

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON CLYDE RIVER WATER MET IN THE MEETING ROOM, CENTRAL HIGHLANDS COUNCIL CHAMBERS, BOTHWELL, ON TUESDAY 10 AUGUST 2004.**

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**Mr STUART EDWARD ARCHER**, CONCERNED IRRIGATORS GROUP, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIR** (Mr Hall) - Welcome, Stuart. We have your written submission and you now have the opportunity to put any additional points or reinforce anything you have said. The committee may then ask you some questions.

**Mr ARCHER** - This submission is submitted on behalf of an informal irrigators group and represents at least 15 of the irrigators on the river. The submission as a whole covers six years of events leading up to the Water Management Act 1999 and all the processes that have happened from then until now. The submission describes the processes followed after the Water Management Act 1999 and evidence is submitted on the reasons why that in the end there was a motion of no confidence in the Clyde Water Trust. There was a call for a judicial inquiry. The submission also provides evidence on government responses to those problems. The document is supported by 130 indexed attachments. There is very little of the submission that you would call hearsay or emotive. There is a further box file of documents that was beyond my resources to index, but they are available for the committee at any time to call upon in the coming days or weeks.

The submission details the preferred allocation structure which is supported by 18 irrigators on this river system. If there are 21 irrigators, there are 18 irrigators who have supported a five-point structure, which is outlined in the executive summary of our submission. At the back of the submission there is a five-point list of recommendations that we feel are desirable outcomes of this select committee process. The submission also contains 36 questions that we would hope at some point could be answered by the select committee. These are questions that cover areas that have not been addressed by the Clyde Water Trust, the Department of Primary Industries or the Rivers and Water Supply Commission.

The submission in its individual chapters addresses the water allocation issues and then all other major issues - technical, legal and administrative - are covered in the individual chapters of the submission. Mr Chairman, to save reading the summary again, I would hand it over to you if you have any questions.

**CHAIR** - Thank you. I will now open it up to members for questions to Mr Archer.

**Mr FLETCHER** - I would like to move aside from something that is not necessarily central to your submission, and that is the future of water supply in this irrigation area, and what, if any, you consider to be reasonable price-setting mechanisms to determine a price at which water might be supplied.

**Mr ARCHER** - The structure we have had here for 150 years, Mr Fletcher, is that there has been a minimal overhead cost in the infrastructure on the Clyde River. The original infrastructure was built by volunteer subscriptions in the 1800s, so we have had no infrastructure to maintain. We have had no ongoing overhead. The only costs we have had historically have been secretarial assistance, an occasional bit of auditing, a little bit of public liability insurance and things of that nature, so that is why historically the cost mechanism that you describe has worked so efficiently. I am sure I am speaking on behalf of our group that we want the trust to be reconstituted; it is one of our recommendations at the back of our submission. We want the trust to be reconstituted so that we can continue with a low overhead cost system where the people who are using water would pay, I would say, 80 per cent of the overhead costs to run the river, and those who are not using water actively would probably contribute something like 20 per cent.

**Mr FLETCHER** - Are you suggesting to me that the price-setting mechanism should be determined by cost recovery rather than determining a value for water in the area that might represent a value to the community rather than a value to the irrigators?

**Mr ARCHER** - No, I believe we would definitely be supporting just a cost recovery. Any other way of pricing the water, to me, would be like having a royalty on water. I would say that what would happen there, if we were suddenly paying an excessive above-cost-recovery price for water, all that does is transfer wealth from this area to somewhere else, wherever the money is going to.

**Mr FLETCHER** - There have been indications nationally that we will never get judicial use of irrigation water until a true price of water is established and there is a charge for that water. You do not subscribe to that theory?

**Mr ARCHER** - No, I do not. I thought the national program was cost recovery, COAG requirements and competition policy, simply that full cost recovery is attained. It is not my understanding that there is anything above that. To give you an example, I know there is some misunderstanding whether this river is an irrigation scheme or a river. This irrigation administrative area is a river delivery authority. It is not an irrigation scheme compared with, say, the Shepparton or Gambier or Echuca in Victoria where there is the Goulburn River or the Murray River.

The water in those rivers is still free to this day, even though there is a lot of speculation on the mainland over how much water costs. The water in those rivers is free. People only pay when that water is delivered through a canal that goes 100 kilometres to the west or east of Shepparton, and there is a cost of maintaining that canal. In the past apparently in Victoria sometimes the full cost of maintaining that canal has not been passed on to users, but it is from now on, I understand. This river here is a river delivery system; there are no overhead costs to maintain.

**Mr FLETCHER** - Can I ask you, then, what you pay per megalitre for the water you use for irrigation in recent years?

**Mr ARCHER** - Here?

**Mr FLETCHER** - Yes.

**Mr ARCHER** - Five years ago it was \$2.50 a megalitre; that would have been the cost in the river. Then two things probably coincided: one was the trust trying to raise some money for this Hamilton pump scheme, and also the drought, which meant that people are actually using less megalitres, so there was an increase in the price to \$12. I think it is important for the community to understand that the price of that water in the river is not the price of the water delivered to the farm at the point of application. That varies for each farm because some farms have land that is adjacent to the river and it is flat, no elevation, but some of us are pumping water 600 feet above the river. In that case the cost of the water applied to the paddock is \$100 to \$150 a megalitre. So any unexplained or unsupported reason for a cost increase would mean some of those irrigation schemes could become unviable. It's marginal enough at \$100 a megalitres; your crop has to be successful before that is economical. You certainly would not do that to irrigate pasture.

**Mr FLETCHER** - You have addressed the matter of sleepers and dozers in your submission. Do you accept that there ought to be a charge applied to those who have water rights but do not use them or use them only occasionally, that there ought to be an annual charge?

**Mr ARCHER** - Yes, I do. I think there should be a nominal charge. I think a nominal charge is appropriate. I do not think it has been suggested by the Rivers and Water Supply Commission that people should pay 80 per cent of a licence whether they have used it or not. All that does is encourage people to use water and waste it. It means that the water will not be left in the lake and will not be available for an environmental flow and the water may not be available for someone else to use.

In the past, a sleeper right meant that someone else could use that water - the water is left in the lake - or you have a situation where the demand is not such that the environmental flow is restricted. So for someone who is not using the water it does not have any detrimental effect on someone else; it is a benefit to everything.

But, to answer the question fully, if that sleeper right is paying a small fee then he is paying his share of, say, the secretarial assistance that the trust might need or he is paying a share of the insurance charges or a share of the auditing cost, a share of those general administrative costs. I do not see any benefit in making someone use the water because they will either pump the water and waste it or else they will gravity irrigate and waste it.

**Mr FLETCHER** - All right. You have introduced the concept of judicial use and waste; what are the management inputs that determine that an irrigator will use the water judiciously, that he or they will not waste it?

**Mr ARCHER** - Well, no-one in their right mind would pay to pump water and not try to use it for a profit, but historically in this area there has been a lot of flood irrigation. For the last ten years most of the irrigation has been flood irrigation. Flood irrigation gets, I think, an undeserved bad name for so-called wasting water.

In effect what happens is that the water gets pumped out of the river onto pasture land - that has been the traditional thing - and then quite a bit of that water will end up back in the river. It is not necessarily a bad thing I would say, although it is politically incorrect at the moment to suggest that this is reasonable. People see water running off and they

think that is an unsustainable practice. It is not so bad, I don't think, but it is an argument we might not be able to win.

**Mr FLETCHER** - What management regimes or tools should be used to make sure that farmers, irrigators, judiciously use the water and do not waste the water. I guess I am trying to put to you that at the end of the day the most significant management tool is price. If the irrigators have to pay for the water, that will guarantee that they will not waste it.

**Mr ARCHER** - I will just give an example of my own situation, because I think you will understand it. If the water in the river is \$5 a megalitre or \$20 a megalitre, my cost for pumping that water can be as much as \$100. In other words, the hydro-electric or diesel bill for me for pumping the water is \$70 000, so it is all profit driven. You cannot afford to pump that water without using it to try to obtain a profitable outcome at the finish. Whether you price the water at \$5 or \$30 a megalitre in the river, you still have to pump the water. You still have the extra \$70, \$80 or \$100 a megalitre on top of that.

**Mr FLETCHER** - You are here representing 17 other irrigators, as I understand it. Is that a reasonable scenario for all of those 18 concerned irrigators?

**Mr ARCHER** - No, it is not. That would be the more extreme one. Some people have low-cost systems where the water gets gravity-fed out of the river to a canal and it is what we call flood irrigated. They just gravity-tip the water out of the canal and it runs across the paddock and irrigates the grass. But there has been a big swing in recent years to spray irrigation, so the amount of water getting used in that way I would say is declining in a vertical graph. Most people are spray-irrigating their water supply now. That is just a generalisation. Some people have farms close to the river where that total cost of pumping the water, for their power and maintenance on their equipment, if they are using strictly off-peak rates, would be \$30 to \$35 a megalitre. Those pumping elevation would be up to \$100. Some people double pump: they pump up to one level and then they pump up a bit more.

**Mr FLETCHER** - Could I ask you to comment on the fact that your proposal provides that in good years with ample water the demand could be met. In drought years or years of low supply of water your system is under stress the same as any other system would be under stress. Could you restate how you would manage that or how do you suggest that be managed?

**Mr ARCHER** - I am glad you have brought that up, Mr Fletcher, because that brings me back to our five-point structure that all our irrigators want, which is on page 3 of the document. That is that when there is a drought, as you suggest, and there is a restriction on the volume of water available, our proposal is that there is a priority system in place on the river to use as a restriction management regime, which is modern jargon for rationing water. The crucial aspect of all the issues on the river is the priority policy that was established by the Clyde Water Trust in 1976. That is one of the most important things in our submission. We say that if the bulk allocation of water was to fall under 8 000 megalitres, then the only licences that should have their full allocation would be the priority people who have the priority water supply. For nearly every irrigator on the river to some extent part of their allocation is pre-1976, so that is their water. On top of that there would be sales water from private storages. There would always be some

sleepers in the system and their water would be available, so that way there is no one disadvantaged. Everyone has exactly the same amount of water they would have had in 1975, and of course if there is a further restriction under 8 000 megalitres then there is a straight-line graph and everyone gets cut back the same percentage. I think 4 400 megalitres was one of the worst years we have had in living memory. The long-term sustainable yield, we understand, is something like 7.5 to 9 that will be used where there are 12 000 megalitres available subject to carp management plans or something. That looks like what the sustainable long-term yield is.

**Mr WILKINSON** - The sustainable long-term yield depends upon what the farmer decides is the appropriate amount of water to put on his property, doesn't it?

**Mr ARCHER** - I was talking about the sustainable yield out of the lake.

**Mr WILKINSON** - Yes, but in relation to your property, you might differ with your property. Say, if I owned your property and know nothing about it, I might decide I need more water on your property than you believe you need. How do you cope with that? In other words, how can you police that the water that you are getting is an appropriate amount of water for your needs?

**Mr ARCHER** - If you are in the farmer's shoes and, just for argument's sake, you have a situation where you think you can make money by irrigating 200 acres of poppies and 100 acres of pasture, we use the benchmark figure of 1.5 megalitres to an acre or 3.38 megalitres to a hectare. You can intensively irrigate pasture with that much water. If they are using more than that, the ground literally won't soak it up. Most of the crops might tend to use a bit less, but it depends on how much rain you get during the season and whether it is potatoes or poppies. A crop like potatoes - and I am the only one who grows them there - are pretty thirsty for water in a dry summer. If we get a few weeks of cool weather and a few showers it makes all the difference.

**Mr WILKINSON** - It seems to me, reading the history of it, that the scheme was set up so that all the farmers on the river could irrigate their properties to an extent where they obtain water to their needs. In other words, that was the commencement of it, to allow farmers to properly irrigate their properties. There are 21 irrigators now - and tell me if I am wrong - and, as a result of what has happened in recent times, are you saying that the farmers downstream should be able to take water from this scheme or should they be able to get it from Meadowbank? Is it a viable proposition for farmers downstream to take their water from Meadowbank as opposed to the Clyde?

**Mr ARCHER** - Leaving the Hamilton scheme out for a moment, anyone with a priority water right doesn't need the Hamilton scheme. We say that has nothing to do with it. Anyone who has a priority water right will not need that Hamilton scheme unless he really wants to expand and get water above his priority allocation. In my opinion, the Hamilton scheme can only benefit people who wanted water over their allocation no matter what category of water right they had, whether it was a pre-1976 one or a post-1976 one or they are just a casual new entrant perhaps.

As far as the practicalities of the Hamilton scheme is concerned, there is a chapter in this document that briefly describes that. Some of us think it is so bad that it is a white elephant and we lobbied against it when it was first put there. It has gone way over

budget. There is only one significant sized farm on the river - only one of the 21 - that can have the water supply replaced by that pump scheme. That fellow uses about 600 megalitres of water so it is a marginal improvement in availability. Governments run around and the trust is trying to say, 'You save the environmental flow, too'. Well, what that does is make the environmental flow a calamity because their intention is to stop the river running. A few kilometres from Bothwell the river virtually comes to a stop.

**CHAIR** - Just following on from that, Stuart, you wouldn't then agree with a proposition - and there has been a suggestion from Mr Mackey, I think it was, in the submission from trust - that the irrigation district be split - the southern part from the Meadowbank storage and the northern part from the Crescent and Sorell area - and that might solve some problems? Is that a possible, workable solution?

**Mr ARCHER** - If it was split administratively, I cannot see any benefit in that.

What they are trying to suggest is, 'We'll split the district, we will use this pump scheme at Hamilton, it takes one significant irrigator off the lake supply and a few smaller ones'. Then they say, 'We'll split the district so that people at the lower end of the river can't trade water, can't ever sell water upstream to Bothwell'. That is their idea of saying, 'Oh well, you're on the pump scheme at Hamilton, you're locked into that and you can never trade your water to someone else'. I cannot see any benefit. The only benefit you could say is that there is perhaps 1 000 megalitres more water in the system but at what cost and why should someone who had a priority water right be having to pay for it? We are strongly against that.

**Mrs SMITH** - If I might continue that. On some of the information that you have given us, Mr Archer, there is a chart that shows the flow ex Crescent at 14 500 megalitres and the flow ex Hamilton at 6 000 megalitres. You have made the comment, 'There's only 1 000 megalitres there'. Could you clarify what you mean by that?

**Mr ARCHER** - The figures that you are quoting there, that is in part of my submission that links the events leading up to the Water Management Act 1999 because it first got drafted to say that all the water allocation on this will be the average of the last three years' usage. The figures that you are reading there are one example, one year, of those three, the three years leading up to 1999.

What those figures show - and I have extrapolated those figures from the river flow recording charts that the Department of Primary Industries, Water and Environment have, one at Crescent and one at Hamilton and in fact the Hydro have one at Bothwell - is that there was not enough water available for those people to have put in such a big claim. When you link those figures that are not credible to the fact that perhaps the same people drafted the legislation, then there are questions to be answered there - why those water returns for those three years show 8 500 megalitres when there was only physically available 6 000 in the river.

**Mrs SMITH** - But this says, 'Flow ex Crescent, 14 500, and flow ex Hamilton, 6 000'.

**Mr ARCHER** - Yes.

**Mrs SMITH** - So that is the flows, not the claims in this particular chart here.

**Mr ARCHER** - That is right, the claims are in the next paragraph down.

**Mrs SMITH** - So you are saying that you have 8.5 as the difference, 2.4 for evaporation, water available, 6 100?

**Mr ARCHER** - That is right and the people, between them, claimed 8 500.

**Mrs SMITH** - That's correct. If we can go back to some information provided; a water licence was granted by the minister in 2001 for 10 000 megalitres out of Crescent and Sorell, is that correct in your interpretation?

**Mr ARCHER** - Granted to whom?

**Mrs SMITH** - To the trust.

**Mr ARCHER** - It is probably right.

**Mrs SMITH** - Would you support some information we have been given that of the 10 000 supported, there would be 7 500 left for irrigators when you took a surety for the town of Bothwell for a water supply et cetera, so there would be 7 500?

**Mr ARCHER** - There has been an accepted evaporation and transpiration and a seepage loss of 2 500.

**Mrs SMITH** - So you accept there is 7 500 megalitres from lakes Crescent and Sorell into the irrigation system?

**Mr ARCHER** - Yes. I think the government people and the trust people are saying, 'Well the Hamilton pump scheme will save that evaporation loss between Bothwell and Hamilton but the trouble is even to push one megalitre a day of water from Bothwell to Hamilton, you still have evaporative loss.'

**Mrs SMITH** - If the irrigators in the Hamilton area were taken off the Clyde water scheme into a new Meadowbank scheme, do you believe the 7 500 megalitres would be sufficient for the northern end of what is now at the moment the Clyde Water Trust Scheme?

**Mr ARCHER** - Well, what it means is that there is more surety for all of them. We call that process moving the graph sideways, everyone's graphs into a higher surety area. So we are saying there would be about 1 000 megalitres extra water available to the Bothwell end. So people will still have their priority water, they would still have their lower priority water, but their surety would increase, but we say only by about 1 000. So it has spent \$600 000 to save that little bit of water.

**Mrs SMITH** - If I might now look at the Meadowbank scheme, I believe there was \$500 000 spent on a scheme at Meadowbank to bring water into the Hamilton area.

**Mr ARCHER** - That's right.

**Mrs SMITH** - Has that scheme been fully operational? Has it been successful, and if not, why not?

**Mr ARCHER** - There are a few questions there. It is not finished, there is still money to be spent there.

**Mrs SMITH** - Can you give us an indication, in your opinion, of how much you believe would need to be spent?

**Mr ARCHER** - Our group is asking for a moratorium on all expenditure - just leave it alone - because we have enough water in the lakes to do for a couple of years at least. So we want a moratorium there while we consider all these things because we don't believe the trust had the authority to spend more than their reserves in the first place. Of course, that is if the trust was constitutional at the time that they agreed to spend the money. It seems as though there are problems. The pumps were actually put in the river, not the lake, which was just an incompetent engineering decision, we say. They pump swift water into a canal and the canal runs towards Hamilton. I do not know if you have seen it -

**Mrs SMITH** - Yes, we have.

**Mr ARCHER** - The landowner there is concerned about erosion problems and he wants a fence put up or public liability because the pumps don't start automatically. Some child playing there could get drowned, and this sort of thing. Apart from that I do not think it needs a lot of expenditure. This erosion of the canal could be an ongoing problem. It could be that every year something has to be done - earth moving, or erosion control or weed control. There is erosion of one of the weirs and the weirs might be get damaged in a flood. So the chances are it is ongoing liability.

We want to just clarify what the financial situation of our trust is because we don't know; there are a lot of documents that we have never seen. And we think \$500 000 has been spent there but we think it's probably a bit more than that.

**Mr FLETCHER** - This is with Meadowbank you're talking about.

**Mr ARCHER** - Yes. It can only save a fairly small amount of water in any event.

**Mrs SMITH** - It's not finished, you have made that quite clear. There are two properties that have the capacity to utilise at the moment, is that correct?

**Mr ARCHER** - No, there are more than that. There's one significant irrigator, Mr Jones, and there's a small irrigator, Richard Downie, and George Sonners, both at the moment with small demand. That might change, but at the moment they've got small demand. Then at the top end of the town there is Rob Parsons, who uses that supply for his mint paddocks. So if you tally all those up it's only 850 to 900 megalitres.

**Mrs SMITH** - And the future potential, in your opinion, of that area down there for further expansion into, say, irrigation capacity of properties?



**Mr ARCHER** - I'd have to say it is limited by the terrain. It is steep country all around surrounding Hamilton, and the potential to expand from that scheme is pretty small.

**Mr WILKINSON** - Did I hear you correctly when you were saying why do you have to pay for water if you've got a priority right for it?

**Mr ARCHER** - That's it.

**Mr WILKINSON** - We are talking about this Meadowbank scheme at the moment -

**Mr ARCHER** - You still pay for water even if you've got a priority right, Mr Wilkinson.

**Mr WILKINSON** - I realise that, but what I'm looking at is endeavouring to give people downstream the capabilities of getting their water from Meadowbank as opposed to getting it by priority right from the Clyde scheme. As I understand it, you pay more for the water that you get from Meadowbank than you do from the Clyde scheme. Is that right?

**Mr ARCHER** - No. The Clyde scheme is only actually used for about one month. It has only ever been used in March 2003.

**Mr WILKINSON** - For these bottom four irrigators.

**Mr ARCHER** - Yes, it only ever got commissioned and used in March 2003. That is the only time it has ever been used.

**Mr WILKINSON** - So in the history of the Clyde scheme, for these four irrigators that you have spoken about, it has only ever been used once.

**Mr ARCHER** - It was only just put there in recent years and is still not finished, but it has only ever been used for one month. That is all. As I say, can people at the bottom end of the river be supplied with water from this pump scheme? Well, two of us lobbied strenuously that they could take all Hamilton off the lake supply, not with that pump scheme but with one of our design, but that was rejected by the trust. They were hell bent on this low-level scheme where you had a pump in the lake and then a canal around the bank and then another pump under the Hamilton Bridge up the top end of the town. We could not convince them that their plan wasn't a sensible idea. They were still hell bent on it. If they were really determined to spend all the reserves of the trust, the \$300 000 that we had in reserve, they could have taken all Hamilton off if they had wanted to, but they wanted to do this low-level scheme. It is folly to turn the clock back and start again now. It is difficult to see how you could make it work now. It has already been put there. But certainly we wanted to have a moratorium on any further expenditure while we made the most of a bad job, if you like.

**Mrs SMITH** - Are you suggesting a moratorium on expenditure and also allocation of any further water?

**Mr ARCHER** - We have never suggested that there is room for any further allocation of water from anywhere. You could arguably allocate more water out of Hamilton to someone who was a new entrant if you wanted to, but there actually is not a demand

there at the moment. In fact it is pretty obvious that the four irrigators there only use very moderate amounts of water. One dairy farmer is using it to capacity, but the others are just irrigating opportunity crops, whereas traditionally one of them was a big flood irrigator. However, the economies of flood irrigating for sheep have diminished over time, so there are a few schemes that are not irrigating intensively like that. They are not using the volume of water that they did 20 years ago.

**Mr WILKINSON** - Do you believe there is enough water in the system to sustain each one of the 21 irrigators?

**Mr ARCHER** - The quick answer to that is yes, but the more lengthy answer is that with the priority system there we have the mechanism all the time to protect those who were irrigating in 1975. The people who have developed schemes since 1975 were told, and it is recorded in the minutes and in the correspondence of the trust, that they put in those schemes at their own risk. They knew then that they had lower surety of water right, even though that probably wasn't a term they used at the time. We used the term 'priority'. They had lower priority when the water would not be available. The document gives comprehensive evidence that there was some rationing of water in the 1960s, and some further approvals from the late 1960s to 1975. In 1976 the trust said, 'Well, that's it. To give people this approval we have to stipulate that they know they have lower priority'.

**Mr WILKINSON** - In other words, enter at own risk. That is what you are saying.

**Mr ARCHER** - That is right.

**Mr WILKINSON** - Enter at own risk. In other words, spend money at your own risk.

**Mr ARCHER** - That is it, and be aware that there will be years where the water is not available. Of those late developments, some of them built big dams so they have their own private storage, and then others just had a fortunate run of years where the lake was never at a critical point. There always was enough water until the 1999-2001 drought, when we did finally run out of water. That is when it is highlighted and this priority policy has been raised. Of course that is when the political manoeuvring started, with some people trying to say that what was in the minutes 30 years ago does not count for anything - that's all finished. Some people argue that with the passage of time that is all over and done with, but on our side we say that the trust at that time in good faith made those motion for priority to protect the users at that time, so it should be upheld. We keep pointing to our five-point structure as the priority that should be upheld, the trust minutes should be upheld, the rights of the sleepers are upheld. The 1.5 megalitres an acre is a reasonable benchmark. It is the benchmark that the government engineers used at Cressy and Longford and it happens to fit well with us, too.

**Mr WILKINSON** - With the sleepers and dozers in relation to them if they don't want to use the water, they can obviously trade that water and then it is a matter of demand and supply, I suppose, and a matter of whether people wish to purchase it and think that it is going to be of benefit to them. Should there be any set-up at all to make sure that that water is traded at a reasonable rate, as opposed to what rate the sleeper and dozer think it should be traded at? Let the market decide?

**Mr ARCHER** - I think let the market decide. The chances are that if the water charge for the year is, say, \$12 a megalitre, the sleepers in the system will let someone else use their water more than likely to cover that service charge. I cannot see that with all the private storages that have been built and potentially can be built that the market value - that is, the tradable value - will really increase by a lot because the annual cost of the private storages is \$20-odd a megalitre. I think that will put a ceiling on what water will be traded at. In the past there have been sleepers on the river who have not used their water and someone else has been able to use it and I reckon that ought to continue. It will just mean that the user probably pays the service charge. I don't think anything extreme is going to happen here.

**Mrs SMITH** - Can I perhaps expand on the sleepers, dozers and users. The people at the moment who are using traditionally yearly irrigation capacity, you have those users. You have then, if my interpretation is correct, the classification of dozers. They may be people who have a licence for water who only see a need to utilise it when they predict it is going to be dry year and perhaps there would be farmers who want to put an extra crop in and irrigate it to ensure they can finish. Then you have sleepers. Is my presumption correct that sleepers are just people who have predicted into the future, 'I may need water so I will put up my hand and claim some water now to utilise down the track'?

**Mr ARCHER** - No. A sleeper is someone who may well have built the weir at Lake Crescent in the 1840s - and there is one farm in this district that represents this case - but at the moment is a sleeper, not having used much water in the last 20 years. They are the pioneers who took the horses and carts up to the lake and with picks and shovels built the first control gates. So they are a sleeper; that person still has a water right. A dozer is someone who uses half of his water every second year, say; he does not use his full entitlement. There are other categories of sleeper - people who might have irrigated, for instance, quite regularly up until two years ago and then perhaps the person has had an illness, a retirement or, say, his son has gone away to college and when he comes back they will start the irrigation up again. Maybe the infrastructure has fallen into disrepair. I know one farmer who had a weir washed out in the 1960 flood and that was a trigger for them to stop irrigating; they did not rebuild the weir.

**CHAIR** - How many actual dozers are there on the scheme? Can you quantify that?

**Mr ARCHER** - There are a lot of farms that have a portion of their water rights as a dozer. I can't quantify that, but the amount of water in the sleeper category is only about 800. So it is not a big percentage of the river. Some of them have a sleeper right in a priority category and some a sleeper right in a lower surety category, too. It is not an overwhelming proportion.

**Mr WILKINSON** - Your fair argument with them would be that they built the infrastructure therefore even though they have not drawn on the system, they should be able to, if required at some later stage?

**Mr ARCHER** - You have raised a question on that, that particular example of someone who did that work predating of the keeping the Clyde Water Trust minutes, but there are other people who had a statutory right, which is one of our arguments, that once you were given the permission under the rules of the Clyde Water Trust, just because you had not used the water you should have it abrogated. In fact it is one of the problems of the

consultants' report that was sent to the trust. At first they said, 'Once you have a statutory right on the mainland you have a statutory right; you can't have it removed', and they don't either in Victoria. If you have a statutory water right, it is a water right with 100 per cent security. Very rarely do they get less than 100 per cent of their water right, even in the worst of the droughts.

There is a consultant who did this report on sleepers for us. He actually said that in Western Australian the sleepers have their water right abrogated; if you don't use your water right, you can have your water right taken off you. On investigation that was proved to be false, that was wrong; he actually edited a quote out of a West Australian paper. That discredited that consultant to my satisfaction and we suggested that the trust should ask for their money back.

**Mr FLETCHER** - This price-setting mechanism interests me significantly. You have stated that initially five years ago you were paying \$2.50 per megalitre for the water and during that time the Clyde Water Trust set aside \$300 000 in reserves from that trading operation, which seems to be very prudent management and well established. You then went on to say that in the last five years the megalitre rate has increased to \$12 or \$12.50 a megalitre, as I understand it.

**Mr ARCHER** - That's right. The last year it may have been even more than that.

**Mr FLETCHER** - Therefore there is a component there or I am assuming there is a component there that is not cost recovery but is reflecting the market price of water in the catchment area?

**Mr ARCHER** - No, none of that is reflecting market price. The Clyde Water Trust has always tried to raise just enough money to run itself - nothing to do with market value.

**Mr FLETCHER** - So why was the extra \$10 a megalitre being introduced over the last five years?

**Mr ARCHER** - Well, that is probably a good question to ask the trust. I am not on the trust; I am not a trustee but I think it is reasonable to say that firstly there is the usage of water fill in that time because of the drought conditions and secondly they are trying to put some further money aside for these consultancies and legal advice on the allocations process. They have spent \$70 000 or \$80 000 on legal advice and consultancies and they needed to raise money to cover those costs as well as spend the \$300 000 they had in the bank on the Hamilton pump scheme, so they actually overspent. We have not even covered the legal advice as yet, which is a shame because that is crucial as to why we had the motion of no confidence in the trust. We have not seen this legal advice.

**Mr FLETCHER** - Setting aside the emotional law, the political outfall that may arise from this scenario and considering the impact on operations, what would be the impacts of increasing the cost per megalitre to \$30 a megalitre?

**Mr ARCHER** - I know that is the figure regarding which we are saying, 'Where's the justification for it?'. Whatever the cost of water is, it would have to be justified. That is the first thing because we do not accept the debts of the trust, we have not seen the legal advice so we are not accepting that they were genuine or in good faith.

We do not necessarily accept the expenditure on the Hamilton pump scheme either. They had the \$300 000 in investment funds. They are allowed to spend that apparently but they have no right to borrow money without the irrigators agreeing to it; they need to have a poll of irrigators to agree to it before they incur any further liability. Then there's the question of whether the Clyde Water Trust was a valid entity at the time and did they approve this expenditure when there were quorums at the meetings. I don't think they were. My solicitor tells me that the trust was out of date in Christmas 2001. It became invalid; it wasn't a valid entity. They had no right to spend any money. They hadn't had elections. The Government urged them to have elections and they still didn't have elections.

**Mr FLETCHER** - What is the difference between the south-east irrigation area and the Clyde River area, where the irrigators in that area can pay \$50, \$60 or perhaps \$90 a megalitre for water, and it's impossible to pay more than \$12.50 per megalitre in the Clyde River irrigation area?

**Mr ARCHER** - A good question. Those people down there lobbied for the south-east irrigation scheme, stage one and stage two. My research into it suggests that the cost of water there is reflecting accumulated incompetence by the commission. The only way those farms survived is that they either had off-farm money or they were allowed to subdivide it and sell it to a doctor who put in a vineyard, or sell it to someone for an apricot orchard. Outside investors would come into the district, as you know, but it wouldn't have happened without the miracle of subdivision. It wouldn't have been possible. That is what has kept that afloat: without the miracle of subdivision from the Clarence Council, a lot of the original farms there would have gone broke.

**Mrs SMITH** - And the miracle of water? Where would you put that in the equation of the vineyards and the fruit farms, and so on?

**Mr ARCHER** - It has certainly given them the opportunity. A small intensive area has worked, but it will not work here because we are a frost area. There is no-one putting in grapes and cherries in at Bothwell. I can't understand how the commission gets away with it down there. They must be placid farmers, or something, because \$1.6 million of government money gets put into that scheme, so all the capital costs are covered by the Government.

Apparently they are raising just enough money to pay for depreciation on the Craighourne dam and the pumps, which is depreciated over 20 years for the pumps, probably, and the dam is 100 years. I can't see how the cost of water there could be more than \$50, yet it's \$180 on the pump scheme from Richmond to Cambridge, and no capital cost. It is extremely inefficient. I know on my own farm that maintenance on my pumps is \$1.50 a megalitre, and that's over 10 years. So where the money goes down there is a separate matter.

**Mrs SMITH** - Just two questions. Firstly, if the Auditor-General actually looks at the affairs of the Clyde Water Trust, financially and so on, and comes forward with a report, do you think the concerned irrigators that you are representing would be accepting and comfortable with that final report?

**Mr ARCHER** - No, we do not have faith in the Auditor-General to do such a report. The Auditor-General will add up the figures, which he already has done, but the Auditor-General has no power or insight into whether expenditure was either lawful or in good faith. He's out of his depth there; it's not his job. We've tried this. It's been put to us; the Auditor-General says the figures add up, but that's not the point. The point is whether it was done lawfully or not, or in layman's terms was it done in good faith or with something else in mind. So the expenditure on the legal advice might add up. There might be \$70 000 of legal advice on the books that has been invoiced and has been paid. We're saying that that expenditure is not in good faith and we're not accepting it until we've seen the briefs that were sent to these solicitors, because the solicitors appear to have been told there are no minutes of the Clyde Water Trust. That's one of the three things.

In this file here, just to give you an example, there is about half the Clyde Water Trust minutes. It seems to us that the solicitors have been told there are no minutes of the Clyde River Trust and someone else is answerable for that expenditure because they tried to allocate \$10 million worth of water on false information given to the solicitor who had been asked to adjudicate on it.

**Mrs SMITH** - One final one, Mr Archer. Amongst the documents you provided, document C7 is a legal contract, Dobson Mitchell and Allport, Michael O'Farrell. It is an agreement from 1996. Is this a standard copy of agreements between the trust and farmers when they apply? What is the rationale for this in the paperwork?

**Mr ARCHER** - That one is in the paperwork. That is one the trust did for me, but it was never finished. I didn't accept that document because one of the conditions says that the trust can tell you that you can stop taking water whenever it feels like it, so it wasn't worth the paper it was written on.

**Mrs SMITH** - So you did not support this because of clause 5(1), which talks about reason of termination?

**Mr ARCHER** - That's right. That is included in the document because of the reference in there to priority. The trust's own solicitor refers to priority in his own document in recent years, so that was one of the supporting documents.

**Mrs SMITH** - In your information would any of the irrigators in the Clyde Water Trust process actually sign such a document as this?

**Mr ARCHER** - No, I don't think any at all. All the approvals in the trust system are all recorded in the minutes or correspondence. There is a big portion of correspondence that went missing from 1996 at that time - correspondence recording approvals in the 1960s and 1970s. They are not in archives; the trust does not have them; where are they? There should be folders full of correspondence and they have gone missing. They were there in 1996.

**CHAIR** - I will give you the opportunity to make any final points, Mr Archer.

**Mr ARCHER** - If I am summarising, I suppose the main thing is that we would like the committee to focus on the five-point structure that we are suggesting is appropriate for

the allocation of water on the river - that is on page 3 of the executive summary. If you turn to the final page - page 28 of our submission - we have our recommendations there, which are fairly broad but are specifically important in that the five-point structure is protected. Number 4 of those recommendations is that we are asking the committee to recommend legislation protecting the existing rights as outlined in the five-point structure. That is probably the most important thing for us. Number 1 is: conclude that the allocations process that was carried out in accordance with the act was appropriate - we have not had time to talk about that - to investigate the impropriety and lack of transparency that led to the motion of no confidence in the trust; investigate the financial consequences of the questionable processes, and apportion responsibility for same; and to recommend legislation protecting the five-point structure. The last one is to recommend that the trust be reconstituted by elections at the nearest opportunity. It is strongly our desire to have the trust back in our control, not as a government entity.

**CHAIR** - Thank you very much for your evidence.

**THE WITNESS WITHDREW.**

**Mr PAUL ELLIS** WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIR** (Mr Hall) - Paul, we have your written submission so I would ask you now to expand on it and make any points that you would like to make to the committee.

**Mr ELLIS** - First of all I would like to say that I am here representing the secretary and a member of committee B and I am also here as an irrigator.

In my submission I covered several points. The first main point is the recent use history. I totally reject the use of any recent use history for the allocation of water rights in this process because the committee C that was set up used a five-year period for the allocation of water rights and on the figures that were put to the Clyde Water Trust for those years, it is a period where we were in our 100-year drought, there was an unlimited use of water, people could put on as much as they liked, it was cheap, it was \$2.50 a megalitre and the figures that people put in were not metered, no official data logs went in until 2000 so it was purely estimates and I do not believe they were true and accurate of what was truly put on in those days.

A rumour went around that the amount of water that you used would affect your water right and so that inflated it even more. On the returns that were put into the trust, there were significant increases in water used by everyone. I do not think that they are a true representative to be able to base water rights on them.

The other issue I touched on, which was in the terms of reference, was sustainability. To back up the points I have made in there, I would like to table a map which is a map put out by DPIWE depicting salinity areas in Tasmania. The two hot spots in the whole of the State are Bothwell and Tunbridge. The Bothwell area is really depicted by the channel flows of open irrigation drains.

I think to flood-irrigate these areas continuously in the future is going to be unsustainable without having serious implications for those land areas. That is about all I want to cover. I am ready to answer questions.

**Mr WILKINSON** - I want to ask you a broad question, if I can. How do you believe that the problems that have arisen can be solved? If I can make it easier, the question is, firstly there seems to be a problem reading the documentation in relation to the trust and the moneys expended by the trust - correct?

**Mr ELLIS** - Yes.

**Mr WILKINSON** - Are you able to say what the debt of the trust is?

**Mr ELLIS** - No. The trouble that has arisen is that the Water Act was changed at the last minute in the corridors of Parliament. Agreements in force and priority of supply were written into the act. The problem was that they were not defined in the act. We all know what they refer to. They refer to the minutes and they refer to the priority decision of the trust in 1976. Now if they had been defined I do not think we would be here now



because it would be very clear what they meant. It is just that lawyers can legally challenge it, and that is why we have gone down this long track of looking at legal opinions and legal advice and things like that.

**Mr WILKINSON** - It would seem to me, firstly, that some of the problems have arisen in the eyes of many as a result of the debts that have accrued at the hands of the trust.

**Mr ELLIS** - Yes.

**Mr WILKINSON** - If the Government was requested to pay the debts, whatever they might be, it would seem that the people are asking are they going to recoup it off the 21 irrigators. Is that correct?

**Mr ELLIS** - Well, they would have to recoup it somewhere, wouldn't they?

**Mr WILKINSON** - Well, did they recoup it at the Craighourne dam. Some would argue no. There was a sum of money put into that by the Government and they did not request the irrigators to pay money for the infrastructure that went on with the irrigators.

**Mr ELLIS** - I think the Clyde Water Trust has spent this money, and how much the debt is I don't know, but it is the responsibility of the irrigators to take on that debt, but they are not prepared to take it on until it is fully justified - where it has gone to, the reasons why, and whether it was constitutionally correct. It is a big worry.

**Mr WILKINSON** - So that is one of the worries, the worry of the debt and how it came about -

**Mr ELLIS** - Yes, and why.

**Mr WILKINSON** - and why it came about. Okay. Forgetting about the debt, how else do you believe this matter can be sorted out?

**Mr ELLIS** - The five-structure plan that was put up by the group, and with the motion that passed at that meeting, that sets up a methodology by which water rights can be issued. If the trust had supported those and taken it to the minister, and the minister had fixed the legislation to support that, then that is the road to go down. And that is what the act is actually saying now. It is just not defined. So to solve the problem would be to use the methodology of that five-point-structure plan and, if it is open to legal challenge, then legislate to fix it.

**Mr WILKINSON** - And should the trust still monitor who is to get the water and how it is to be allocated?

**Mr ELLIS** - With that structure set up it is quite easy to do it.

**Mr WILKINSON** - And how should the trust be manned? Should it be two people from the south, two people from the north, two people from Rivers and Waters?

**Mr ELLIS** - Are you talking about having elections fairly soon, then?

**Mr WILKINSON** - I am just talking about how it should be made up.

**Mr ELLIS** - Well, probably, yes. This should be open to anyone who wants to come forward, as long as it is an irrigator. I think there should be a recommendation that there should be someone from the Government there.

**Mr WILKINSON** - And how often should there be elections, if there should be elections?

**Mr ELLIS** - Every five years, I would say. It would probably be a good idea to set it up so that there is an election every two years to replace members, or an election for one member so that you have continuity, instead of getting the whole lot kicked out in one slab and a new group in.

**Mr WILKINSON** - A bit like the Legislative Council. So as far as the concerned irrigators group is concerned, you would say that a conclusion along those grounds would be comfortable?

**Mr ELLIS** - Well, it is in the Water Act now. That five-point structure is in accordance with the act now. The only thing is that it's apparently open to legal challenge, and I think we should fix that loophole.

**Mr FLETCHER** - So, Mr Ellis, you support the passage of the retrospective legislation that denies people their rights at law?

**Mr ELLIS** - You had better explain that to me.

**Mr FLETCHER** - It seems to me you're suggesting that the Parliament change the law, to backdate the law, to deny people rights that they may well have had or believe they had at a moment in time.

**Mr ELLIS** - No. I am saying that what needs defining in the act is the agreements in force and the priority of supply. The five-point structure plan is the methodology to bring down water rights; it would be quite easy to do that. With committee B's acres and figures, it's quite easy to slot everyone in.

**Mr FLETCHER** - So you're suggesting that there needs to be doubts removal in regard the definition, or a clarification of the definition to make it clear.

**Mr ELLIS** - A clarification. I think at the start of the act it defines certain terms in parts of the schedule. I think it's just a matter of defining what 'agreement in force' is and 'priority of supply'.

**CHAIR** - In your submission you talked about committee B, and then you note that the recommendations of committee B failed to gain support from the chairman of the Clyde Water Trust, who then dismissed committee B. This proved to be the end of the open process of water allocation and the beginning of a protracted period of distrust and a lack of disclosure that has led to the current situation. I understand that from the end of committee B, and then Marsden Jacob were engaged, and then there was a facilitator, Mr Andrew Beattie. So are you saying that in those two processes it wasn't open and transparent even with the facilitator in place?

**Mr ELLIS** - No. The end result of that was that committee C was formed and water rights were drawn up, sent to the minister and no-one knew what they were. So, yes. Why weren't we informed what our water right was going to be?

**CHAIR** - So the allocations that were made by committee C are the ones that I think may be the proposed allocations?

**Mr ELLIS** - That's what I understood, but they weren't put to the minister.

**Mrs SMITH** - Mr Ellis, in your opinion, how many properties of the 21 irrigators, I think we're talking about, would have the capacity for on-farm storage?

**Mr ELLIS** - In various amounts of on-farm storage, probably most of them could do it to some degree. The point about on-farm storage is that not everyone can build dams. You have to have a site and you've got to be able to fill it, whether that's filled from the river or filled from a creek, or something like that.

**Mrs SMITH** - Yes. I was looking to get someone's opinion who knows the area well - a percentage of those who could. You brought out in your recent history that there's no official metering of water. I believe that Rivers and Water as managers are in the process of metering the water, so there is meterage in the future. Do you support the concept of water metering?

**Mr ELLIS** - I think there's no doubt that meters will have to be installed; how they are paid for could be a problem. From my point of view, I would not like Rivers and Water Supply to own anything on my property. I don't mind them installing the meter, but I'll pay for it, and that's what I would support. The meters would be installed, but each individual property would pay for their own meter.

**Mrs SMITH** - I think my interpretation under the Water Management Act is that the minister can tell people to put a meter on and it would be at the people's expense, not the minister's. So I think your presumption would be correct there.

**Mr ELLIS** - The understanding we had from Rivers and Water Supply Commission was they were going to put them in and then charge as a cost per megalitre, which I can't agree with. If they go in, they go in and are paid for by each property.

**Mrs SMITH** - Your opinion, considering the past history and the concern in this area about where all this has led, on a concept when the meters are in of something, written into an act, that has a three-year moratorium on trading for profit of any water to get a definite basis of the amount of water that is being used in a three-year period? I ask that because there have been some presumptions that some people in their guesstimates may have in the last few years upped what they have actually used, understanding of course that trading of water is something that is legal.

**Mr ELLIS** - Sorry, what is the question?

**Mrs SMITH** - In your opinion, if there was a three-year moratorium put in, the meters used to get tangible information on the amount of water used over a three-year period and the

rider of no trading for profit - so you can help your neighbour by saying, 'Here is my water payment pump costs' but you cannot trade it for profit?

**Mr ELLIS** - I think there was a motion passed in the Clyde Water Trust that there be a moratorium on trading. I thought the moratorium on that part was for the actual selling of the whole right. So, if someone had 100 megalitres of high-priority water, he could sell 50 megalitres of that and it would go to someone else. They would have it permanently. It might have a figure of, say, \$500 or more.

**Mrs SMITH** - The act allows two ways: you can sell it permanently or you can trade on an annual basis.

**Mr ELLIS** - Yes. From my point of view, I am probably one of the few irrigators who has been put in a position where I have to buy water every year because I am a more recent irrigator and didn't put a scheme in until 2001. On the basis of the methodology, I look to be buying probably 100 megalitres of water every year. Where that comes from I don't know, but as far as a moratorium for three years is concerned, as long as the 100 megalitres can be got from somewhere.

**Mrs SMITH** - In your conclusions you make the comment that post-1976 large dams were built to provide security of water for large irrigation expansions, therefore these properties have more than enough water for their needs and no longer need large water rights except as a saleable asset. How do you balance that with what some would call an entrepreneurial process that people decide to spend money and drought-proof their farm to the future rather than rely on a year-to-year flow through a channel?

**Mr ELLIS** - There are several issues there. The first of these dams, the post-1976 dams, were built for the security of water, to have large expansions. They have also been of great benefit to the river but the river is a great benefit to them, too, because those dams would not exist without the river because the river fills them. In particular reference to the largest one, for 10 years after he put the dam in he took no water from the river. When it was known that if he didn't use water it might influence his water right, he took 2 500 megalitres. As an entrepreneurial thing, yes, they have made decisions to build their dams, especially the more recent ones, obviously to try to make money.

**Mrs SMITH** - Or to drought-proof themselves in an exceptionally dry year?

**Mr ELLIS** - They were already sustainable in water. They will drought-proof themselves anyway.

**Mrs SMITH** - Would they have been sustainable if they hadn't built their on-farm storage and just relied, as others do, on the flow-through of irrigation channels?

**Mr ELLIS** - Probably not. The drawn-down on the river would have been a lot greater.

**CHAIR** - Could you argue that the mere presence of those two large storages does give some better security for the river downstream in times of low flows?

**Mr ELLIS** - Yes, it has worked brilliantly in the past. They have been very flexible when there has been a shortage of water. It takes a number of days to let water out of Crescent

get right down to Hamilton. The bailiff at the time, Peter Bignell, used to call on those dams if there was a shortage of water, to be able to pull water out of them.

**CHAIR** - I am referring to the private storages.

**Mr ELLIS** - These are private storages. The bailiff used the private storages also and at times they kept the river going. They were of terrific benefit for all irrigators down the river but, at the same time, the river was of terrific benefit to those dams because they were filled by the river.

**Mrs SMITH** - Certainly there have been some issues about the management of the trust. I think you made a comment that you don't believe that the debts should be taken on by all until the trust has justified its actions. I would like your opinion of the Auditor-General actually coming in and auditing the trust. I will clarify it perhaps a little bit better the role of an auditor-general than I did with the previous person giving evidence because the Auditor-General does have the right to do more than look at the dollars and cents of any area. One that comes to memory was response times for the police department, for instance, whether their response times were fair and reasonable within community expectations, so an auditor-general can expand past dollars and cents.

Do you believe, perhaps, that the Auditor-General is the person who could come in and investigate not only the dollars and cents but also the other issues surrounding the water trust, or would you suggest someone else?

**Mr ELLIS** - I certainly suggest there should be someone totally independent. The dollars and cents would be quite easy, probably, to add up and balance. It is the problem of finding out whether the expenditures were legally done, whether they were unconstitutional or done in good faith or whether spent illegally, done for singular purposes.

**Mrs SMITH** - So if you were shown that the Auditor-General's department had the capacity within it to draw on people with financial, engineering and legal expertise, which would probably be the three areas you would need some expertise in to look at the Clyde Water Trust and its past history, do you believe they would give you a fair and reasonable decision? The Auditor-General has to be independent of government and has in the past criticised the Government; that is how independent that position is.

**Mr ELLIS** - Do they have the authority to look at briefs and things like that that were sent to the solicitors, to dig them out to see whether they are relevant to what was asked?

**Mrs SMITH** - Our legal eagle at that end may be able to expand on that.

**Mr WILKINSON** - They would have the ability to request any documents that they believe would be of assistance to their investigation.

**Mr ELLIS** - And whether they were relevant to what was going on in the community at the time, whether it was seeking their own personal agendas or anything like that? Would they be able to target anything?

**Mr WILKINSON** - They can look at a number of things other than dollars and cents. There have been a number of investigations that are held yearly by the Auditor-General that do not just look at dollars and cents.

**Mr ELLIS** - With that information I have to say I would have to support it, as long as it is done properly and not just washed over. We have already had the audited accounts, the annual returns for the trust. There was a complete change of accounting practice within those yet the Auditor-General just ticked it off. That is what his job is but I was unaware of what other powers he had.

**Mrs SMITH** - They even looked, for instance, at bullying in schools; they did a report on that and they draw on expertise as required.

**Mr ELLIS** - So they can commission other people to look into it?

**Mrs SMITH** - Yes, and they would have to manage the whole process. I am just looking to see whether you saw that as a reasonable track to take.

**Mr FLETCHER** - Paul, you're secretary of the committee B process and you are representing committee B by being here today. I have focused on this price structure and am still looking to formulate an opinion in relation to that, but it seems to me that the whole of the committee B program ignored the price of the water and whether the price of water was of any consideration at all in determining the quantities used or wanting to be used by irrigators. Am I right in concluding that?

**Mr ELLIS** - Yes, you are. It was raised in one committee B meeting, and I raised it in, I think, in 2000 when there was a huge restriction on water. The trust asked committee B to allocate water on a needs basis. I thought at that time it was probably irrelevant. All you had to do was charge \$30 a megalitre. There was plenty of water in the whole system for everyone because it became uneconomical for people to flood irrigate. The only thing it would be used for would be high-value crops.

In a time of water shortage, at that stage the trust was running out of money, I thought it was a good idea. As an ongoing process, I don't think it is probably relevant to the Clyde River as it should represent the cost of delivery of water in the Clyde River. It is not relevant to national values of water. The Clyde River is unique. We own the water, from where it comes to where it goes - right through the whole system.

**Mr FLETCHER** - Who owns the water?

**Mr ELLIS** - It would be the trust - the water that is delivered out of Crescent.

**Mr FLETCHER** - You don't subscribe to the argument that the people of Tasmania collectively own the water?

**Mr ELLIS** - No. The trust has a licence for 10 000 megalitres, don't they?

**Mr FLETCHER** - Yes, they do. But that licence is granted by somebody else and it is granted by eventually the Government on behalf of the people of Tasmania, so we can trace it back to the people being the owner.

**Mr ELLIS** - I won't argue with that. They have a 10 000 megalitre water right licence, so they have a right to deliver that down the river.

**Mr FLETCHER** - It is an important concept, from my point of view, because if we take the parallel of the people of Tasmania owning the abalone fishery and as the price of abalone increases the people of Tasmania get a share of that through a royalty or a tax or whatever, if water is the same as the abalone and the people of Tasmania own it, if there is an increase in price, perhaps there could be a market price determined that would allow the people of Tasmania generally to share in the increasing price of water. So the market determines what the price of water is and part of that market price is a royalty to the Crown.

**Mr ELLIS** - Would the market price be in the Clyde valley?

**Mr FLETCHER** - I don't know where you would determine it, but it is just a concept that I have been thinking about and I have wanted to hear argument about.

**Mr ELLIS** - My understanding is that the trust will have control of the water. They are a separate entity. I think the Rivers and Water Supply Commission has said they want to set them up, like they have been, and then the price of the water will reflect their ongoing running costs - and it should, too.

**Mr FLETCHER** - The point I am clarifying at this stage is that the allocation of 8 000, 10 000 or 12 000 megalitres of water ex Crescent is a licence that is given without any cost associated with it. Rivers and Water do not charge anything for the allocation they make to the Clyde Water Trust. Is that fact? So the Clyde Water Trust only charges for the cost of its infrastructure - the cost recovery of that.

**Mr ELLIS** - Yes, that is how it works.

**Mr FLETCHER** - In your summing up, would you address whether there is small/great potential for further economic development in the irrigation area? That is one of the points you have made in your conclusion.

**Mr ELLIS** - Any economic development is dependent upon the return. If the return is there then the crops will be grown. We have had peppermint down the Hamilton valley for a long time and in more recent times we have had spuds, garlic has been grown locally, tulip bulbs. If the return is there, the water will be used to grow those cash crops. You have probably seen that in the Coal River Valley. It has expanded into apricots, grapes and things like that. There certainly is potential for more water usage, but the returns have to be there. We have probably seen a shift in the last 10 years from flood irrigation into poppies, with centre pivots and spray irrigation, so yes, there is more potential. The only thing holding it back is the return.

**Mr FLETCHER** - Or the availability of water.

**Mr ELLIS** - Yes.

**CHAIR** - Thank you very much for your evidence, Mr Ellis.

**THE WITNESS WITHDREW.**

**Mr JAMES HALLETT**, MONTACUTE PTY LTD, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIR** (Mr Hall) - Mr Hallett, we have your written submission. Would you like to expand on that and make any points that you would like to make?

**Mr HALLETT** - I would. I am representing the Montacute Company which owns the Sherwood property suited on the Clyde River. Prior to the introduction of the Water Management Act 1999, the Clyde River was administered by the Clyde Water Act 1898. Prior to that, in 1857, William Langdon, who was the owner of the Montacute properties which included Sherwood, and the founding member for Derwent in the Legislative Council, introduced the Clyde River Water Bill into the Legislative Council in order to secure a water supply through the construction of a dam known now as Lake Crescent. In 1850 the river flats at Sherwood property were irrigated by means of a 110 metre tunnel dug through the side of a hill on which the outlet side had water entering stone drains some 30 feet above the river. This allowed for the irrigation of the some 50 acres. By 1861 this had grown to 240 acres.

Sherwood was one of the original irrigators on the river and founders of the lake storage which supplied the Clyde River and its requirements. Sherwood has always had a sleeper's water right and, with the assessed megalitres in relevant categories, should retain and deserves to retain this water right without any discount. Sleepers is a generic term used for irrigators who have not used their full entitlements for a period. Elsewhere in Australia sleepers' licences are common and are not penalised. It also can be argued that there are benefits to the environment through increased flow in the rivers as their entitlements are not always used to full capacity. Water made available by an irrigator not actively using his water right simply means either the water can be held in the lake or it can be used by others or, as I said before, the environmental flows will be increased because it is not being used. Therefore I believe the rights of sleepers and dozers to full entitlements in their categories should be upheld.

**Mr FLETCHER** - Should a sleeper pay a fee for the cost of the water they don't take?

**Mr HALLETT** - No, I don't believe they should.

**Mr FLETCHER** - The water is set aside for them. It is there if they need it. There is a cost in keeping that water. Why shouldn't they pay?



**Mr HALLETT** - There is a cost in keeping the water there. There are not a lot of ongoing costs. It is held in a storage. There is not a lot of maintenance so I don't see where the maintenance is in a dam. I do not see why you should have to be paying ongoing costs for that water if you are not using it.

**Mr FLETCHER** - Do you have a domestic supply or on-farm supply that needs complementing from time to time? Why does a sleeper occasionally use water?

**Mr HALLETT** - The original Sherwood scheme was a flood irrigation scheme and over the years through, I suppose, lack of maintenance on drains and that sort of thing, that has become a fairly inefficient way of watering on that property. Although the irrigation that happens now on Sherwood is through spray irrigation, there is no point pumping a lot of water for little gain. Trying to be responsible with the water use and only using it when necessary I think is a fairly big issue.

**Mr FLETCHER** - Yes, so the real value to you in water would be in your capacity to trade that water?

**Mr HALLETT** - Yes, I guess it would be or, as I said, to use it as an environmental flow or someone else can use it.

**Mr FLETCHER** - You are suggesting to me that there are three benefits: one, as a sleeper you have a water right that you could trade, you could elect not to trade and to leave it in the environmental flow in the river to improve the river.

**Mr HALLETT** - Or leave it in the catchment.

**Mr FLETCHER** - Or, three, leave it in the catchment.

**Mr WILKINSON** - Or, four, use it.

**Mr HALLETT** - Or use it in the future.

**Mr FLETCHER** - Your infrastructure is not set up to use it, is it?

**Mr HALLETT** - Not presently but it could possibly be.

**CHAIR** - Have you got the capacity for on farm storage at all?

**Mr HALLETT** - Montacute has on-farm storage on other properties which are not close to the Clyde and the waters are caught from run-off basically. It is not pumped out of the river; it is just the natural catchment area.

**CHAIR** - What's the reliability like infilling those?

**Mr HALLETT** - It's good.

**Mrs SMITH** - If I could get a clarification, you say that you have a sleeper licence that you can use occasionally. Can you tell me the difference between sleeper and dozer then in a time frame? When do you say it's a sleeper as against it's a dozer?

**Mr HALLETT** - I can't tell you the difference between a sleeping right and a dozing right. I don't know the answer to that question.

**Mrs SMITH** - You say sleepers don't pay for water because they don't use it. If I equate the telephone and Telstra, we all pay a rental and that is seen as a contribution to the infrastructure and when we actually use the facility, we pay per use. Why would you see that sleepers should not contribute to the infrastructure?

**Mr HALLETT** - We are quite happy to pay a service charge for what is a sleeping water right. The service charge is different to an ongoing cost per megalitre of what that sleeping right is.

**Mrs SMITH** - So if there was an administrative charge and a usage charge, you would see it fair and reasonable for dozers, sleepers and users to pay the same administrative charge -

**Mr HALLETT** - Certainly.

**Mrs SMITH** - and then as you use it another charge?

**Mr HALLETT** - For sure, yes.

**Mr FLETCHER** - Can I clarify an element of doubt that cropped up then? There is only one licence, isn't there? The licence is to take water. A sleeper or a dozer is simply a decision to exercise your right or not to exercise your right. There is no separate licence that says you are a sleeper or a dozer or anything at all, there is simply a licence with a right to take water and your licence is the same as anybody else's, pre or post 1976 with that proviso on it.

**Mr HALLETT** - Yes.

**Mr FLETCHER** - Do you see there is or there is likely to be a demand for more water in the irrigation area in the future? Do you see there a potential for further economic growth if more water was available?

**Mr HALLETT** - I can certainly see the potential for more growth, for sure. I think the years are going to be dry, I think everything points towards that, and I think water is going to become a very important commodity in the future. On average dry years I think the use of water will be as much as it is now or possibly more.

**Mr FLETCHER** - Has that situation come about because of climatic change, do you think, or because farming practice has been built around a plentiful supply of water?

**Mr HALLETT** - Certainly the climatic change has had a fair influence. Both have had an influence, I think, especially with the more efficient use of water through spray irrigation that has evolved over the years. It has allowed higher returns, I suppose, per land area over and above a flooded area which was before any of these new irrigation practices had evolved. It's certainly become more efficient these days. With that, I suppose everything keeps evolving with it, and I guess there'll always be, with population growth and so forth, that need for irrigation.

**Mr FLETCHER** - You're a supporter of the concerned irrigators paper, you were part of that? Do you think that group's got it totally right, or would you have suggestions that could improve their case or improve their recommendations?

**Mr HALLETT** - No, I think it's pretty much all there. It's just the five-point structure, with a few recommendations. I don't think it's anything over the top. I think it's just trying to get everything sorted out as quickly as possible. This has dragged on for a fair while now and it's got to be sorted out. It takes a hell of a lot of people's time trying to get their heads around all of this.

**Mr FLETCHER** - I guess if it was easy to sort out, it would have been sorted out by now. The fact that you've made the point that it has dragged on for so long might well mean there are irreconcilable differences between the parties.

**Mr HALLETT** - I don't think they are irreconcilable, I think a process needs to be put in place to address some fairly basic issues. Transparency seems to me to be one of them; it's fairly high on the agenda.

**Mr FLETCHER** - So you seem to be arguing that an arbiter is probably the way, that it needs an independent party to make a judgment that is binding on the two sides of this argument.

**Mr HALLETT** - Certainly someone independent; it definitely has to be someone who's independent to look at it.

**Mr FLETCHER** - If an independent party were to make a judgment, you'd be bound by it?

**Mr HALLETT** - Yes, we would.

**Mr FLETCHER** - Good, thank you.

**Mr WILKINSON** - Just furthering that a bit, the evidence we've had today - and I know we have just had it from the concerned irrigators and haven't had it from the other side, I suppose - has been on the basis that there is some concern, and the concern mainly is about the lack of transparency in the Clyde Water Trust. Is that correct?

**Mr HALLETT** - Yes.

**Mr WILKINSON** - And therefore there is a belief that even though things may not have gone your way, but if there was a transparency - say, you were aware of why they hadn't gone your way - there wouldn't be the unrest that there now seems to be?

**Mr HALLETT** - There are a lot of issues that have half addressed a questionable process, I guess, that have questions that need answering. Talking about the fairly high value on the 10 000 megalitres is talking about possibly \$2 million worth of water. It's a fairly serious issue; I see it as very important in trying to determine the allocation process.

**Mr WILKINSON** - Who then should control the allocation process? Should it be a body that is still known as the Clyde Water Trust, but have elections for that body to see who's

on the trust? Or alternatively, should it just be people from government? How should it be made up?

**Mr HALLETT** - No. I think it should be retained as a trust entity.

**Mr WILKINSON** - With a trust entity, though, should there be people from government on that entity?

**Mr HALLETT** - I don't have a lot of faith in the Government and the part in the process they've played so far with the department and the Rivers and Water Supply Commission. They've had the power under section 208 of the act to look into some of these issues, but no-one's actually stood up yet and made the phone calls. I suppose someone, as long as they're independent, we need to be able to gain some trust, I guess, in the future as to where they sit with the Clyde Water Trust.

**Mr FLETCHER** - I asked a question of the witness just a few minutes ago and he responded that he was in favour of an independent person or a party with that expertise making a decision, feeling that he would be bound by that decision. I notice in fairness to you that the other member of your delegation, Mr Archer, who is still under oath in relation to this matter, is shaking his head and disagreeing in relation to that. I wonder could I ask a question of Mr Archer then in relation to the concerned citizens group and how would your group generally respond to the concept of an independent arbiter with expertise making a judgment as to the fairness of it, and whether you would agree with that process?

**Mr ARCHER** - The word I just underlined here that I passed to my colleague was 'this committee'. This committee looks into all these matters transparently, yourselves right now.

**Mr FLETCHER** - Yes.

**Mr ARCHER** - Or next week, and by the time you finish tomorrow you will have to ask the 36 questions that have never been asked, and demand the production of documents that have never been released, and not someone else. This has been hand-balled to consultants and lawyers and all these things have never been credible. They have all been influenced from outside. People who claim to be independent have not been independent.

**Mr FLETCHER** - But, Mr Archer, you have presumed that my use of the word 'arbiter' means a single person. It could be a group of people. This committee could be an arbiter. If it was independent and listened to the evidence and made a judgment, would you be bound by it? Would your group be bound by the judgment of this committee?

**Mr ARCHER** - Our group wants to see the committee investigate first. We haven't achieved transparency yet. Having achieved that, we probably would be bound by further advice that was done properly, properly constituted. When we first decided to go for legal advice because there was argument about priority and argument about sleepers, I am on the record in one of these committee transcripts that we had two years ago, saying that the solicitors have to be appointed independently, sourced independently, the brief has to be agreed, and then if it is done properly we might all agree that this is going to go to the

High Court and it is going to definitely say that there is no priority, that the minutes of the Clyde Water Trust that have been kept for 150 years were not worth the paper they were written on. If that is what the legal system told us then that would be an end to the matter. But I would say you would be selling yourself short, Mrs Smith particularly, if she thinks she is not as good as the Auditor-General. I think she is more capable than the Auditor-General to weigh up what is in good faith and what is not.

**Mr FLETCHER** - But I am trying to determine, Mr Archer, whether your group would be likely to be bound by an independent group doing their best to make a judgment in relation to this. You seem to be saying to me that you would be bound, provided the independent arbiter played according to your rules.

**Mr ARCHER** - We have been told certain things are independent several times and they have not been, so it just depends on the circumstances of that arrangement. Firstly we achieve transparency - and we haven't done that yet - and then I think we would agree to a process where certain matters are arbitrated on issue by issue - I think is the best way to say it - until we come to agreement. In the past we have just found one act of treachery after another, so we have had a gutful of being told so-and-so is independent and he will do it. We have had the department say they are independent. We have had Rivers and Water say they are independent. We have had a solicitor in Sydney. We don't even know how they came across this solicitor in Sydney. We haven't seen the briefs that got sent to him. What we do know, and only by a bit of good fortune, is that the advice that was sent back is nonsensical, absolutely nonsensical, and has never been corrected and we have never seen the original brief.

**CHAIR** - Mr Fletcher by his line of questioning has given Mr Archer an opportunity to make some further points. That is fine. We are here to get further information. So now back to Mr Hallett. Any final points you would like to make in summing up?

**Mr HALLETT** - Only that I hope the committee can achieve some outcomes and conclude that the allocation process carried out in accordance with the act was appropriate to investigate any impropriety and lack of transparency that led to the motion of no confidence in the Clyde Water Trust; investigate any financial consequences of questionable process; recommend legislation protecting existing rights outlined in the five-point structure of the irrigators group's submission; and recommend the trust be reconstituted by elections at the nearest opportunity. I would see it as a gross injustice for a property such as Sherwood, which is a small irrigator in the scheme of things, to be denied its long-standing water entitlement. The property has been irrigated on and off for 150 years and I think it would be an injustice if we were crucified in the way that has been portrayed.

**CHAIR** - Thank you very much for your evidence.

**THE WITNESS WITHDREW.**

**Mr HENRY EDGELL WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.**

**CHAIR** (Mr Hall) - Welcome, Mr Edgell. We have your written submission. Would you care to expand on it?

**Mr EDGELL** - I would like to expand on a few of the points I made in the submission. In the history of water allocation and use, I made the point that the attitude of the Clyde Trust over many years was to endeavour to supply the continuity of water that people requested. I think we are all of us prone to fall into errors of terminology. The trust never issued a licence. There is evidence in the minutes that it thought about it; they wanted to do it and then they never addressed the issue. They were always operating under a fairly uncertain legal status, if you like, of the trust issuing permission to people to do this and that at various times. So when we talk about 'sleepers' - and we have used that as a shorthand terminology for a category of people we have put into various boxes - it is very easy then for us to translate the rights of sleepers in other jurisdictions - if somebody a water right on the South Esk or something - and say, 'Oh well, those commissional sleeper rights translate into full entitlement, so why shouldn't the ones on the Clyde?'. I really feel that the status of the legal permissions, if you like, of the trust need to be taken into account when it is all being assessed.

I advocate a process of a fair and equitable outcome for all concerned and the concerned irrigators group, to my mind, as far as I know their submission, has an ambit claim. It doesn't purport to be balanced; it seeks to find the points that suits its case. I would assume they have done it very well and assiduously, but I really feel the committee should look at arguments from the other end of the spectrum. That being said, I am not advocating the outcome should be at the other end of the argument either. My family and I would like to see a compromise.

I do say at the end of section 1 that alternatively it could be a no-priority system, with the post and pre-1976 water put in at different amounts. That was the recommendation of Marsden Jacob. I think for practical purposes that is not an alternative that should be pursued, given other people's attitudes - and that is fine with me.

In the next section I talk about production from irrigated land is at least double that of a dry State. I was actually meaning to talk about animal production, pastures, et cetera and the irrigation of crops. It is necessary to have irrigation for them. They probably would not occur without the irrigation.

Going down to section 3, I mentioned the surety of supply, in the current licence, of 10 000 megalitres which is issued to the trust at present. When the water management planning process works itself through, the rules we put in place modify that 10 000 megalitre licence and it will be dependent upon the levels of the lakes. There is a computer model which predicts the outcome of lake levels at the end of the irrigation season, putting in place a standard amount of evaporation, if you like. There will be more megalitres available from the model and that will be the allocation that will be available for people to take up.

The water management process also requires environmental flows. They consist of minimum flows. I am talking now of tributary flow from the Clyde River. That is another source of water that the Clyde Water Trust has at its disposal. That will be given a licence to take water not just from the lakes, which relates to 10 000 megalitres, but also from the tributaries that come into the river down its course. That ephemeral water can be used by the trust to supply people's allocations. It can be used before the irrigation season starts for people to irrigate with if they wish and that has been the practice up to now.

**Mr WILKINSON** - Can I ask where that ephemeral water comes from?

**Mr EDGELL** - Any creek and tributary coming into the catchment below Lake Crescent. Lake Crescent and Sorell are large lakes but they have a smaller catchment area and then there is quite a big catchment off the Clyde Valley itself. Bark Hut Creek et cetera come in and in a year like this they are flowing strongly. They are a source of water for the lower reaches. It does not come out of the lake and that has always been used by irrigators as well.

**Mr WILKINSON** - So that is over and above the 10 000?

**Mr EDGELL** - Yes. It is low-security water because you do not know whether it is going to be there. In the middle of a dry summer it is not there so we are relying more then on the high security from the lakes.

Also, as part of the water management plan, the two lakes, Sorell and Crescent, will have a regime of lake levels. One of the rules proposed is that if water at the end of an irrigation season gets down to a critical point then there will be a penalty imposed in bringing it up again next year. This is the sort of thing that will mean a penalty and it could very well have a severe impact on the supplier the year after.

For all of those reasons it will be necessary for the trust to conserve as much water as possible in the lake. Also, as part of the water management plan process, the Hydro has an interest in the water management plan. They are saying of the water in the catchment that if it is not allocated it is theirs. It is ambivalent if it's actually in the Clyde, but ones on these tributaries mentioned earlier that are caught directly - for instance, the Hallett's dam - could be subject to rules of filling which would mean that they couldn't fill them, for instance, unless the flow at Hamilton is at a certain minimum level. That could constrain the usefulness of that. So that's an area where I believe the Hydro's influence could well impact unfairly on this district.

With regards the notice of no confidence, I don't regard that as being justified because, to my knowledge, the trustees did act in good faith and they did their best. They were caught by circumstances of not being able to properly raise rates because the irrigation licences were not issued. That caused the financial problems the trust found itself to be in. I would be very disappointed if irrigators repudiated the vested trust. The trust is now in administration and I don't believe it can take any action of itself at the moment. That in itself is a problem because it is the appropriate body to act on irrigators' behalf when dealing with issues like the Hydro. It leaves us a bit exposed to those things.

**Mr WILKINSON** - Can I ask how should the trust be made up? You may have heard some comments from one end of the river and by people from the other end of the river, the government's delegate, and maybe somebody else. I just wonder what your opinion in relation to the make up of the trust would be.

**Mr EDGELL** - It should be open to nomination. I don't believe trustees should have to be irrigators; it would be advantageous if some weren't. I would just let the normal elective process take its course.

**Mr WILKINSON** - And who would vote for the people in the trust?

**Mr EDGELL** - The people who hold irrigation rights, or perhaps trusts or companies that hold those rights. So the people acting for those trusts or companies should vote.

**Mr WILKINSON** - And, say, one right, one value.

**Mr EDGELL** - I would like to see one irrigation right, one vote, but most cooperatives operate by one licence holder, one vote. I'm not sure what the legislation says about that.

**Mr WILKINSON** - Right. And you believe that the trust is still the appropriate body to allocate the water - or a trust?

**Mr EDGELL** - You mean after this is all settled?

**Mr WILKINSON** - Yes.

**Mr EDGELL** - To run the river, yes, because what happens is that the water management plan puts a straitjacket on freedom of action. The operating rules are very precise and there's not much room to move, but it will be responsible for raising rates and quantifying the charges.

**Mr WILKINSON** - And there should be an election, should there, for personnel on the trust, or do you believe that once they're elected they stay elected for a six-year period, two-year or three-year period?

**Mr EDGELL** - I think there should be an election perhaps for a three-year period.

**Mr WILKINSON** - And all at the one time, or should that be a system where some members stay on and some go off? Maybe half on after three years and half off after three years.

**Mr EDGELL** - We are a very small group of people, and it's a small thing, so anything that makes it efficient is good. All in, all out would be the kind of thing after three years.

**Mr WILKINSON** - A lot of the documentation has said that there's been a problem with people that are on the trust, obviously, and the lack of transparency. Were you on the trust?

**Mr EDGELL** - No.

**Mr WILKINSON** - What do you say to that?



**Mr EDGELL** - I think the trust's communication with irrigators was not always brilliant, and there was a problem of timeliness of getting things done. I think the trust had problems within its secretariat. Also, it was constrained by not being able to go anywhere.

**Mr WILKINSON** - My view is that most people on all these boards endeavour to do the best they can with the facilities they have; some do a better job than others, as in any walk of life. But in relation to the trust, are you able to say what the debts of the trust are? Do you know?

**Mr EDGELL** - Not precisely, no.

**Mr WILKINSON** - What do you say to a view that there should be knowledge of what the debts are and, whatever those debts are, should the Government dip into its pocket now and pay those debts in order to allow the new trust to start afresh?

**Mr EDGELL** - No. I don't believe the Government has any obligation to fund the debts of the trust. They should be paid by irrigators. Perhaps a loan would be necessary to tide the trust over for a period until they can raise the money for the rates.

**Mr WILKINSON** - Reading through the documents, if I might, some of the irrigators might argue that they had no real say in where the money was spent, they weren't advised where the money was spent, they didn't have any say as to how it should be spent, therefore why should they have to pay.

**Mr EDGELL** - I don't think that stands up under examination. There were several irrigator meetings to which the trust referred major decisions and they were accepted, particularly the expenditure on the Meadowbank scheme - which is the major item. That was passed by a large majority and the budget for that was within the resources of the trust at the time and cost overruns are very unfortunate but they happen.

**Mr WILKINSON** - How do you believe that this whole process should be sorted out? What do you believe would be the most appropriate outcome?

**Mr EDGELL** - I think, given the circumstances, I would like to see your committee being comfortable with the way the Rivers and Water Supply Commission might do it if the legislation goes through. I think the knowledge of the Rivers and Water Supply Commission and DPIWE should be put on the table as well to sort this out. I would like to see those amendments passed that were held up. With the benefit of your report, the Rivers and Water Supply Commission can get on with the job of recommending to the minister what the rights should be.

**CHAIR** - As I understand you are a member of the Clyde catchment water management group.

**Mr EDGELL** - Yes.

**CHAIR** - You referred in your submission to the environmental flow regime and you say that it will have a significant impact on the ability to build storages and thus on the future sureties of supply. Can you give any indication of how significant you think that is

going to be? I take it it is still in a draft form and no quantum have yet been allocated for environmental flow?

**Mr EDGELL** - There are a lot of quantum but not agreed ones. Usually it is a matter of something being put on the table and we pull it to pieces and it may get modified or may not. I guess from the irrigators' point of view there is about 20 000 megalitres in the lakes that the new rules will not give us access to. The lakes are driven by evaporation and there is a huge quantity of water up there - about 200 000 megalitres - if the lakes are full, but we know and expect that about 90 centimetres of evaporation will occur over the summer so whatever is left may be available for irrigation. So what is taken out for irrigation doesn't have a huge influence on lake levels but nevertheless cumulatively it would. The lakes, for instance, have not spilled since 1997 but our usage since then would be impacting on lake levels now.

The 10 000 megalitre licence out of the lakes has an impact. There is also an impact of minimum flow requirements and the ability to take these ephemeral stream flows, which has been part of the scene. That is very much harder to quantify but these stream flows are used for filling private storages in the winter, and sometimes in the summer if there is a flood - which we do get in the middle of summer sometimes - there is surplus water going down the river and people replenish their storages. So we need access to them. I can't be more precise in saying there could major economic effects of it; it is very hard.

**CHAIR** - A proposition was put earlier that there maybe a solution or a potential solution was to split the irrigation district, so those people who had land-holdings down near Meadowbank would irrigate and have entitlements from there and then you would have a split from say the northern irrigators; is that any sort of a sensible proposition or not?

**Mr EDGELL** - Absolutely. The whole concept of the Meadowbank scheme was to have a source of supply for irrigators at the bottom end, which gave people virtually 100 per cent security; that is a huge benefit to them.

It is logical, then, that it is no good trading those rights up the river because the source then has to come from the lakes. I think the criticism of the pump scheme is unfounded. It will be a huge benefit to those people down the river. There is a lot of capacity for expansion and it should be put into operation for this season.

**CHAIR** - I think you mentioned you were a member of committee B.

**Mr EDGELL** - Yes.

**CHAIR** - Since then, the consultants Marsden Jacob have been involved, and also the facilitator. Do you think that was a reasonable open process, those events that transpired since committee B?

**Mr EDGELL** - No.

**CHAIR** - That they were transparent in regard to the other irrigators, that everybody had their fair say?

**Mr EDGELL** - Well, Marsden Jacob were engaged almost at the start of the process, yes, and then we went back to them to help get resolution when we were getting stuck. I think people had a good opportunity to give Marsden Jacob their opinion.

**CHAIR** - I understand there were a small independent group who were determined and who met then with the facilitator - I think it was Andrew Beattie, was it? That occurred after that process, after Marsden Jacob?

**Mr EDGELL** - Yes. Andrew Beattie came in as facilitator late in the day when there was a fair bit of negotiation between Peter McShane, one of the trustees, and Andrew Beattie. He then presented committee C's report which eventually went to the minister.

**CHAIR** - At the end of the day there was a fair bit of discrepancy between allocations from committee B and committee C, was there?

**Mr EDGELL** - Significant but not -

**CHAIR** - Okay. Any further questions?

**Mr FLETCHER** - Mr Edgell, you are a member of committee B and do you support that report and those recommendations unreservedly?

**Mr EDGELL** - I am afraid I had a minority view. When it came to its final report I thought it was too generous to the sleepers. I advocated that sleepers should not be eliminated but go down a category - half their sleeper right to go down a category was what I suggested to committee B. I was not too far away from what committee B were reporting but I was not quite with them.

**Mr FLETCHER** - Could I take you through a number of scenarios that have been recommended to us by the concerned irrigators group and ask for your acceptance or rejection of their propositions? Firstly, that all acres of water be converted to megalitres at the established benchmark of 1.5 megalitres an acre based on the committee B recommendations. Do you accept or reject that proposition?

**Mr EDGELL** - I accept it but could I add a rider that there is a ceiling of 10 000 megalitres in the licence. It is all very well to have a huge water right but if the river is not going to supply it everybody is cut back proportionally.

**Mr FLETCHER** - Okay, I accept that. The recommendation of this concerned group was that the minutes of the Clyde Water Trust be accepted as a true and accurate record of the trust business. Do you believe that to be acceptable and reasonable?

**Mr EDGELL** - Well, the minutes are the minutes, yes, I accept them, but that is not necessarily the only record of business. There would be correspondence.

**Mr FLETCHER** - But surely you would have to accept that the minutes take precedence over correspondence. The formal decision-making process as recorded of a group or of a committee is the official record of that committee.

**Mr EDGELL** - Sure.

**Mr WILKINSON** - The correspondence would be accepted into the minutes anyway, would it not?

**Mr FLETCHER** - The next is the matter you have referred to previously, and that is that the rights of sleepers and dozers - that is, irrigators who have not used their full entitlement for a period - to full entitlement in their categories be upheld. I think you have responded to that with your committee B statement saying you were supportive of recognising the rights of sleepers or dozers but probably to 50 per cent of their initial allocation. Do I represent you fairly?

**Mr EDGELL** - The amount would be a little bit better than that. If we are going to have a two-tier system, if a sleeper had 100 megalitres, found to be by committee B, 50 megalitres would stay in high category and 50 would go to low.

**Mr FLETCHER** - I see. Okay. The next point was that the hierarchy of water rights be structured on the basis of the 1976 policy, so the group are making the point that post-1976 there was a condition attached to the granting of permission to take water. Do you accept that that is so?

**Mr EDGELL** - No. Many permissions were given without reference to the 1976 policy. There was a mish-mash of evidence, if you like, and that makes the whole thing rather murky. In fact the 1976 decision pertained to an application I made and I got a letter from the secretary of the trust - it is in there somewhere - which I accepted on its face value, but it was never explained to me or put into action what it meant.

**Mr FLETCHER** - So if you are a case study, you applied for water in 1976. You received a letter which said you are granted the right to take water subject to the water being available.

**Mr EDGELL** - It was more than that. It was subject to previous licence-holders having priority.

**Mr FLETCHER** - Okay. So, having received that letter, you must accept that there are two levels, there is a priority system in place.

**Mr EDGELL** - Yes, I accept that, to a degree, but how you interpret it is another point.

**Mr FLETCHER** - Could you explain for the benefit of the committee your doubt there?

**Mr EDGELL** - Well, as my submission says, I can see that the people who were using water at 1976, that could be a priority, and making allowance for some sleepers, but to bring it up to 8 000 megalitres is unfair on the people who have invested in water since then.

**Mr FLETCHER** - Okay. The other question I had to raise was a point raised by the concerned irrigators. I think you have already addressed that, but their point was that the priority policy implemented on 21 July 1976 be upheld, so are you saying categorically that, no, that should not be upheld but, yes, it should be upheld subject to certain conditions?

**Mr EDGELL** - I have accepted it as a significant piece of evidence, and it should be upheld to a degree.

**Mr WILKINSON** - To what degree? An obvious question, I think.

**Mr EDGELL** - Whereas the concerned irrigators suggest 8 000 megalitres goes to high priority, I have suggested 3 000.

**Mr WILKINSON** - Can I ask how you came to that figure?

**Mr EDGELL** - It was a bit rubbery, but probably irrigators were using a bit less than 2 000 megalitres back then, those early irrigators -

**Mr WILKINSON** - This is pre-1976?

**Mr EDGELL** - Yes - and probably you could recognise by whatever method another 1 000 megalitres of sleeper rights, but I must admit I have not done chapter and verse on it.

**Mr WILKINSON** - Am I right in saying that you came to the 3 000 megalitres by looking at what the pre-1976 irrigators used and gave them a bit on top?

**Mr EDGELL** - Plus sleepers.

**Mr WILKINSON** - If you had to go down a table and say, 'This is the first thing that should be looked at, this is the second thing that should be looked at' in coming to what you believe an equitable conclusion would be, would I be right or wrong in saying that the pre-1976 users and sleepers should be the initial starting point and should be at the top of the ladder as far as allocating rights is concerned?

**Mr EDGELL** - No, I think it needs to be all looked at as a piece and sorted out in priority after that. Obviously it is a significant thing.

**Mr WILKINSON** - Is there anything more significant?

**Mr EDGELL** - If you are starting from B committee's report of that spreadsheet, the pre-1976 priority is probably the first thing you look at after that is established.

**Mr WILKINSON** - And then where do you go?

**Mr EDGELL** - It is a matter of all those various boxes being put into some bigger boxes. I think you go next to high priority and then to low priority. It is as simple as that.

**Mr WILKINSON** - Were you aware - I think Paul might have mentioned it - of the incidence where the people who, let us say, invested in water after 1976 were given a warning by the trust that it might be dangerous as a result of the allocation of water at some later stage?

**Mr EDGELL** - Except in a few instances, not in relation to the priority issue, in relation to the total supply. The trust was often concerned about total supply and they mentioned 'investment is at your own risk' and used phrases like that, I understand.

**Mr WILKINSON** - In relation to the Meadowbank scheme there has been some comment that in order to get it up to a situation where it is able to properly supply people downstream, there would be a significant sum of money involved. What do you say to that comment?

**Mr EDGELL** - I don't believe it is a significant sum. There is fencing and a bit of erosion in the channel and I think that could be fixed fairly simply. The dam needs a bit of work on it but that is only earthworks. I think perhaps a few thousand dollars would do it.

**Mr WILKINSON** - They are talking about I think 800 megalitres. That is all it would give. Is that correct?

**Mr EDGELL** - It depends how much irrigating people do down there. What it will mean is that instead of letting x number of megalitres pass through Bothwell and make sure they have enough, it can be dropped back to a lower figure because there are not all that many people who take water out between Bothwell and Hamilton. The saving will be the accumulation of a daily flow.

**Mrs SMITH** - Whilst we are still on Meadowbank, it was suggested that the scheme be split into two. It would be fair to say that there has been \$500 000 spent on the Meadowbank process and some more to spend. Wouldn't you think that those at the lower end would have quite an entitlement to have some concern that suddenly they might be lumped with the bill?

**Mr EDGELL** - I don't think they should be concerned, Mrs Smith, because it was never, to my knowledge, in anyone's thinking that that be the case. The cost of running the scheme, which will be a hydro bill and depreciation on the scheme, will be borne by all irrigators.

**Mrs SMITH** - So you would have two schemes but under the one banner of management?

**Mr EDGELL** - Under the one management, that's right.

**Mrs SMITH** - Okay. If the lower level users all irrigated out of Meadowbank, would there then be the capacity in the upper levels to give pre-1976 full entitlement and post-1976 full entitlement and then add the sleepers at 100 per cent or 50 per cent; in your opinion would there be enough water?

**Mr EDGELL** - I do not believe so. The argument gets very intense when there is low supply and there have been years when only a few thousand megalitres are available. Meadowbank will have an effect but not get us out of trouble.

**Mr FLETCHER** - It seems to me that if more water is required in the system Meadowbank is one of the opportunities for more water to be available in that system. It would seem to me that cost is the factor. I use a hypothetical; if water is \$12 a megalitre in the north and \$30 a megalitre in the south, they are going to want to equalise the price. I think you

have suggested the price could be equalised, so at \$15 or \$20 a megalitre over the whole of the scheme, whatever that happens to be.

The Water Act, of course, has brought an extra component into that and that is the right to sell water. If people can draw water out of the northern end of the scheme they have a tradeable right to sell to the people in the north end where there is perhaps more activity and more demand, whereas if you have a water right to Meadowbank you cannot sell that upstream. Is that a legitimate concern?

**Mr EDGELL** - The thinking that I have been involved in is that the process of issuing irrigation rights has to be based on historical use, which was only out of Lake Crescent because if the Meadowbank scheme breaks down it will be necessary to supply the Hamilton irrigators from Lake Crescent or Lake Sorell. They have a right to that water.

What it amounts to is the trust now having another source of supply that can supply irrigators in a particular area with water from another source. That means it is unnecessary for the trust to supply them from Lake Crescent, therefore everybody on the river benefits one way or the other.

The people in the Hamilton scheme benefit by having a very high security supply; they will never have to worry about shortages. Not only shortages of the total allocation but shortages of particular flows on a particular day because the scheme was designed, perhaps too generously, so that everybody could switch on their pump at once so there will not be any necessity for scheduling in that area.

**Mr FLETCHER** - I do not quite understand your last point but perhaps I need to think about that a bit more. I am across the fact that it is a generous scheme that allows everybody to operate if the need be at the same time. The point I was making was that if you are farming in the southern end and I am farming in the northern end, and if you have rights to the Clyde water scheme and I need those rights, you can sell them to me and we can do business.

If your right is transferred in some way to take water, do you envisage that your water rights might be transferred to take water out of Meadowbank? If you take water out of Meadowbank, and that is the right, you cannot then sell the water to me in the northern end if I want it and you want to sell it, because the water is in the south and there is no way of getting it to the north?

**Mr EDGELL** - Yes, I think that's right. The trust has elected to supply those irrigators from a source nearby. For them to sell their water right upstream would create an unnecessary demand on the lakes because in fact the water can be supplied in another area.

**Mr FLETCHER** - Yes, you then argued that if Meadowbank broke down for whatever reason there would still be a need to supply the right from the Clyde.

**Mr EDGELL** - Yes, absolutely.

**Mr FLETCHER** - That is what I can't quite envisage. Are you saying that the water right would remain and the water right would be a right to water from the Clyde River Water Trust and it does not matter where it comes from?

**Mr EDGELL** - I would see it as an obligation on the Clyde River Water Trust to supply the allocation that is made for that, yes. However, let us say there is a restriction of 4 000 megalitres out of Lake Sorell and we are all hurting up this end of the river people in Hamilton can have their full entitlement without any problems and everybody would pay for that, I would say, pay the pumping cost of that.

**Mr FLETCHER** - But the right to trade water would largely be taken away; the right for a southern owner to trade water to a northern irrigator would be lost. That would be the price they would pay for their security?

**Mr EDGELL** - Exactly.

**Mr WILKINSON** - Can I be very brief? Are there any other catchment areas that could be linked into to assist with the water supply in this area? We have heard that there is a couple, whether that is true or not I don't know. What are your views on that?

**Mr EDGELL** - There were ideas of bringing water from the Shannon. I don't think they have actually got legs. I am not sure how far these proposals went but I would imagine the costs would outweigh the amount of money that people would be prepared to pay for it; it is always something that could be looked at.

**Mr FLETCHER** - Could we then ask; will operators in this area be constrained in their economic development in the future or are there big areas available for possible expansion of waters?

**Mr EDGELL** - There are big areas of possible expansion if water is available and markets are available and suitable crops et cetera. It takes a lot of investing in infrastructure to achieve that. There is still a lot of potential in the State. It is not even half developed yet, I would say. The trouble is that the more private dams go in, the more risky it is to get them filled every winter. We have seen evidence in the water management planning process that the river is what they call very 'flashy'; it is either up or down. When it is up it is up for a short time and although there are some big flood peaks that go through, the reliability of getting the dams filled every year is not there. I would suggest that anyone putting in a dam would have to rely on it getting filled every second year.

**CHAIR** - If there are no further questions would you like to make a short summary, Mr Edgell, to conclude?

**Mr EDGELL** - Well, only I suggest, Mr Chairman, that you look at all of the arguments and you then, if your report can, inform the Rivers and Water Supply Commission, who will actually do the job of coming up with the megalitres.

**CHAIR** - Thank you for your evidence.

**THE WITNESS WITHDREW.**



**Mr JOHN FOWLER WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.**

**CHAIR** (Mr Hall) - We have a written submission from you, so would you like to expand and say what you have to say?

**Mr FOWLER** - Mr Chairman, I thank you for the opportunity to be able to do this. Just to allay my nerves, I might just make a general comment about the irrigation and the importance to this whole community, not just to the irrigators concerned. Historically, Bothwell has been known as quite a prosperous grazing area, but to achieve that in the past it has always had the benefit of relief country, so most of the viable properties that expanded over the years were the ones that had some relief country in the lakes, and that is no longer available on the whole. Much of that relief has been replaced with irrigation, so it is a vital part of a viable grazing enterprise in this area.

Grazing in general has historically been the only viable enterprise for this area, but unfortunately the grazing industry is having lower and lower returns per unit. To remain viable the enterprise has to expand to have larger and larger unit numbers. In my time of farming, I hate to say how long it has been, I think it was generally considered that for a grazing enterprise in this area about 30 years ago, probably somewhere between 2 000 to 4 000 of what we call dry sheep equivalents was considered a viable unit. I think nowadays it is probably considered more like 10 000-plus, and the way the returns for grazing are going it is very soon going to be 25 000 and maybe even 50 000 in the foreseeable future.

If this community stays dependent on grazing, probably this area here will support only four or five farms. The ratio of people who are used to manage those sheep is falling all of the time, and it has probably gone pretty well from 2 000 to 10 000, and it is going to go to 25 000 with one person looking after that size of enterprise. On the whole now, most of the properties around here, as far as their grazing side goes, would be able to manage their enterprises just with family labour, so it does not leave much for this community.

We had a council which is no longer here. There are some employees here but really Bothwell has not had much growth in recent times, apart from irrigation. Irrigation is the growth industry of this area and that is really important. There are things like tourism that are nibbling around the edge but they haven't translated into anything as yet. In the future they may but at the moment irrigation has been the success story as far as keeping this community viable. If you have only four or five farms there would be need for this town to exist, so I think it is really important.

My submission is really based on promoting the committee B process as a fair and reasonable process for the distribution of water rights, which was what our job was. As a general comment on the trust, I feel the irrigators lost confidence in the trust. The main reason, I think, was that the trust was decaying in its membership in that the members weren't being replaced. There was really one member who was really interested in it; the other two used to openly say that they weren't really interested in it and that they were only doing a community service. That did not help the confidence of the irrigators. It

did not have any structure. There was no common knowledge as to when meetings were being held; there were no regular meetings, no minutes made available to the irrigators and, in fact, when they asked for them they didn't get them. There was no communication and no policy within the trust. They did not have a structure and I believe the irrigators felt that it was operating in an ad hoc manner.

Once the 1999 Water Act came along it was a really serious issue and committee B was formed. I believe that one of the main aims of committee B was to give people that structure so that they could see why they were given the particular allocation of water and how that was relative to other people who were given allocations of water so that no questions need be asked - 'Why was I given that amount of water?' - because the structure would explain that. I believe that committee B's task was to give a method of allocating water, based on the agreements that were in force at the time and the priority of that supply. I believe that committee B addressed those two important points.

Before I go on to committee B, I will make some comment on some of the questions that were asked by various members of the committee. Mr Fletcher asked a question whether by not using the legal process we were denying people their legal rights. Committee B had a really close look at the agreements that were in force at the time and it was decided that, because the minutes of the trust were not really enforceable legal agreements, we needed some other method of determining that. Part of our structure was to develop a way of defining what the agreements were in force at the time. I don't believe that our process does deny anyone their rights. You did make mention also, Mr Fletcher, that committee B ignored the dollar value of the water. That is true, but it was not ever part of what we were asked to do. But, having said that, also we believe that really, once you have defined the water allocations and given the water rights to the individuals, then the market forces would determine the capital value of those water rights. There are other issues which you have talked about also about the overhead costs and variable costs of the water and how they might be allocated. That is purely an accountancy thing as far as I personally am concerned. Mr Hall mentioned that the Marsden and Jacobs Report became part of the process after committee B finished. In fact they were part of the committee B process. Committee B used them as a reference really to bounce ideas off.

**CHAIR** - So then the facilitator - just correct me if I am wrong - came in after committee B was stood down. Is that what happened?

**Mr FOWLER** - Yes. I believe what happened was that committee B finished its process and it presented its findings and then we had a stalemate and Mr Beattie came in as one option of breaking the stalemate.

**CHAIR** - And he was also involved with some other community members, as I understand it, independent of the irrigators. Is that the case, that facilitator, that committee C, that consisted of -

**Mr FOWLER** - Oh, yes, there was then a committee set up which was Mr Beattie and three non-irrigators on that committee.

**CHAIR** - And you had some input into their deliberations?

**Mr FOWLER** - I was asked for my opinion. I wasn't part of the process. I was just asked to give information. I wasn't reactive in it.

Mrs Smith also asked some questions about sleepers. If I could help to define that, what committee B considered to be sleepers. First of all if I could just say that the information on water usage was only available over 15 years, so what we defined as a sleeper was someone who had only used water periodically within that 15-year period, used water to varying degrees within that 15-year period. A dozer we defined as someone who had some water agreement with the trust but had not used water at all within that 15-year period. Through the committee B process they defined sleepers and dozers for the pre-1976 authority people as 692 acres and for post-1976, as 265 acres. The process we used was to convert those acres to megalitres by multiplying by 1.5.

**Mr WILKINSON** - John, just getting to your sleepers again, you were talking about 692 acres. That was pre-1976?

**Mr FOWLER** - Yes.

**Mr WILKINSON** - That is per sleeper, that is the amount of property they entailed, is it?

**Mr FOWLER** - Yes. Committee B had this problem of what are the agreements in force, and we looked at these history-of-use figures and we rejected those. There was lots of detail around as to why people weren't happy with that, but the end of it was that committee B was not willing to base its water allocations on the history of use, and we came up with this process of going through the Clyde Water Trust minutes and trying to define what the irrigation schemes were that pertained to those particular approvals. We came up with these acres, and then we had to convert these acres into megalitres which we needed for the end of the process. When we allocated, we defined these approvals in acres, we put them into categories because we didn't want to deal with people individually, we wanted to deal with people as groups. There were 692 acres grouped into this sleeper category of the pre-76ers, and 256 in the post-76.

**Mr FLETCHER** - Mr Fowler, I just want to find out a little more about the sleepers and the dozers. It seems to me in listening to other witnesses and reading the submissions that you have had access to mainland situation water trusts and water management authorities, and the like, where sleepers and dozers are defined and are accorded licences. So there has been a track there on which you can base your definition.

**Mr FOWLER** - Yes, but the situation is not identical to other situations. That was the best definition that we came up with. Basically in the Western Australia one, I think, people who had not been using water, when the water rights became structured were asked if they intended to use them in the future. Those who said no lost their water right, I gather, but those who said, 'Maybe' or 'Yes, I will use it in the future' retained their right, even though they had not been using it. These were all people who had irrigated at some time in the past. They had never been asked that question as to whether they were willing to give up their right, and there were some precedents, the precedent where they had not watered since 1960. It was originally a 300-acre irrigation scheme. They hadn't watered since 1960 and then in about the late 1990s, anyway, they suddenly started to irrigate again. They just rang up and ordered water, it didn't go back to the trust. The

permission didn't have to be regranted; it was reactivated purely by picking up the telephone.

**Mr FLETCHER** - I wonder would you comment on my proposition that committee B has used the official records, the minutes of the Clyde Water Trust, to determine certain allocations and to provide a basis for consideration, but nowhere in the official records of the Clyde Water Trust does the concept of sleepers or dozers get a mention at all. Not only has it not been conceived by the Clyde Water Trust at any stage, but there have never been any licences issued and that substantiates that proposition.

**Mr FOWLER** - Every sleeper that's there at some stage was given permission by the trust to water, so they were given permission to water. It wasn't defined as a sleeper. The minutes and things aren't structured well enough to have that sort of structure. That was one of our main problems as to how to structure all of this to get definitions for things that weren't defined. We have given it a name, but what it was, was a person who had been given permission at some stage to water, and hadn't been recently watering, or only recently watering periodically.

I believe the committee B process has achieved what the act asked them to do and, for that reason, having been through this process, I think the wording of the 1999 water act gives what it set out to do, which was to give permanent water allocations for the basis of future water trading. The act specifically says that the job was to allocate water rights in accordance with agreements in force and with particular reference to the priority of that supply. I believe that we defined those two words - 'priority' and 'agreements' - and built a structure that would cope with those. At the end of the committee B process I believe we developed a computer spreadsheet that is very simple to operate and in future, if that system is used, it is purely a matter of putting into the spreadsheet how much water is available for that year and it will throw up what amount of water is available to individuals. I think that is really important because every individual knows the reason why they got that amount of water relative to someone else and there is no argument. It is very clear how much water people are getting under any scenario. That structure can be used for any amount of water up to 15 000 megalitres.

**Mr WILKINSON** - Let us say you have a couple of boys in your family and you have to split your farm up and your property becomes two, how does that fit in with your committee B proposal? Would you look at the total amount of water right that you gave to that property and then say that that person has half of the property and he gets 50 per cent of it?

**Mr FOWLER** - The allocation of water rights happened in 1999. It was a particular point in time, so all this refers back to that time. It is the agreements that were enforced then. Once you have established what people's rights were at that particular point in time, in the future these rights have a value, they have a title, so those titles can be dealt with in exactly the same way as land titles are now. Originally at the end of the squatter era, they had to go through this same process. They had to allocate titles to the land and market forces and things controlled it from then on. Our job is only to define what the position was in December 1999. If someone has a title in the future, say 1 000 megalitres of water and he has two sons, it his title and I imagine he can give 500 to one and 500 to the other, however he so desires. That wouldn't be a matter for the administrators of the river to decide.

**Mr WILKINSON** - I take it that with the number of people we have had speaking to us they believe that there is room for development within the district and so with the 21 irrigators now, one could easily say that in 20 years' time there are going to be many more than 21 irrigators taking water from the Clyde.

**Mr FOWLER** - Yes, and that is perfectly achievable. In the same way that land gets split up, so can water be split up. Our job is to define it in 1999. I believe that committee B achieved a fair process and that that process can be used in the future to very simply administer the river. There is just the issue of what information you put into that process. I have data on how you deal with these different categories. We have defined the priority, and it is just a matter of how you use that priority.

**Mr FLETCHER** - Was your committee unanimous in reaching these conclusions?

**Mr FOWLER** - No. There was a committee of five but, as with all committees, not everybody agreed to every point.

**Mr FLETCHER** - Did your committee members have any conflict of interest? Were they irrigators with a vested interest in the outcome?

**Mr FOWLER** - All except Peter Bignell, yes.

**Mr FLETCHER** - They all did?

**Mr FOWLER** - Yes.

**Mr FLETCHER** - Were they evenly spread across the range of people?

**Mr FOWLER** - Yes, I believe so.

**Mr FLETCHER** - I am not casting a doubt about the integrity of members of your committee at all, but I am wanting to get a feel about how others will feel about it. You will rightly claim - and justifiably claim, I presume - that it was a committee focussed with the best of intentions of delivering the best possible outcome for the river users. What will others say about you? Will they say 'They all had pre-1976 sleepers and dozers among them, and obviously they would find that way'. Would anyone say that?

**Mr FOWLER** - That was the main aim of spending a lot of time on developing the process, because initially we developed the process and then we let fall what fell out the bottom. We were trying not to be too directive in what the outcome was. We were trying to let that fall out the bottom, so that is why we had this process. At the end of the committee B process it then goes out to the irrigators for comment, and their comment was that most of them accepted it and were happy with it. And then, really, first committee B was a sub-committee of the trust. We made our recommendation, the irrigators had their input into it, and it was then up to the trust to deal with it. My perception is that the trust was not prepared to do that. And so it got deadlocked.

**Mr WILKINSON** - So the trust seconded your committee to do the work that you have told us about.

**Mr FOWLER** - Yes.

**Mr WILKINSON** - Your committee comprised five who were all irrigators but for Peter Bignell?

**Mr FOWLER** - Yes. I was elected chairman. There was Paul Ellis, Stuart Archer and Henry Edgell, who were all irrigators, and then there was Peter Bignell. At that time he did have an interest in a property, but I think he was divorced from it.

**Mr WILKINSON** - How was that committee derived? Did the trust ask each one of you to be part of it, or alternatively was there a vote amongst the irrigators for that committee?

**Mr FOWLER** - John Marsden from Marsden Jacobs came over to help the trust start the process off, and he gave us an outline of how that might be achieved. He suggested that two committees be formed; committee A, for want of a better word, which was to deal with the lake issues, and committee B which was to deal with these water allocation issues. That happened here at the irrigators' meeting, and out of that irrigators' meeting came this committee.

**Mr WILKINSON** - So the irrigators had a meeting and the irrigators voted the people to your committee and voted on the people to committee A, did they?

**Mr FOWLER** - It was a trust meeting with all irrigators being present. The meeting was called by the Trust. We went through the formal process where the committee was empowered by the minister to do the work.

**Mr WILKINSON** - At the initial meeting when the committees commenced, was there any argument about the committees, that they should not be committees or that so-and-so shouldn't be on?

**Mr FOWLER** - Within the committee itself?