

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 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 to 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.