

**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 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.**