actually obtained by the trust, of which I think Stuart has the last lot of legal advice that we had, said that it was sub judice and therefore should not be released, and they were the reasons why it was not released.

Mrs SMITH - And the brief that you gave to the solicitor, are you prepared for that to be a public document?

Mr MACKEY - I am quite happy to give you the legal advice that we have, if you so wish to use it in any way.

Mrs SMITH - No, the brief, I am talking about. Like you must have given solicitors a brief of the questions you wanted answers.

Mr WILKINSON - Instructions.

Mrs SMITH - Instructions. I am looking to know whether or not you are happy for that to be public.

Mr MACKEY - The instructions were within Michael O'Farrell's advice, so I am quite happy to provide it to you.

Mr WILKINSON - You were saying that pre-1976 the advice that you got was simply that any 'agreements' entered into prior to 1976, as far as the legal capacity was concerned, would not be binding. In the actual bill itself in 1999 there was an amendment, as you know, which was made by the Government which mentioned 'with agreements in force at the time'.

Mr MACKEY - Yes.

Mr WILKINSON - Now are you able to say - and we can of course ask the Government this - what agreements that was talking about?

Mr MACKEY - I can only make an assumption that that is documentation or documented evidence as to the areas of irrigation and letters that were received by irrigators for what irrigation right they actually had in force prior to the Water Management Act.

Mr WILKINSON - And maybe agreements made which led up to the 1976 time span.

Mr MACKEY - Yes, it could do that, but I know that subcommittee B went through all or most of the minutes that they could, sought from irrigators in the area any letters that they actually had pertaining to their irrigation rights or their water rights, and I think they obtained some of those and included them in their final report.

Mr WILKINSON - Now when you requested legal advice - and that was because of certain comments that I understand were made to the trust - you believed it would be most appropriate to get the legal advice because of the question about 1976. Is that right?

Mr MACKEY - Yes.

Mr WILKINSON - The trust employed Mike O'Farrell to do some work for them. Did the Trust give any written instructions to Mike O'Farrell to act, or were they verbal instructions?

Mr MACKEY - What is in the brief of Michael O'Farrell is the advice that was actually sought.

Mr WILKINSON - Yes, but what did you request from Michael O'Farrell? In other words was there a letter saying -

Mr MACKEY - There was no letter to Michael O'Farrell, no.

Mr WILKINSON - So it was just verbal instruction. There was an appointment made with Michael O'Farrell to see him, verbal instructions were given to him, and then he continued from there.

Mr MACKEY - Yes, and there was communication from Jenny Mattila with Michael O'Farrell.

Mrs SMITH - Was it you who gave the verbal instructions to Mr O'Farrell?

Mr MACKEY - No, it wasn't me.

Mrs SMITH - Would you like to designate who it was?

Mr MACKEY - Discussions with Michael O'Farrell and the issues that needed to be clarified in that brief were, to the best of my knowledge, through Jenny Mattila.

Mr WILKINSON - In relation to the advice that was given, as you are no doubt aware, a number of the irrigators are concerned because they are saying, as a member of the trust and paying for the advice that was given, it was unfair that they were not shown a copy of that advice because they were having to pay for it after all.

What were the circumstances in relation to that?

Mr MACKEY - There were discussions held with Michael O'Farrell in relation to the legal advice that had been sought. As I said before, he advised us that it was sub judice and therefore we should not hand that advice out.

Mr WILKINSON - But sub judice is only when a matter is actually in court and at that stage no matter had been in court. There was not a matter actually in court, the court action had not been taken.

Mr MACKEY - I'm not a solicitor; he's a solicitor and a barrister. I can only take the comments.

Mr WILKINSON - He told you that it was sub judice?

Mr MACKEY - That was the comment, yes.

Mr WILKINSON - But there was no action that had already been taken in court, was there; that was only threatened action?

Mr MACKEY - Well, there was threatened action and there was action or a letter that, I think, went to the minister. I think there was also the issue that action had commenced. The timing of these issues is a little sketchy.

Mr FLETCHER - I am confused with regard the matter of instructions to various solicitors, Mr Mackey. There have been suggestions, which we want to prove or refute, that the questions asked or the instructions given to the various legal advisers were pointed in a

direction that solicited an answer which was favourable to parties who were giving the instructions.

That certainly deserves to be put down if it is incorrect and that is where I am coming from at this stage. I am interested in the brief or the instructions to each of the legal advisers. In the first instance you seem to suggest that the brief, or to Jenny Mattila, was provided by Mr O'Farrell after a member between members of the trust and Mr O'Farrell, but then when you were questioned further by Mr Wilkinson you said, 'No, Mr O'Farrell's instructions came from Jenny Mattila as far as you understood it'.

It's a critical aspect and I would like you to give some consideration to providing for the committee this clear line of where the instructions came from. What was it that prompted a request for advice from Jenny Mattila? How was Jenny Mattila identified? Who was the contact? What was the relationship between the trust and O'Farrell, and Dobson, Mitchell and Allport, and the trust and Jenny Mattila in relation to the various issues that were under consideration?

Mr MACKEY - The pre-1976 decisions or the issue of the 1976 decision of the trust was actually discussed with Jenny Mattila. The chairman had discussions and I had discussions with Jenny Mattila about that.

Mr FLETCHER - So how was Jenny Mattila identified?

Mr MACKEY - That is not a bad question. I did not identify her in the first instance but my understanding is that she has a substantial knowledge and background in relation to water issues and needless to say she was discovered as being probably an appropriate person to actually talk to.

Mr FLETCHER - So you had a telephone conference with her?

Mr MACKEY - Yes, a telephone call with her. I provided her with certain information in relation to the decision of the trust and whether that was a binding or contractual decision. She then went through it and as she is a solicitor - Michael O'Farrell is actually a barrister - those points that are in the brief and the legal advice that he came back with were the issues that she felt needed to be clarified through that advice. That is how it came about, in my understanding.

And then Michael gave his decision in relation to that and that is where the advice is.

Mr FLETCHER - So Ms Mattila initially suggested that you retain the services of Brett Walker to gain that advice. Is it true that the trust membership took a decision not to proceed with the Walker advice but rather to seek advice from barrister O'Farrell?

Mr MACKEY - I think we received the legal advice from Michael O'Farrell and I think Jenny Mattila, whether she did or didn't know Michael, felt that a QC from the mainland might be a better person to use. I think we were reasonably comfortable with the decision that had been made by Michael O'Farrell with the information that he had available to him at that time. I think there was another thing that probably swayed the decision of not going to Mr Walker and that was probably the fees.

Mr FLETCHER - Was it ever suggested that Mr O'Farrell might be representing other members of the trust and there may be a conflict of interest?

Mr MACKEY - I would have assumed that if there was a conflict of interest he may have advised us of that. Most soliciting firms do that.

Mr WILKINSON - Did he get a copy of all the minutes of the trust that you had in your possession or alternatively did he just get a summary which was given to him either by yourself or another member of the trust to base his recommendations or questions to Jenny Mattila?

Mr MACKEY - I am not exactly sure whether he received a copy of all the minutes of the trust. I know he definitely received the one with the 1976 decision and I think there were discussions with him as to how and what had occurred in future years from that. I think he was aware of the fact of some of the different things that occurred in 1998 or thereabouts. But I think - and this is only a personal view - that he looked at the issue as to whether the 1976 decision was a binding contractual obligation on the trust.

Mr WILKINSON - So with your experience, the major area of dispute is this 1976 matter, is it?

Mr MACKEY - I would say in my view that there are probably two issues that are of major concern to the trust. One is definitely the issue of the 1976 decision and the second part is the fact of the actual amount awarded that is being allocated to the trust. Out of Lake Sorell and Lake Crescent we have 10 000 megalitres of water and a component of that was to be used for the townships of Bothwell and Hamilton - I know Hamilton is now out of the equation because they draw out of Meadowbank - and there was the environmental flows. And then you came down to the issue of what was surety of supply? The surety of supply is, I think, 5 000 megalitres.

The issue really is that we are looking for sustainable agriculture and sustainability in the water supply and a fair and reasonable allocation of water to all irrigators. Therefore I think that the issue of 10 000 megalitres was a bit light on. And then when you talk about the issue of the average water usage over a number of years and you then take into play the fact that European carp have been in the lake since 1995, therefore it has been deemed to be artificially low, the amount of water that has been able to be taken by either one or all irrigators. So I think there are some things that need to be clarified in that regard as well.

Mr WILKINSON - In relation to the 10 000 megalitres, you were saying part of that allocation had to make sure that the townships of Hamilton and Bothwell were supplied with water. Bothwell still has to be supplied with water. Hamilton now doesn't from that allocation because that's now supplied from the Meadowbank system. Therefore are you saying that there is obviously an extra allocation that can be made to the irrigators because Hamilton now doesn't come into the equation?

Mr MACKEY - The first lot of allocations that were made were based on 7 500 as being the allocation that could be utilised for irrigation purposes. That was then subsequently massaged up after a discussion with Mike Temple-Smith and that came out to, I think in the end, 8 265. The allocations could come out at 10 000, but the issue really is the

surety of supply at the end of the day. Unfortunately at the end of the day you could say that there is 5 000, which is security of supply, but what do you do if you then have a situation where some farmers did certain cropping in some years which used less water and in subsequent years they need their allocation of water? You don't have enough, and then you turn around and say, 'Oh dear, how sad. You shut off. You don't get anything' and everyone else pre-1976 actually gets all the water. It might be nice to say that pre-1976 has more credibility than some or all of us give credence to, but at the end of the day we have to get allocations that are fair and equitable and reasonable for all irrigators within the irrigation district, and there has got to be a way to do that.

Mr WILKINSON - Further on that, if I might, are you saying - and I might be reading between the lines wrongly - that there should be a greater allocation to the trust and, if so, what do you believe is a fair and appropriate allocation that should be given to the trust for the irrigators?

Mr MACKEY - This is off the top of the head, and I would say you are probably looking at about 15 000 megalitres.

Mr WILKINSON - And so if there was an allocation to the trust of 15 000 megalitres, which you with your experience believe there could be - and I know you are not putting that in concrete - the problem then would seem to be solved, would it not?

Mr MACKEY - I do not think you can solve the problem unless you really clarify the issue of the pre-1976 and the security of water supply, because it would be nice to think in every year that there would be 15 000 megalitres of water available for irrigation purposes. There are going to be years when that is not going to be available, but then again, if you take the issue of Meadowbank and extend that, you have the bottom end which then has virtually 100 per cent security of supply.

Mr WILKINSON - Already with the bottom end it has 850 megalitres sorted out from Meadowbank, has it not?

Mr MACKEY - About 1 000.

Mr WILKINSON - If you increase that to the two extra properties, that involves -

Mr MACKEY - That would take in Rob Parsons and, with some weir work done on that lower weir, it would actually help to take it back towards where Stuart comes from.

Mr WILKINSON - Right, and how much would that be? You would be looking at approximately 1 000 megalitres to 3 000.

Mr MACKEY - In the numbers that are about at the moment, I think there is about 1 700 megalitres of water that could actually be utilised out of that.

Mr WILKINSON - Right.

Mrs SMITH - Mr Mackey, could you table with the other requests the financial position of the trust at this time? I presume at the end of the financial year there was a balancing of accounts et cetera.

Mr MACKEY - Yes, a balancing act.

Mrs SMITH - And can you inform us whether or not there is a cost attached to the work that Rivers and Water will be doing? Are they doing this on a do-and-pay basis, that you can have an expectation of more accounts to come, or are we in recess with the trust and no more accounts?

Mr MACKEY - I can make an assumption in relation to the comment I am going to make, and I would assume that, since the Rivers and Water Supply Commission actually took over, they are accountable for the costs in that period of time. There is a debt on the trust, which the Government is fully aware of and the Rivers and Water Supply are fully aware of, which is about \$190 000. The trust in the balancing act of the cash accounting side at the end of this year is \$216 in debt, put it that way. When you take into account the weirs that have been put in place, the new irrigation scheme that is in place, and you take the liabilities or the debts that are actually owed by the trust, I think the balance sheet would look somewhere in the vicinity of \$553 000. The assets are about \$746 000, liabilities, \$192 000, so that gives you \$553 000.

CHAIR - Just putting any legal issues aside, and given the plethora of reports that have been done, as you have listed them there starting with committee B and right through to Andrew Beattie and C, I think, what in your opinion out of all of that mish-mash is the fairest and most equitable allocation?

Mr MACKEY - Out of those?

CHAIR - Yes.

Mr MACKEY - Can I say there's another one?

CHAIR - Okay, you can. You certainly can. Let's hear it.

Mr MACKEY - The reason I say that is I have actually gone through and done some numbers. You have to take this on the basis that I'm saying that the bottom end, the Hamilton end of it, can get their surety of supply by an extension of the current scheme. If you then do that, as I said before, Andrew Beattie was the highest number; he came out with the highest. If you end up with still 8 265, which is what has been allocated out of Lake Sorell and Lake Crescent, and use that as your baseline number, it means that nine of those that got an allocation under Andrew Beattie would be better off than what Andrew Beattie had allocated them if the redistribution occurred. If you then go back to subcommittee B and the allocation that was first done by subcommittee B, 15 of those irrigators would be better off than what subcommittee B allocated to them.

I think the most appropriate way to deal with this - do the extension - if we go back to the financial issues of the trust, and we went through the process of actually borrowing money - about \$180 000 and I did a loan schedule for that - for the trust to actually pay back that over a three-year period at 8 per cent, it was \$67 000. If we include \$150 000 on top of that to actually include the extension to the Meadowbank scheme, and we do that at 9 per cent but we do it over a six-year period -and hopefully this is correct; it was

done about eight o'clock this morning - it means that the trust would then have to pay \$74 924 per annum.

CHAIR - Are you prepared to table some of that information for the committee's perusal, given that we accept that you've only just done it.

Mr MACKEY - Yes.

CHAIR - We can call it the 'Mackey Report', can we?

Laughter.

Mr MACKEY - You can call it whatever you like. I think at the end of the day, what we are trying to achieve out of this is the best allocation, fair and equitable allocation, for all concerned. There will be a debt to actually achieve that, but I think at the end of the day we're talking about something that's going to last years and years.

CHAIR - So you're happy to table that. Thank you.

Mr MACKEY - Yes.

Mr FLETCHER - Mr Mackey, I'm sure everyone we've listened to would like to find a way of resolving this impasse or this tension that is there at the moment, but your proposition seems to be that we ignore all the previous agreements and do what we think, or what you think or what your advisers think is reasonable in all the circumstances, imposing a burden that you, I guess, believe is equitable; the burden being a reduction in water supply for some to get an outcome that is achievable and acceptable. Have I summarised you correctly there?

Mr MACKEY - Well, possibly. What I am saying here is that with those numbers it still needs to be looked at to make sure that everyone is reasonably comfortable. We could be naive and think at the end of the day we are going to get 100 per cent satisfaction in relation to what we allocate. It doesn't matter what we use or where we go or what we do in relation to the 1976 decision, at the end of the day what we have to come out with is an allocation that most are comfortable that they can work with. If we sat down and spoke to all irrigators, they could turn around and say, 'This is what I think is my allocation and a fair and reasonable allocation'. Quite frankly, that has to be balanced up, it has to be judged and then at the end of the day someone needs to make a decision. My understanding from that is that I think the minister is likely to be the one who is going to have to tick off to the irrigation rights that are distributed but let us take it that we need to get it as close to the best we can get as opposed to hearsay, innuendo, assumption, a 1976 decision hanging over our head which, if it is not clarified or not totally cleared up, needless to say we have advice, others have advice, how do we get it on the table and get some kind of finality as to which is or which is not right?

Mr WILKINSON - Make a decision, that's how you get it on the table. If a party is aggrieved that party then takes it to court.

Mr MACKEY - Yes, but one would like to think at the end of the day because everyone ends up - I am not sure that I should say this - but I think there is really only one winner when it goes to court and I am not going to answer which one that is.

Mr FLETCHER - I have a series of questions but perhaps we will need to call Mr Mackey back at a later stage if we are running out of time now. I still have a number of options I want to explore with him.

We are going to hear from fishermen a little later on this morning. In your knowledge - you have asked for more water - your submission suggests that there is more water available. Lake Crescent particularly was developed by landowners in the area for various reasons - irrigation, flour-milling and the like in the earlier days - so the lifting of the levels of Lake Crescent in the first instance was done for use of water to irrigate the land. In more recent times the recreational fishery has taken some ownership of that area as one of the prime fishing areas of the State. Do you believe there is justification in that, or what in your judgment what was the critical decision that turned this from an irrigation lake into a fishing lake?

Mr MACKEY - That is not a bad question. I think fishing has been there for a long period of time but then again -

Mr FLETCHER - But not as long as irrigation.

Mr MACKEY - No, that's quite correct. One would like to think that at the end of the day we can all work together and get what is the best outcome for all concerned which means the recreational fishers - for everybody.

Yes, you will probably look at me and say, 'Well he must be naive' but I would like to think that at the end of the day there is an outcome that can be achieved that can get what is in the best interests of all concerned.

CHAIR - Thank you.

THE WITNESS WITHDREW.