

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

Mr RICHARD BOWDEN, CHAIRMAN, CLYDE WATER TRUST, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Hall) - Richard, we have your written submission and give you the opportunity to make some comment on that submission.

Mr BOWDEN - Thank you, Mr Chairman. I must say that being the Chairman of the trust right now I feel like the proverbial lamb at the slaughter. It has been a most uncomfortable position to be in in the last few years. I think largely circumstances have got way out of our control. I must say that the other two members of the trust are extremely fine people and as honest as you could find and they did a huge amount of work to try to get it sorted out but it became impossible for us.

Peter Bignell, the Water Controller, became a de facto member of the trust because of his past involvement with the water usage and allocations and everything else and I would like to say the same thing; they were extremely honourable people and put in a huge amount of work but in the end we got into a position where we could not progress any further.

I think that point arrived when Anthony Archer's family put an injunction, we were forced into a position of presenting the figures to the minister. I was not involved because I had a vested interest as an irrigator so I had to keep out of it. When that point arrived we felt that we had nowhere to go. There were threats or suggestion of legal threats and that is what prompted us to go and legal opinions on the 1976 issue which really seemed to be the centre of the whole problem and it went on from there.

There were a series of events that just happened. Coincidentally, at the same time carp were discovered in 1995-96 in Lake Crescent. That compounded our problem because over the next two years Inland Fisheries let about 25 000 megalitres of water go, which is a massive amount of water, equal to probably around three years' average irrigation usage, and that was let go in the winter.

On top of that in 1999 and 2000-2001, we had a really bad drought period which created a larger need for water from irrigators down the river and when the two were put together we found ourselves in a position where the lakes were the lowest they had ever been, they had never been down except originally before the raising of the lakes back in the flour-milling days. Also around that time we managed to secure water from the Meadowbank scheme. It was voted on by irrigators to go ahead with that scheme and even though we had cost blow-outs that looked ridiculous, I still believe that is one of the secrets to solving the issues we have now.

CHAIR - Did you just mention that in your opinion the only way to solve the whole issue is to test it legally?

Mr BOWDEN - Absolutely, because - you have heard it all here today - there are two sides to the argument and even if you people come up with some decision, then there is still a risk of one side of the argument or the other taking legal action and suing. I believe, I am not sure right now, recently there was a similar case in New South Wales and the New South Wales minister was being sued. I don't think we want to go down that path. I am not a lawyer, none of us are lawyers - sorry, Jim is.

Laughter.

Mr WILKINSON - A member of parliament. Some might argue to the contrary, I think.

Mr BOWDEN - We have to get an answer to this one way or another and that is the only way I can see it will happen.

Mr WILKINSON - You were saying, Richard, that things came to a head with the threat of an injunction and that was revolving around the 1976 so-called pre-existing use or the use up to 1976?

Mr BOWDEN - Yes, it revolved around the issuing of the water rights. Under the act, the trust was required to deliver their recommendations to the minister and under the act the final figures were not allowed to be released. Only the minister could release those figures. I think some irrigators probably don't realise we were in a position and up until the very last, to the best of my knowledge, the trust people who were working on it - there are three of them, bearing in mind I wasn't - were talking with irrigators trying to solve it. But that was what triggered the injunction.

Mr WILKINSON - Am I right in saying that when we heard John Bignell's evidence that there was committee B set up, committee C set up, they were subcommittees of the trust?

Mr BOWDEN - Yes.

Mr WILKINSON - They came forward with a recommendation to you?

Mr BOWDEN - Yes.

Mr WILKINSON - You were looking at that recommendation and going to make certain recommendations as a result of what was put to you but because of the threat of legal proceedings, you thought it best to endeavour to sort the legal matter out rather than going any further?

Mr BOWDEN - It's very hard to say exactly that far back but we ourselves were in doubt as to where we stood and we felt that we had to try to clear up what was the true answer - like, did the pre-1976s have all the water or not. About that time too the trust received a letter I think from two irrigators. I can't remember the exact dating of it. It was 4 October 1999. It says:

'As you would be aware, the Clyde River is currently suffering shortfall in normal flow due to works being conducted on a control gate at Lake Crescent. The Trust should in such circumstances instigate the agreed policy since 1976, that being that post-1976 licence users cease taking water as existing pre-1976

licence users have priority rights. The remaining water can be rationed amongst those pre-1976 licence holders.'

I first became involved with the trust in about 1982. I had no knowledge of the 1976 decision. Perhaps I should have done but I didn't until I am not sure whether it was receiving this letter or at about that time I was also called in by a solicitor, one of the trust people, to discuss this same issue. I'm not sure.

Mr WILKINSON - I know Anthony mentioned it in his evidence earlier on where he said - it just escapes me at the moment - the amendment that was made in Parliament in 1999 was agreements in force, or words to that effect. As you probably know and have probably heard, the courts take into account intentions of parliament when they make laws, and what I'm wondering is were you involved with any of the lead-up to that for Parliament and the Government at the time to seem to accept that there were already agreements in force by putting that amendment into the bill?

Mr BOWDEN - No. I believe it was two irrigators that helped Mr Harradine, actually, that added that clause there; it was nothing to do with the trust. We had no knowledge at the time that that was likely to be.

Mr WILKINSON - I don't know, but what it seems to suggest is that the Government at the time believed that there were some agreements in force, and what I am wondering is what those agreements in force were.

Mr BOWDEN - They were obviously aimed at some of the older agreements with the trust, in my opinion. I mean, how far do you go back? You get back to the 1857 act and legal opinion that we've had is that some of that 1857 act still has an influence on the present day. But I'm not a lawyer, so I can't argue.

Mr WILKINSON - It would seem also - and please tell me if I'm wrong - as I said earlier on, I believe that the people on the trust when they put themselves up for these jobs, do so with the best intentions and endeavour to do the job the best they can with the information that they have in front of them, and I ask these questions with that preface. But it would seem that there is some concern from a number of irrigators that the process wasn't transparent, and they weren't told exactly what was going on from time to time.

Mr BOWDEN - I can assure you certainly none of the trust people that I'm aware of had any reason to hide anything from irrigators. If that did happen, it was certainly not the intention of the trust that irrigators shouldn't know. I don't know how that came about. One of our problems was that our trust secretary was also the general manager at New Norfolk, and he was a very busy man. We had trouble contacting him from time to time.

We kept him on because obviously he was very good, he knew the background, and he also had the municipal knowledge that was needed at the time. We just felt that it was at an awkward stage, and it would have been a wrong decision to have appointed someone completely new because they wouldn't have had any background. The trust did talk about it, but I must say that Mr Mackey did his level best and he couldn't have done any more than he did. He worked at night, and all sorts of things, to try to help us.

Mr WILKINSON - We've got a submission from the concerned irrigators, and they have requested that these questions be asked, and it's in the submission. We couldn't give them to you beforehand because you can't do that in committee until you get to the committee stage. If I can ask you those questions, please, if you can do your best with them. If you can't; if you say, 'I can get you the answer to that', we can do that. Can I go through those?

Mr BOWDEN - Yes.

Mr WILKINSON - The first one is, was there any correspondence to DPIWE prior to drafting the bill regarding the provisions for the trust?

Mr BOWDEN - Not that I'm aware of. I think that was aimed at the suggestion of an average of use being the criteria, and there was some suggestion, I think, from irrigators that it was instigated by the trust. It was instigated by DPIWE, it was never any suggestion by the trust - not to my knowledge.

Mr WILKINSON - Did the trust have any meeting with DPIWE regarding provisions for the trust?

Mr BOWDEN - What do you mean 'provisions for the trust'? What does that mean, I'm not sure?

Mr WILKINSON - Neither am I, I'm just reading the question. Did the trust have any meeting with DPIWE prior to or in relation to the trust building up to the time when there was this proposed injunction?

Mr BOWDEN - No, not that I'm aware of.

Mr WILKINSON - The next question goes to legal advice from the Clyde River Water Trust; who chose Jenny Mettler?

Mr BOWDEN - It was probably my suggestion. It came about because my son-in-law is the chairman of a fairly large water entity in New South Wales and we were having trouble trying to figure out who was right and who was wrong and where to go. I was talking to him on the telephone one night and he suggested her because she specialises in water law.

Mr WILKINSON - That is the normal way it goes; you try to find out who the specialist is.

Mr BOWDEN - That's right.

Mr WILKINSON - Does she have any connection to the trust?

Mr BOWDEN - Well, other than legal advice to us from time to time, no.

Mr WILKINSON - Who made contact with her in the first instant?

Mr BOWDEN - I think it was me; it's a long time ago but I am fairly sure it was me.

Mr WILKINSON - And what brief was sent to her, if any? Was there any letter sent to her requesting certain information?

Mr BOWDEN - I think you would have to ask the trust secretary if there was any written brief. I would have talked to her on the telephone. Basically the only question I have ever asked in relation to the 1976 issue is, 'What is the correct outcome legally?'. Bearing in mind the trust, at the time, felt it was treading on pretty thin ice obviously and we needed to know an answer one way or the other.

I must stress we didn't try to emphasise whether it was right or wrong. What we wanted to know was, what is the legal answer, because we had to be seen to be legally correct.

Mr WILKINSON - Was the brief recorded in trust minutes or outward correspondence that you know about or would I ask Stephen Mackey?

Mr BOWDEN - You would have to ask Stephen Mackey; I'm not sure, I can't remember.

Mr WILKINSON - Do you know what supporting documents were sent or given to her at all?

Mr BOWDEN - You asked me that a little while ago, I thought you did. Again -

Mr WILKINSON - Stephen?

Mr BOWDEN - Stephen, yes. I am not sure what correspondence actually went in writing.

Mr WILKINSON - Were final copies of the opinions obviously ever sent to the trust from her?

Mr BOWDEN - Yes, I think so. As far as I know, Stephen would have them on record. Again, as far as I am concerned, there was no intention from the trust to keep them from any irrigators, certainly not as far as I was concerned.

Mr WILKINSON - Were draft opinions corrected? When she came back with a conclusion was it ever corrected by the trust or members of the trust and sent back to her?

Mr BOWDEN - I can't recall - again, that would have to be checked with Stephen. I don't know.

Mr WILKINSON - Is it true that the trust was warned by Jenny Mattila that members of the trust had conflicts of interest?

Mr BOWDEN - I don't understand the meaning of that.

Mr WILKINSON - I would imagine it would be a conflict of people allocating water who were on the trust who also were irrigators. It could be argued that there was a conflict of interest in the outcome.

Mr BOWDEN - Yes, well I could obviously be in that position being an irrigator but as I say I kept out of all of the committees, the B group, the Beattie report, the trial C group. I was not a part of those because I knew I had a vested interest; I had to keep out of it. The only involvement I would have had was passing on the legal information that I happened to receive to the trust.

Mr WILKINSON - Were copies of the trust minutes sent to Jenny Mettler?

Mr BOWDEN - I can't recall; again, you would have to check with Stephen.

Mr WILKINSON - I do not know what this means in effect but I will ask it any way. Were any non-genuine documents sent to Jenny Mettler?

Mr BOWDEN - Not that I am aware of. I wonder what is meant by 'non-genuine'.

Mr WILKINSON - Neither do I, that's why I said that.

Did the trust in any way question Jenny Mattila on the basis that their belief was that her opinion was incorrect, and did the Trust in any way endeavour to give her further advice for her to come back with any other answer or any other opinion?

Mr BOWDEN - I quizzed her on how much she knew of the background, and in my opinion she knew the background extremely well, better than anyone I have come across. She got a lot of it off the Internet; she had gone back to the 1857 act and she looked at it very thoroughly. I was never in any doubt that she had any doubt about what she was talking about.

Mr WILKINSON - Do you know of any correspondence that was sent to her at all, or should we ask Stephen that?

Mr BOWDEN - The written side of that I just don't remember, to be honest, at any particular time.

Mr WILKINSON - If there was any written correspondence, that would be on the file, I take it, at the trust and should be in the possession of Stephen?

Mr BOWDEN - It should be, yes.

Mr WILKINSON - Which non-trust parties, if any, became involved with Jenny Mattler's brief and advice?

Mr BOWDEN - I don't know. You see, the only one that might have discussed some matters could have been Henry Edgell. I don't know, other than that. You would have to ask Jenny Mattila. I don't know.

Mr WILKINSON - Did any solicitor provide advice that the legal opinions on allocation matters were to remain confidential?

Mr BOWDEN - I think there was possibly a misunderstanding there from a letter from Jenny Mattler. I think it was to the trust. I didn't understand it either - whether it is a misprint I am not sure. I cannot remember the wording, 'Where there is a conflict of interest between Trust members', but there was not, so I am not sure what she meant. Again I think you would have to inquire from her.

Mr WILKINSON - Or alternatively if that was the case that would have been written, I take it, and therefore Stephen Mackey would have a copy of that letter.

Mr BOWDEN - Yes.

Mr WILKINSON - Why didn't the Trust have an election in 2002?

Mr BOWDEN - We couldn't. Very simple, because there was a mistake in the 1999 Water Act, and there still is, as to who can vote. Again, I would suggest you talk to Stephen Mackey on that, because he understands it. Probably our honourable member, Sue Mackay, would know that the way it was set up it didn't match up with how it should work electorally. We couldn't, and we still can't until it is modified.

Mr WILKINSON - So you received advice that you couldn't do it because it would be illegal to do that, I take it?

Mr BOWDEN - Yes.

Mr WILKINSON - Was the legal action of, I take it, Anthony Archer and the Clyde Water Trust genuine or a mechanism - well, you can't answer that - to protect the Trust from disclosure?

Mr BOWDEN - I am not sure what that means. Just read it again.

Mr WILKINSON - Yes, that was a question probably that we should have asked Anthony. Was the legal -

Mr ARCHER - Would you like me to address it, or not?

Mr WILKINSON - Maybe later on if we can before we finish. I will leave it in Greg's hands. These are just questions that we are going through. Are you aware of why DPIWE did not use any of its powers pursuant to section 208 of the act to ensure transparency? Or the question is asked of DPIWE.

Mr BOWDEN - Yes, ask DPIWE, but I must say that DPIWE's Mike Temple-Smith was involved in - there were one or two, but I cannot remember - meetings of the Trust and he had all the final figures, so as far as we were concerned DPIWE was involved. Again, you would have to check with him, but as far as I am concerned DPIWE knew all the figures and were involved. That was in the later stages.

Mr WILKINSON - Why did the trust ignore two letters in 1998 and 1999 from S. Archer and J. Jones seeking confirmation of trust policy regarding water rights under the new act?

Mr BOWDEN - Simply because we felt that we had to have a legal opinion on it. We didn't actually ignore them. They didn't get answered. We felt that at the time it was very drastic. It would have meant some people having to turn off completely. Also, how far ahead did that mean those people wouldn't get water, bearing in mind there were some irrigators - and I must emphasise none of the so-called big three - that were granted water in the 1980s by the trust, with no mention of any 1976 issue, and those people had been watering regularly. They would have had to have turned off if we'd taken over those meters. That was why we sought legal opinion, and I must say we got legal opinion from, I think it was five different sources, including a verbal from Crown Law, that all said the same thing. I have been accused of misleading the trust, and all sorts of things; all I have done is pass on what I was told.

Mr WILKINSON - Why didn't the trust minute receipt of this correspondence?

Mr BOWDEN - Well, how could we reply to it other than to say, 'Yes, we'll look into it', which wouldn't have satisfied the two people who had sent it? We just felt it was a very complex issue, and there's no way we could have answered those questions other than via legal opinion.

Mr WILKINSON - Why was no response received until four months after the act was passed?

Mr BOWDEN - For the same answers?

Mr WILKINSON - Yes.

Mr BOWDEN - The same reply. There is no way we could have answered those without having very clear-cut legal opinions on it.

Mr WILKINSON - Who was the other person? There was you, Henry Edgell, I understand who met with Alan Harradine on 8 April 1999 at Bothwell, purporting to represent the trust and its policy on water rights allocations.

Mr BOWDEN - I understand Peter McShane, the other trust member.

Mr WILKINSON - Who made the decision and on whose advice did the three years of history use almost become enacted in the legislation?

Mr BOWDEN - It didn't, as far as I know. It was never an initiative of the trust, and I would suggest you ask the other two trust members as well. But there is no way it was ever an initiative of the trust. We didn't even talk about it, to the best of my knowledge, other than in passing.

Mr WILKINSON - Only a couple to go. What happened to the resolution of the meeting of irrigators held on 7 July 1998, that the new act is to protect the current operational practices and procedures implemented and minuted by the Clyde Water Trust since its inception?

Mr BOWDEN - I'm not sure that I can answer that, I don't understand.

Mr WILKINSON - Right. It would appear that there was a resolution at a meeting on 7 July that the new act was to protect the current operational practice and procedures implemented and minuted by the Clyde Water Trust since its inception, and it would seem that some of the people were saying that that resolution was not acted upon.

Mr BOWDEN - It may or may not have been, I can't comment on that.

Mr WILKINSON - Okay. What action has the trust taken to correct the misrepresentation and recover payments made to Marsden Jacob?

Mr BOWDEN - What do you mean by 'misrepresentation'? I am not sure.

Mr WILKINSON - Has any action been taken by the trust to recover any payment to Marsden Jacob?

Mr BOWDEN - No, I don't think the trust was aware there was a mispayment, but if there's a misrepresentation, I'm not sure what it was.

Mr WILKINSON - Where are the written briefs to the various solicitors who have charged a total of approximately \$25 000 for their opinions? We've spoken of that one.

Mr BOWDEN - That figure is quite wrong. There is a total - and I have the figures here - of about \$60 000 all up, and of that, very nearly \$40 000 involved Marsden Jacob. I can't remember the exact figures, \$29 000 to Marsden Jacob, that was agreed to by irrigators, and the Beattie report was \$11 000, and that was agreed to by irrigators. The rest of it, there are other bits and pieces in there that I can't remember now. Steve Mackey would have the list. But I must say that some of that legal would have been in relation to the Marsden Jacob report because they were instructed by the trust that it had to be legally sustainable, if it was challenged it had to stand a legal challenge, and they had to confer with her to make sure it was legally correct.

There were also other requests involving the Hydro and Duncan Campbell when he wished to put in a dam. We requested a legal opinion to find out whether the Hydro controlled the river or the tributaries, and whether it was the trust. The rest of that was over about two or three years. There were various reasons. Another one was we made an inquiry about the lakes at one stage, the water in the lakes. Out of the total cost, less than \$20 000 was on legal but it was not all on the 1976 issue by any means.

Mr WILKINSON - Where are the legal opinions, faxes, phone notes, e-mails, et cetera, for which the trust invoiced by Jenny Mattila?

Mr BOWDEN - I presume Steve Mackey has those.

Mr WILKINSON - Where is a copy of the legal advice that it was illegal to release to irrigators the legal advice relating to past procedures and minutes of the trust?

Mr BOWDEN - I have no idea. Did that come from Jenny Mattila? I think you would have to ask her because I don't know what she was meaning. I have no idea.

Mr WILKINSON - What are the links between the various solicitors and are any of them acting for any individual irrigators at the same time as working for the trust?

Mr BOWDEN - At one stage the trust had a doubt that Mrs Mattila in New South Wales may have been working for another party and I asked her on the phone, verbally, if that was the case. Her reply to me was that if she felt there was any conflict she would withdraw, I think were her words. She assured me that was the case. If there is any conflict to be seen at all, that was it.

Mr WILKINSON - Finally, why wasn't the allocation process carried out in an open manner as instructed by the minister and agreed to by the trust in writing?

Mr BOWDEN - I am pretty amazed at that statement. I would have thought the trust did everything it possibly could over about two-and-a-half years. Again, I wasn't one of those directly involved on all those committees and procedures. I would like to know the hours of work that Peter McShane and Peter Bignell put in trying to work this out - it would have been

colossal - on their computers and talking to irrigators. The point was and the whole point still is the 1976 issue and until that is solved we are not going to go anywhere, in my opinion.

Mr WILKINSON - That is the end of the questions. Thanks for doing your best. I can recall a public accounts meeting we had a while ago when somebody was in the same position as you.

Mr BOWDEN - Did he survive?

Laughter.

Mr WILKINSON - Yes, he did. The only other question I was going to ask was this: how do you believe that this whole process should be sorted out? What do you believe to be the fairest method?

Mr BOWDEN - It can't be all history of use simply because down the bottom end the Hamilton irrigators on lots of occasions were short of water, through no fault of their own, and so how could they possibly have a history of use that reflected the water they really should have received. In 1996 when the carp were discovered, the Edgell family and ourselves were acting as a de facto reservoir for the system because when carp were discovered Inland Fisheries just shut the gate, bang, and even the towns wouldn't have had any water if it wasn't for us. We didn't ever get paid for that or we didn't even get thanked for it, to be honest. It just seemed to be something that happened. We were happy to go along and try to help. And I have no regrets. Again, I am not blaming Inland Fisheries. It was a major disaster or could have been and there was this threat that they may have been able to get down the river into the Derwent and all the rest of it. But that is where we found ourselves.

Mr WILKINSON - Are you able to say what the debts of the trust are?

Mr BOWDEN - Yes. I have them here. As I understand, they are large figures. I only received them recently and I haven't had a chance to have a look. Regarding the Central Highlands Council, there is still a debt there that is unpaid and Stephen Mackie has not been paid for his last year's - it is probably a bit more than that - secretarial services. He had not sent an account in because he felt that the trust was not in a position to pay.

I would like to say a little bit about how the trust got into this mess. Originally the trust had about \$330 000 before we started on that pump-back scheme at Hamilton which, as I remember rightly, was voted to by 19 out of 22 irrigators. There were three against.

We went to Serve-Ag with Chris Thompson and his words were, I can't remember the exact words, to the effect that he thought the \$330 000 should go a long way towards paying it off and there would not be a great deal over that. What we did not bank on was, of course, running up this \$60 000 for the Marsden, Jacob and Beattie Report and all of the rest of it. We had some cost blow-outs on the scheme; some bad underestimates, I think, on Serve-Ag's part.

There were some problems we had. One irrigator gave us quite a bit of trouble and added a lot of cost with machinery having to start and stop and all sorts of problems there. Anyway, at the end of the day in - I can't remember - around 2000-2001 we had a severe dry period; the river was running dry. I think it was in about February. On three nights running the town

pumps were out of order. One pump blew up, the other pump was making a terrible noise and the council sent the works overseer over to an irrigator and told him, 'Well, if you don't turn off we will have to get the police in'.

I believe on one particular weekend the council actually had to get trucks in to cart water for the town water.

CHAIR - This is Hamilton we're talking about?

Mr BOWDEN - Yes. You can imagine the pressure the trust was under. We had the scheme nearly completed, we knew we were running short of money and what else could we do to try and get it going. The irrigators were all yelling to get it going and so even though we knew we were out of money, we took the hat around in effect and some irrigators agreed to help fund to get the thing up and running. There were still some jobs to get it going but I believe that that scheme is an extremely good scheme.

Some of the problems we had were that we had to have a drop-down flat for the top storage hole. It is where, if I can use names, John Jones pumps from. It was felt that we could have done an el cheapo job with a flat one - and if I can demonstrate it - and just prop it up with props and take them down at the end of the year but if we had left them there we felt that we ran the risk of flooding his property and that was not acceptable so we came up with an automatic hydraulic that would drop itself. In case of flood when the water level - there was a float that controlled the relief valve - got above a certain level it would drop to safeguard his property.

Just from one example, we were quoted \$11 000 on that and that blew out to \$26 000. We were quoted - they weren't quotes because no-one had ever done it before and they could not engineer it and so we had to hope that it would not be too outrageous.

Mr WILKINSON - Do you think the trust is still the most appropriate body to look after the water rights of the irrigators of the Clyde?

Mr BOWDEN - Without a doubt. But the way the water act is set up, I must say if you look back through history it was the warden and one councillor from Bothwell and it is the same for Hamilton and the old Rivers and Water Supply nominee and that served the trust incredibly well up until 1999. It was a little bit earlier than that when all of this trouble started up with carp and so on.

My opinion is now it is set up so that only irrigators can be trust members and I feel that is very dangerous because you will end up with pressure groups and what should happen in my opinion again is one irrigator from Bothwell and one irrigator from Hamilton, with one perhaps landowner from Bothwell and one landowner from Hamilton and one qualified water engineer, all elected by the trust. You can see where I am coming from. You run the risk of having pressure groups set up within the trust and perhaps controlling it in a way that is not in the best long-term interests.

Mrs SMITH - Mr Wilkinson asked Mr Bowden what the debt of the trust was, and you told us how much was there before the Meadowbank saga. I don't think you actually told us what you believe the debt of the trust is at that particular time, or have you something you can table?

Mr BOWDEN - I have handed it over here. I do not have that figure with me. The total cost of the whole thing is there. I had better not quote it because if it is a few dollars out I will be accused. Can that be obtained from our secretary?

CHAIR - We may be able to determine that with Mr Mackey tomorrow.

Mr BOWDEN - You will. The figure is available. No-one is trying to hide it, except his fees that he has not been paid for, which he has to be paid for.

Mrs SMITH - In the Central Highlands Council I think at one stage it was a \$60 000 loan. Is that still the same?

Mr BOWDEN - No, the Derwent Valley Council.

Mrs SMITH - The Derwent Valley Council. Is that still the same?

Mr BOWDEN - No. That has been paid. The Central Highlands Council became involved only right at the end, and that was on earthworks around the drop-down flat, and that was carting material -

CHAIR - Sorry. Central Highlands or Derwent Valley?

Mr BOWDEN - No, Central Highlands became involved. Derwent Valley was a straight-out \$60 000 loan, and that was a short-term loan based on the fact that it would have been repaid within a short period of time because the trust at the time worked out that they would charge \$12 a megalitre for water rights, and we assumed then that water rights would have been allocated fairly quickly, and \$6 for water used. If I remember rightly, it would have brought in about \$130 000 and we envisaged paying it off over two years. That was the debt that was owing.

Mrs SMITH - Are you comfortable that the Clyde Water Trust has always had the capacity to be financially viable, and still has?

Mr BOWDEN - Absolutely. Up until this Meadowbank scheme came along and the problem of water rights. There has never been any other problem. Basically it was a very simple system that worked on a pay-as-needs basis, and water users were levied, and the fact is that the trust now has this 10 000 megalitres of water available and there is no doubt it is going to be used every year so it is just a matter of levying users according to the needs of the trust.

Mrs SMITH - You made the comment that 19 of the 22 supported the Meadowbank scheme; 18 of 21 supported a particular allocation of water rights. Why would the trust see one vote as being acceptable but not the other one?

Mr BOWDEN - I am not sure. What was that again?

Mrs SMITH - You quoted earlier in talking about the Meadowbank scheme that there was \$334 000 in the bank. It was proposed to be a \$300 000 scheme. There was a vote taken of irrigators and 19 of 22 actually supported it, so the trust went ahead.

Mr BOWDEN - Yes, that was to go ahead with the scheme.

Mrs SMITH - We have had evidence that 18 of 21 irrigators supported a particular division of water rights, and yet the trust chose to move on to another committee process. Was that because of legal action?

Mr BOWDEN - I think there is a bit of confusion there. My recollection is that that 18 vote was very late in the events whereby the trust was virtually non-existent. It was in limbo. I thought that was after the Archers' injunction.

Mrs SMITH - After the injunction?

Mr BOWDEN - Yes, I am sure it was. It was long after we had any jurisdiction really.

Mrs SMITH - Thank you.

Mr BOWDEN - We got to the stage where we just couldn't operate, we couldn't work.

Mrs SMITH - We have a copy from the concerned irrigators group of a letter of 2 August from Jenny Mattila to the Clyde Water Trust where she gives advice. They were concerned about the trust making counsels' advice generally available to members of the trust because of the threat of litigation and they were concerned that a number of members of the trust had conflicts of interest and it would be inappropriate to circulate the full text of advice. Wouldn't you perhaps admit on the same basis that every irrigator that has had any involvement, whether it has been the trust board itself or irrigators on committee B, had a conflict of interest by virtue of the fact that at the end of the day they would be allocating for themselves as well as for others in that scheme?

Mr BOWDEN - Honestly, I don't understand that. The only way to solve that would be to ask Jenny Mattila. I am not sure what she is getting at because she mentioned trust members. There was no conflict that I was aware of within trust members. Certainly not that I know of. I just found that very confusing. I don't know and I would suggest that if you request the answer from her it would be more appropriate.

Mrs SMITH - Did the trust ever consider in the allocation of water processes that perhaps it should go right outside of the water users to look at a concept of allocation so that there was absolutely no pecuniary interest by anybody?

Mr BOWDEN - We tried to do that with the Marsden Jacobs Report. We thought that was what we were doing. How far do you go and where do you go? We were told at the time that they were leading people in that field and so we just had to take their advice. We couldn't do anything else. All you can do when you hire an expert in, is try to check up on their background and hope that it works out as it should.

Mrs SMITH - We have had some discussions on sleepers and dozers through the day. To your knowledge, through your time on the trust - and you have been there for quite some years - has the trust ever set a position on the difference between a sleeper and a dozer in time lines?

Mr BOWDEN - Not that I'm aware of. I don't know whether the trust really discussed that. Most of that was left to the B group. And I must say that the B group did an enormous amount of work and I have their figures here. It is a document that I presume you have. The one-and-a-half megalitres per acre I think is generally agreed by everyone as being a fair figure. You had to have some way of working out some basis because when you go back to 1976, the rating system was on the old AAV system. There was no way of measuring water. There were no measuring devices of any sort. It was no more than a gentleman's agreement, 'Yes, you can have water'. They often said, 'We won't guarantee supply'. I thought the B group did a very good job. When you add it all up, if you apply one-and-a-half megalitres to all of that, it comes to 13 000-something megalitres. That is the crux of the matter. The crux of the problem is that if everyone received one-and-a-half megalitres for the acre they want, it just does not add up. It can't be supplied. So somewhere, somehow there has to be a compromise; within that there has to be a compromise to cover it. One of the hard ones for me to come to grips with was that an irrigator who hadn't watered since sometime prior to 1923 - that is a huge time ago - could have precedence over someone who the trust gave water post-1976. Under the letter that you have heard read out from a couple of irrigators, that post-1976 irrigator - and it is not one of the bigger irrigators - would have to turn off, even if he had a poppy crop there. And yet people with prior 1923 water who haven't used it at all since would have priority. I am not saying who is right and who is wrong. What I am saying is that the only way you will sort it out is to test it legally, in my opinion, at the end of the day.

CHAIR - You have made the note, following on from what Mrs Smith said, that in terms of your own properties, the extracts from the trust records indicate a strong case for a rate allocation from that actually ordered by group B committee, that is for your properties, yet in the interests of finding a compromise we are prepared to accept less provided others do the same. Do you think there is enough goodwill to do that?

Mr BOWDEN - I would hope so. At the end of the day if we could stop brawling amongst ourselves, to be honest, and try to work to a sensible solution I am sure we could find a solution.

As I have said, we are prepared to accept less but we do not want to accept less if someone else is digging in and saying, 'I want every last megalitre'. It has to be everyone compromising.

Mrs SMITH - There is still some confusion in my mind about how people pay for the water they are getting over the last two or three years. Who pays? Does everyone pay or just dozers and users? Please explain that.

Mr BOWDEN - Okay, if I go back. There was a case in 1976, it was on, as I said, the old AAV system. You could have someone with a bush block up the river and they were paying virtually the same as someone who was irrigating 200 acres or whatever. That was the system then. Then, I believe, I think in about the early 1980s there was a per-acre levy put on because we wanted to raise money for upgrading the control gate out of Lake Crescent. That is how the trust operated then; when it needed money it raised money in that way.

It was not until 1997, I think, that we actually decided that we had to have more accurate ways of measuring and controlling and charging for water and so the trust worked towards making everyone install measuring sills with recorders that were locked up. People with

pump systems had their meters read and we put on a water bailiff to go around. For the first time really in the trust's history it could accurately record and know what water is being used where. That was how water was charged. From then on water was charged on a megalitre basis.

If you could bear in mind that the trust was in a very difficult position because we were controlled by the old trust rules and regulations and it was unknown territory a little bit for the trust to go into charging for water and disregard the AAV system.

Mrs SMITH - You said in 1976 everyone was paying whether they were using it or had a bush block, through the AAV system, but in the early 1980s you put a per-acre level on it. Was everybody still paying as well as the per acre levy on the AAV or not?

Mr BOWDEN - No, that only applied to people who were irrigating. The people who weren't using water didn't pay, no.

I must add too that back in that period of time the towns were also rated. My father in 1924, I think, was paying water rates to the Clyde River Water Trust for a paddock that he had next to the river; he didn't irrigate he only fed his stock but he still had to pay a water rate, but that was the system.

CHAIR - Just one question, changing tack slightly. This morning I asked Mr Edgell the question in regard to his part of the catchment management group and we were talking about the potential environmental flow that may be allocated to the Clyde. In your evidence you say that the requirement that the level in the lakes be kept at an artificially high level or that river flows be over the above natural flows within recorded history fails to reflect the natural environment. Would you like to expand on that? You obviously have a concern in that area.

Mr BOWDEN - I certainly do. I must say some of this has been corrected lately. For example, in the early stages of that committee there was talk of 35 megalitres a day having to go over the weir at Bothwell, and it goes through from that bottom end. When we pointed out that that was about or more than we were using when everyone was really going flat out, this is in the summer months, then DPIWE in their wisdom realised that their figures were wrong and revised those figures. We have only just found this out; it is now down to 10 megalitres at the weir here and I personally feel that that is an acceptable figure; that is a lot better. That does not mean there only 10 megalitres are going to go over the weir. It means that at any given time that is the minimum that can go over it, so if we get some rain or whatever and everyone turns off, then there has to be 10 megalitres go down the river. The winter flows are a worry. Again, under this committee it has been emphasised that we won't have to release water for the environment, and yet they are working towards having artificially high flows released down the river on one day a month. Now it just does not make sense. It can only come out of the lakes in most years because the river in most years relies entirely on the lakes. The ephemeral water from the streams that comes in dry years - it is a dry district - usually is non-existent, and so that is a worry. The winter-fill storages are terribly important for the ongoing viability of the trust, I think. There has been in the past, and it worked extremely well, an arrangement - it is recorded in the Trust minutes way back here somewhere - where if a surplus came down the river, like this year, for example, where we had high flows, irrigators with storages up and down the river anywhere could take water in and then that could help to supplement the flow when it got drier. I would like to see that stay. Winter-fill storages again I think are terribly important, because it all takes pressure off

those lakes. The aim is to keep as much water in those lakes as possible. That is our bank. That is where we have to have the water.

CHAIR - For those irrigators to take those flushes in, say, in the summer months if you get a summer storm, do you have to have a temporary water right to do that?

Mr BOWDEN - It all has to be done under the control of the water bailiff, and up until this last year it was Peter Bignell and he did a fantastic job, he really did. He was always available, even at 11 o'clock at night. He was always there. This year, since the Government or DPIWE have taken it over, we have had a different bailiff, but he has been working very hard and it worked pretty well this year, yes. But this year was lucky; we had high summer flows so there was not a draw on the river that there is in some other years.

Mr FLETCHER - Mr Bowden, I would just like to walk you through certain positions of concern to irrigators here. You have already agreed to one, and that is that the acres-of-water right be converted at the rate of 1.5 megalitres per hectare, I think.

Mr BOWDEN - Yes.

Mr FLETCHER - Okay. So you had no disagreement with that?

Mr BOWDEN - I have no disagreement with that.

Mr FLETCHER - There might be variations on that, but not of any substance.

Mr BOWDEN - Yes, and the B group put in a huge amount of work in coming up with those figures. I have no dispute and I am not in a position to dispute it. I am quite happy to accept it.

Mr FLETCHER - And another point they make is that the minutes of the Clyde River Trust be accepted as the true and accurate records of the trust's business. Do you agree with that?

Mr BOWDEN - Sometimes, unfortunately, no, and that has happened, I must admit, when I have been chairing the committees. We were relying on secretaries. You must admit over the years the trust had quite a lot of different water secretaries. They were normally the council clerk, and sometimes those council clerks had no knowledge of water. Sometimes what was actually said or intended did not end up in writing, and we discovered in the last few years that we had to be incredibly careful to look very, very carefully at the wording, and it only happened in the last few years. And sometimes the trust only met every six months, and people forgot, and all this sort of thing. Mostly I agree that the minutes were a fair and honest attempt, but sometimes they did not always correctly reflect the actual meaning at the time.

Mr FLETCHER - Wouldn't you, as chairman, demand at the subsequent meeting that the minutes of the previous meeting be confirmed as a true and accurate record of the business that transpired?

Mr BOWDEN - Yes, that is right.

Mr FLETCHER - So you have approved them.

Mr BOWDEN - We have approved them, but what I am saying is that occasionally it slips through because bearing in mind some meetings were held at 7 or 8 o'clock at night at New Norfolk and this sort of thing, and people were tired and things got through that perhaps were not quite right. They were close but sometimes not exactly right, yes.

Mr FLETCHER - But surely we've got a situation here where you are challenging the whole ethos of business administration.

Mr BOWDEN - No.

Mr FLETCHER - You're saying that a decision, having been made and minuted, and then a subsequent resolution to confirm that that's correct, is not correct at all.

Mr BOWDEN - No, I'm not saying that. I will say occasionally the meaning may have been slightly different to what was intended, that's all.

Mr FLETCHER - And so you say the trust is not bound by those decisions because of that.

Mr BOWDEN - Well again, trust members change very regularly. If you go back to the 1976 decision, as early as 1979, if my background knowledge is right, there was a shortage in the river - I can't remember what the reason was - and everyone was made to turn off. Yet only three years earlier they said, 'There's going to be this priority'. There were those sorts of inconsistencies. Trust members change; you have to bear in mind that trust members were also council members.

Mr FLETCHER - Yes. I am trying to discern here between the official records of the organisation. I am not necessarily wanting to get that mixed up with management procedure, so that what happened in reality might be different to what was decided at the meeting. But surely there has to be a record of the decisions that were made, and unless those decisions were subsequently rescinded, they should be binding on the group. Do you agree with that?

Mr BOWDEN - Oh, yes, as a principle that's got to apply, yes.

Mr FLETCHER - Okay. So the decisions of 1976 to issue certain permissions to take water subject to priority, are binding on the trust because they've never been rescinded. Would you agree with that?

Mr BOWDEN - They might appear to be that way, that's right. This is what I wish to emphasise, that if the trust is going to be challenged from either side, it's beyond my ability to say whether that is binding or not. I think it is a legal decision that is way beyond my capacity. That's all I can say.

Mr FLETCHER - Okay. Can I ask you the question then, again, do you accept that the minutes of the trust are the true and accurate records of the trust's business? And your answer to that is no.

Mr BOWDEN - No, I didn't say no, I said not always. There have been times when I think - if you like I will quote from Mr Piscioneri, if I can find it, if you don't mind, just to illustrate. This letter was received on 19 August 2000, where he says:

'I am sure the motions were not intended to implement the policy of last on, first out in perpetuity'.

Then he goes on to say -

'As a matter of interest, a motion attributed to me was not drafted by me. The wording used is not my kind of jargon. Existing licence requirements imply that the trust issued licences to irrigators, but as far as I know this has never been the case. I did not object to the motion's wording, as I thought we all knew what it meant'.

Mr FLETCHER - So the wording, then, is binding on the trust. If it's been accepted and no-one's objected to it, that wording of that motion must be binding on the trust, surely.

Mr BOWDEN - I don't know, as I was saying -

Mr FLETCHER - It might be subject to interpretation in different ways to different people -

Mr BOWDEN - That's right.

Mr FLETCHER - but the motion is binding because it's duly passed.

Mr BOWDEN - That's right. I am not trying to judge whether it is correct or incorrect. What I'm saying is that if you're going to get legal challenges you have to have a legal opinion to know where you are. That's all the trust ever sought to do.

Mr FLETCHER - I just find it amazing that the chairman can be saying that the official records are not the official records, or the official records don't mean what they say.

Mr BOWDEN - No, I didn't say that; I said sometimes they are not quite exactly as was intended. There's a difference. And you bear in mind that we only met sometimes every six months or so, and they were rushed meetings, not through our fault, usually. I think little things slipped through that perhaps shouldn't have, that's all I'm saying.

Mr FLETCHER - Can I draw your attention to your evidence which says that on three occasions between 1979 and the early 1980s there was a need for water restrictions and you didn't use the priority system; rather, you just turned the water off.

Mr BOWDEN - I wasn't on the trust then of course. But the last time I can remember was the drought of 1982 and they are in the trust records. But I do remember the drought of 1982. I think on one occasion before that Hamilton was out of water. That is what often happens because the system then regulating the water flow was a stick under Andrews Bridge and the water controller happened to be the mayor in those days. He did his level best. He tried extremely hard. But it was virtually impossible as you can imagine, bearing in mind it takes four days from when you let water out at Lake Crescent to get water to Hamilton. And so he would ring up and say, 'Look all you people up here, you have to turn off because Hamilton is out of water', for a day or whatever it took. That is what happened. We all turned off. There were no arguments. In 1982 when the lakes ran very dry we were told we had to turn off and that was it. There was not argument, everyone turned off. That was pretty amazing bearing

in mind it was only four to six years after the 1976 decision. But you see the trust then was obviously ignoring the 1976 decision.

Mr FLETCHER - There is evidence given to us that Mr Peter Bignell, I think a servant of the trust from time to time, attests to the fact that water was distributed on a priority basis in lean years. Have you any memory of that?

Mr BOWDEN - I don't think it was on a priority basis. I don't think that is the case, no.

Mr FLETCHER - So you suggest the evidence I have been given is incorrect in relation to matter, you would think?

Mr BOWDEN - There is definitely not a priority basis. No, I just wouldn't agree with that. I think there were times when it was felt that the needs of perhaps one or two irrigators at Hamilton were more important. Obviously the towns were important. I think where some of that came from is that Peter would ring up some of us with private storages and say, 'Can you turn it off for a day or two because they are short over there', and that is what we did. But then the arrangement was that if there was surplus in the river we would take it back in. I don't believe it was a priority system at all.

Mr FLETCHER - The method of communication, if there is just to be a turn-off for those three occasions post-1979, and I accept you weren't there, but there would simply be a phone around or a letter distributed or a request to certain people to take less?

Mr BOWDEN - It was usually done by phone. Peter would ring up. This happened with the Edgell family and ourselves, with our private storages. Bearing in mind if it took four days to get water to Hamilton, it only took two days from perhaps the Denison Dam, if you like. And so it was an extremely good system and I would hope that it is going to remain, that it stays there because it made for a much better working relationship with the irrigators and the river.

Mr FLETCHER - The concerned irrigators make the point that the priority policy implemented in July 1976 establishing hierarchy be upheld. Do you agree or disagree with that.

Mr BOWDEN - No, I disagree.

Mr FLETCHER - And that the hierarchy and water rights be structured on the basis of the 1976 policy be agreed; you disagree with that as well?

Mr BOWDEN - Yes. All I am saying is that I feel that has some standing but there has to be a better and a fairer system. That is all I can say.

Mr FLETCHER - An earlier witness suggested that the fairer system might be determining a level of high priority somewhere between 3 000 and 7 000 and lower priority for the remainder. Is that an option do you think?

Mr BOWDEN - It is a possibility. I think it all should be looked at. It depends how high you set the low priority. Bear in mind that DPIWE has allocated 10 000 megalitres to the trust but that has to include the supply of the towns and the river. Over the years the trust has learnt that it took around 2 500 megalitres to do that if no-one was irrigating at all, so really we have only got 7 500.

That 10 000 megalitres is high priority and low priority. When the lakes get down to a certain level the low priority drops off so we come down to 5 000 megalitres, but then if you start taking this 2 000 megalitres out for the environment and the river it means that there is virtually nothing left, so very little soak. I think that has to be looked at very carefully. If we can work out as fair as possible water right and at the end of the day that are all it will be because there is no criteria that will let you say, 'This is what it has to be or that is what it has to be'. It will have to be the fairest possible mechanism and I believe the only people to do that will be the water people in DPIWE. It has to be someone independent and then it will have to be legislated by the Government.

Mr FLETCHER - The Government has suggested that the best way of overcoming this problem is to pass the legislation and then for the officers to make contact with all the irrigators and say, 'We are now in the driver's seat; we're providing water at \$30 a megalitre; this is your history of use; how much do you want to contract in the future?'. Would that meet your criteria of letting the Government resolve it in the future?

Mr BOWDEN - No, it won't. I would much sooner get back to the affairs of the trust being run by the trust. I think there is little doubt we all want to do that because the Government tends to get very expensive in the way they run things and all the rest of it. None of us want to pay more water than we really have to.

The only way I can see it being solved, though, is by legislation. Figures will have to be worked out by an independent authority, whether it is DPIWE or someone I don't know. The water rights will have to be legislated and whether that will stand a legal test, if someone feels really aggrieved, I don't know, but there is only one thing I am sure of, thank God, I won't be in the driver's seat.

Mr FLETCHER - My last question. You provided us with a list of the debt situation at an earlier time. Do I assume that that is a list of sundry creditors as at this date?

Mr BOWDEN - Well, that's a list of what all the costs were to do the - Hamilton scheme plus the Marsden Jacob report, those various reports and some legal stuff, but the biggest part of it is a list of what everything cost and how it came about.

Mr FLETCHER - So that is not necessarily the state of indebtedness of the trust at this stage?

Mr BOWDEN - Steve Mackey has that figure. I should have it and I haven't got it. I will not comment because I don't know the exact figure.

Mr FLETCHER - Rather than a list of the liabilities of the trust at this stage.

Mr BOWDEN - Yes. We had \$330 000 in credit that we had built up over a period of years and that was built up for future works such as this, but as I say it just went wrong because it blew out and all sorts of other things got involved that we weren't expecting.

CHAIR - Thank you, Mr Bowden.

Mr BOWDEN - There is only one other request I have. I have some matters that I wish to discuss with a select committee that are commercial in-confidence and I request an interview in camera, if that is possible?

CHAIR - You can talk to us and make a request to us that you do that in private and we can consider that.

Mr BOWDEN - Yes. That is what I would like to do, please.

CHAIR - That being the case we will hear that from Mr Bowden. I will have to ask other members of the community to leave the room. In doing so I would like to thank everybody for the quality of their submissions today and the manner in which they have been put. They have been very good and very helpful to the committee.