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TRANSCRIPT OF PROCEEDINGS

O/N H-910739

MR B. WALKER SC, Royal Commissioner

IN THE MATTER OF THE MURRAY-DARLING BASIN ROYAL COMMISSION

ADELAIDE

10.05 AM, TUESDAY, 31 JULY 2018

Continued from 30.7.18

DAY 16

**MR R. BEASLEY SC, Senior Counsel Assisting, appears with MR S. O'FLAHERTY,
Junior Counsel Assisting**

MR BEASLEY: Before we begin, we acknowledge this land that we meet on today is the traditional lands of the Kurna people and that we respect their spiritual relationship with their country. We also acknowledge the Kurna people as the custodians of the Adelaide region and that their cultural and heritage belief is still as important to the living Kurna people today. We also pay respects to the cultural authority of Aboriginal people visiting from other areas of South Australia or Australia present here.

Just before we begin again with Ms Slattery, Commissioner, there's just a couple of documents that are relevant to some of the evidence that she was giving the last time she was here. I just wanted to go back and remind ourselves of the SDL adjustment provisions in chapter 7 of the Basin Plan, in particular, starting at seven – division 4, 7.15, 'Determining the Amounts of Adjustments'. We know that the supply contribution of any supply measure is the total increase in SDLs for all units affected by notified supply measures that will ensure that, calculated in accordance with the applicable method, on the basis of – we have got a repeat of historical climate conditions and (b):

Benchmark conditions of development modified by addition of the supply measure, (2) removal of an unimplemented policy measure.

To assess entirely what that means, we need to go to the definition of "unimplemented policy measure", which is defined on the next page as:

Unimplemented policy measure means an anticipated measure consisting of a policy to either credit an environmental return flow for downstream environmental use or (b) allow the call of held environmental water from storage during unregulated flow events –

And then, importantly –

to the extent, if any, that the measure at the time of determination is not expected to or did not come into effect by 30 June 2019.

THE COMMISSIONER: I think we have noted this before. That use is at its heart the expression "anticipated measure", which is defined in 7.02.

MR BEASLEY: Yes.

THE COMMISSIONER: Which uses at its heart the notion of a benchmark conditions of development, which is also provided in 7.02.

MR BEASLEY: Yes.

THE COMMISSIONER: And it has a number of less than crisp elements, one of which is picked up by the word “assumed”, the conditions of development that were assumed in the benchmark model described in schedule 6.

5 MR BEASLEY: Yes.

THE COMMISSIONER: I lose count of how many fingers I would need to keep track of the critical components of this definition but, suffice it to say, if you look at the note, it talks about certain measures that were not yet in effect, but were expected
10 to be in place.

MR BEASLEY: That’s the point, that if these policy measures are not expected to be – or don’t come into effect by 30 June ’19, then 7.15 (1)(b) requires them to be removed from the modelling.
15

THE COMMISSIONER: Yes.

MR BEASLEY: Now, if they’ve been included in the modelling - - -

20 THE COMMISSIONER: Yes.

MR BEASLEY: - - - and they’re not – don’t come into effect by 30 June 2019, then there has to be reconciliation about the amount of water said to be recovered by supply measure.
25

THE COMMISSIONER: I can see why you say that. What does one get from the two temporal elements in that rider to the definition of unimplemented policy measure – “is not expected to” or “did not come into effect”?

30 MR BEASLEY: “Did not come into effect” - - -

THE COMMISSIONER: So beforehand - - -

MR BEASLEY: - - - sounds easier, but - - -
35

THE COMMISSIONER: Well, that’s right, but – so - - -

MR BEASLEY: - - - “expected to” is an element of judgment that is very hard to determine.
40

THE COMMISSIONER: Now, what does the “or” mean:

To the extent, if any, that the measure at the time of the determination - - -

45 So that’s speaking of one time, I think.

MR BEASLEY: Yes.

THE COMMISSIONER:

...is not expected to or did not –

5 So - - -

MR BEASLEY: That's almost – the last bit is meaningless in terms of the supply measures, because they have been determined.

10 THE COMMISSIONER: I don't find it at all easy. And I can see why you talk about reconciliation, but then I can't find an express reconciliation provision.

MR BEASLEY: No.

15 THE COMMISSIONER: On the other hand, everything – doesn't everything get caught up in 2024?

MR BEASLEY: Yes, but I would have thought that you would have to - - -

20 THE COMMISSIONER: 7.15 is, as the heading suggests, all about a contribution to an adjustment. The adjustment is initially proposed under 7.10 and then gets reconciled in 7.11. And then 7.21 - - -

MR BEASLEY: Yes.

25

THE COMMISSIONER: - - - stipulates the method by which you reconcile in 7.11.

MR BEASLEY: I reckon you've got to do – the way I had interpreted it is you have to do something before 2024 if the policy measure has not come into effect by 30
30 June 2019.

THE COMMISSIONER: I can understand - - -

35

MR BEASLEY: It's not absolutely clear, but - - -

THE COMMISSIONER: I can understand why you say that, because it seems absurd otherwise to - - -

40 MR BEASLEY: The fact that you could wait another five years, then what was the point of having this?

THE COMMISSIONER: Well, that's right. I assume that that date is chosen because of the - - -

45 MR BEASLEY: It must be the Water Resource Plans.

THE COMMISSIONER: The Water Resource - - -

MR BEASLEY: Yes.

THE COMMISSIONER: - - - Plans all being accredited by then.

5 MR BEASLEY: Yes. Yes. That would be my assumption. Then what I wanted to take you to in the folder for the witness - - -

10 THE COMMISSIONER: That actually – that’s a bit odd, because if they’re meant to be accredited by the middle of the year and then to take another look by reason of that definition, what they all become - - -

MR BEASLEY: Then you go, “Whoops. The modelling has been done incorrectly, because we haven’t got - - -”

15 THE COMMISSIONER: That’s what I mean.

MR BEASLEY: “- - - the policy measure in place. It’s a bit of a mess.”

20 THE COMMISSIONER: That’s right. I’m not seeing anything published suggesting how the Authority is proposing to deal with this.

MR BEASLEY: No. They keep reassuring everyone everything is fine because this will all be reconciled in 2024, but - - -

25 THE COMMISSIONER: Whereas you pointed out the middle of 2019 is perhaps - - -

30 MR BEASLEY: Well, that’s why I’ve raised it, because – and it is something that the witness has picked up in one of her submissions regarding - - -

THE COMMISSIONER: Yes.

35 MR BEASLEY: - - - Menindee Lakes about the fact that it has been modelled as though a policy measure is in place where, if it is not, it will have to be redone again. And it is also – I think we went over this last time. If these policy measures aren’t in place, the Basin Authority itself has said that 2,750 is not going to be anywhere near enough; you’re going to need something like four to 4,000 gigalitres.

40 THE COMMISSIONER: Yes.

45 MR BEASLEY: Behind tab 14 of the witness’s bundle is an MDBA document that is called Prerequisite Policy Measures Assessment Guideline. I only draw that to your attention because I think you asked me last time, “What’s the difference between an unimplemented policy measure and a prerequisite policy measure?” It’s, effectively, the same thing, which is made clear by this explanatory assessment guideline document. You will see at the bottom of page 3 there’s the two

requirements for an unimplemented policy measure, (a) and (b), environmental flows throughout the length of the river, etcetera:

5 *...to allow for the environmental water on top of other flows. These outcomes are described in the Basin Plan as the unimplemented policy measures. The unimplemented policy measures are now referred to as prerequisite policy measures.*

10 THE COMMISSIONER: That's just a piece of informal bureaucratic rechristening, is it?

MR BEASLEY: Yes.

15 THE COMMISSIONER: Or is that because "unimplemented" is an ugly word, is it?

MR BEASLEY: Yes, I think so. I think that that would be the concern. Going over the page to page 4, there's a reminder of what I just said to you:

20 *PPMs are only applied during the operation of the SDL adjustment mechanism in the Basin Plan. Any increase to the SDL resulting from supply measures will be calculated by adding notified supply measures and removing any unimplemented prerequisite policy measures from the benchmark conditions of development.*

25 THE COMMISSIONER: It's the last sentence of that paragraph that describes their function in what - - -

MR BEASLEY: Yes.

30 THE COMMISSIONER: - - - I will call the algorithm, which I think I've been able to follow, although it has been done in a piece of Byzantine drafting, it has to say. But it's a straightforward enough idea - - -

MR BEASLEY: Yes.

35 THE COMMISSIONER: - - - that you adjust your benchmark for certain things that - - -

MR BEASLEY: That's right.

40 THE COMMISSIONER: - - - shouldn't be counted twice.

MR BEASLEY: And your third-last paragraph:

45 *Failure to implement PPMs would also reduce or offset the SDL adjustment resulting from supply measures.*

THE COMMISSIONER: Yes.

MR BEASLEY:

5 *Initial testing –*

Etcetera, etcetera:

10 *It's estimated the Basin Plan outcomes could only be achieved with an SDL
reduction of more than 4,000 gigalitres if these policies aren't implemented.*

THE COMMISSIONER: Yes. Well, that's pretty plain.

15 MR BEASLEY: So if they're not, the whole supply measure process is a - - -

THE COMMISSIONER: Well, the significant thing is this. This is a document
that is emblazoned "internal use only" - - -

20 MR BEASLEY: Yes.

THE COMMISSIONER: - - - but it is dated 9 April 2015. It has, obviously, come
to light since. And the Authority obviously – well, I infer the Authority well knows
that it has been published.

25 MR BEASLEY: I will just ask the witness, was this obtained through an FOI or a
- - -

MS SLATTERY: Yes, that's right.

30 MR BEASLEY: It was? Right.

THE COMMISSIONER: Yes. So it has been published.

35 MR BEASLEY: Well, only through a compulsive process.

THE COMMISSIONER: Absolutely, but that's publication.

MR BEASLEY: It is.

40 THE COMMISSIONER: That is the purpose of the FOI regime - - -

MR BEASLEY: Yes.

45 THE COMMISSIONER: - - - to force publication of - - -

MR BEASLEY: Of course.

THE COMMISSIONER: - - - certain things. Indeed, rather quaintly, it's posited on a premise that by and large that's the general rule, that government information should be available. Does anyone know - - -

5 MR BEASLEY: Yes.

THE COMMISSIONER: - - - whether - - -

10 MR BEASLEY: Yes. I notice on page 8 of this there's a whole heading on transparency, which is unusual for a document that had to be - - -

THE COMMISSIONER: For internal use only.

15 MR BEASLEY: Yes. Anyway - - -

THE COMMISSIONER: Does anyone know whether this is regarded as superseded by the Authority?

20 MR BEASLEY: I don't know that. I hadn't seen any further document. What I was going to take you to was the - a current publication from the New South Wales Government about prerequisite policy measures, which hasn't been made available to you. There you go. I need to drag out my copy of that first. So it's not a particularly helpful document, other than explaining the background about what prerequisite policy measures are. This is a publicly available document. But you see the second
25 paragraph:

When setting the SDL, the MDBA assumed - - -

30 THE COMMISSIONER: Assumed. Yes. Well, prerequisite then rather conveys the notion that these are policy measures the actual implementation of which are prerequisite to the SDL remaining as it was.

MR BEASLEY: Precisely.

35 THE COMMISSIONER: That is - - -

MR BEASLEY: And if they're not implemented, then - - -

40 THE COMMISSIONER: - - - as high as it was. Yes.

MR BEASLEY: - - - you've got to change the volumes of water. There's a draft of that document that you're reading now that was obtained under - I think a freedom of information request or a GIPA. But I haven't familiarised myself with it fully and there's someone else coming to make submissions on this topic that I might leave it
45 with them. But I will read the document in due course.

THE COMMISSIONER: So that will be tendered?

MR BEASLEY: Yes.

THE COMMISSIONER: Certainly.

5 MR BEASLEY: And I tender that document behind tab 14, which is the
'Prerequisite Policy Measures Assessment Guideline', Thursday, 9 April 2015,
MDBA, which is as I said behind tab 14 of Maryanne Slattery briefing volume 1,
tendered documents. Now, I want to ask – the witness has instructed us that she has
got a correction to her submission, or a clarification, so I might return to her now.

10

THE COMMISSIONER: You're on your former oath or affirmation, whichever it
was.

15 <MARYANNE SLATTERY, ON FORMER AFFIRMATION [10.21 am]

<EXAMINATION-IN-CHIEF BY MR BEASLEY

20

MS SLATTERY: Yes.

MR BEASLEY: I think it's pages 22 and 23 of the submission.

25 MS SLATTERY: Yes. There's just an edit that needs to – a few words that need to
be removed.

THE COMMISSIONER: What page?

30 MS SLATTERY: The bottom of page 22 of my submission.

MR BEASLEY: What do we do with that?

35 MS SLATTERY: If you go to the second last – the last paragraph on the second last
line.

MR BEASLEY: Hang on, so the paragraph commencing:

That is 40 gicalitres.

40

MS SLATTERY: Yes.

MR BEASLEY: Second last line.

45 MS SLATTERY: Sorry, the third last line.

MR BEASLEY: Third last.

MS SLATTERY: The sentence that says:

Changes to the BDL arising from this purchased are discussed further under.

5 And then the rest of that text of that page needs to be deleted.

MR BEASLEY: So:

It is my view - - -

10

MS SLATTERY: That needs to be deleted.

MR BEASLEY: Right down to what?

15 MS SLATTERY: The dot point in professional auditor.

MR BEASLEY: So right to the words “reinstated” and “include”.

MS SLATTERY: Yes.

20

MR BEASLEY: Delete all that?

MS SLATTERY: Delete all that. Delete the next dot point.

25 MR BEASLEY: Delete “professional auditor”.

MS SLATTERY: And then delete the top three dot points on the next – page 23.

THE COMMISSIONER: I see. So:

30

Discussed further under changes to base line diversion limits.

Is that right?

35 MS SLATTERY: That’s right. Yes.

THE COMMISSIONER: Thank you.

MR BEASLEY: Okay. Anything else?

40

MS SLATTERY: Yes.

45 MR BEASLEY: I know we want to go to the transcript. But anything else in submission – there’s one thing I want to take you to in the submission that I discussed with you this morning. Let me just turn that up. Actually, it might be in one of your papers. Yes, it is. If you go to tab 8, we have had some discussion about this, this is your publication with Mr Campbell, ‘Desperate Measures: Supply

Measures, Diversion Limits and the Murray-Darling Basin Plan'. And we go to page 12 where you start talking about the Menindee Lakes water saving project and the heading why the – you say the Menindee SDL adjustment is unlawful. You say it's unlawful because:

5

the benchmark model run was not adjusted for the unimplemented policy measures; there are detrimental impacts on reliability that have not been offset or negated.

10 So you say:

The SDL adjustment based on the Menindee project has not adjusted for unimplemented policy measures, specifically the protection of environmental inflows into Menindee Lakes. Environmental flows into Menindee Lakes are not currently protected from extraction into and throughout the Barwon-Darling River.

15

And you say the MDBA has identified the problem but not adjusted the model for that.

20

MS SLATTERY: That's right.

MR BEASLEY: In other words, not taken out of the modelling, modelling for the fact that this measure has been implemented.

25

MS SLATTERY: That's right.

MR BEASLEY: Yes. So, on the top of page 14, you refer to an advice from the New South Wales Environment Defender's Office. Now, it will need to be clarified – and I can't give the evidence, but I've been told any privilege associated with this advice has been waived. But you say:

30

The NSW Environmental Defenders' Office, on behalf of the Inland Rivers Network, advised MDBA that in their opinion the unimplemented policy measures should be included in the SDL adjustment calculation.

35

What you really mean is that that unimplemented policy measure, by including it, they shouldn't have included that the measure was in place in the modelling and, therefore, there's a deduction that will take place.

40

MS SLATTERY: That's right.

THE COMMISSIONER: While we are on that, by the way - - -

45 MR BEASLEY: Yes.

THE COMMISSIONER: - - - I can't now recall exactly where it was, but in at least one publication or document that has come to light the Authority has described the Menindee project as one to which the SDL adjustment requirement of equivalent environmental outcome does not apply. Are you able to explain to me why, as you
5 understand the matter, the Authority has come to that view?

MS SLATTERY: My understanding is it's based on the environmental equivalency method that was agreed. So that method is based on – it's essentially a hydrological – hydrological indicators are then a proxy for ecological outcomes and the ecological
10 outcomes are weighted to give a score based on the hydrological indicators. My understanding is that the MDBA have used the same hydrological indicators they used when they prepared the base line, the benchmark model, and there was a hydrological indicator in the Lower Darling but not in the Menindee Lakes itself. So because there was no hydrological indicator they couldn't apply an environmental
15 equivalency.

THE COMMISSIONER: I don't understand that.

MR BEASLEY: So you're talking - - -
20

THE COMMISSIONER: Why does it mean you can't - - -

MR BEASLEY: You're talking about schedule 6.06 and onwards of the Basin Plan, where you've got the ecological methods of score and method. If you just turn to
25 that. Page 220, if you've got the same volume I have. So 6.05 commences with the 'Ecological Elements of Scoring Method'. And you're telling the Commissioner, because there wasn't an indicator site for Menindee, the Basin Plan says this doesn't apply.

30 MS SLATTERY: That's my understanding of it.

THE COMMISSIONER: So could – I realise I'm not asking you to present an argument that you believe in, but I really need help. This enquiry, I suppose, might
35 start with 7.17 (2) (a) as mandated by 7.21(b).

MR BEASLEY: Yes.

THE COMMISSIONER: And the combination of those two provisions ensures, supposedly, that there can't be an apportionment of supply contribution under 7.18,
40 or a determination to proposed adjustments under 7.20. So something that satisfies the definition in 7.15 unless the so-called supply contributions to the proposed adjustments achieve equivalent environmental outcomes compared with the benchmark environmental outcomes. Now, the benchmark environmental outcomes are defined in the multi-stage manner that Mr Beasley and I have just discussed this
45 morning. And I'm sorry, no doubt my attention span is too short but I just can't trace through that process how Menindee Lakes – a supply measure proposed in relation to the Menindee Lakes, escapes that requirement.

MR BEASLEY: Just to fully help the witness, I think what you're referring to, Commissioner, is in the MDBA analysis, the Menindee Lakes business case – sorry, Menindee Lakes Water Saving Project business case, which is RC51 on page 5. There's the statement:

5

The Menindee Lakes falls outside of the SDLAM framework for testing environmental equivalence.

MS SLATTERY: Yes.

10

MR BEASLEY: You're familiar with that, no doubt.

MS SLATTERY: Yes.

15

THE COMMISSIONER: I much regret to say there's much of my red writing here, and I can't even myself read everything I wrote, but suffice it to say that I don't think that I cracked it when I wrote that note. This expression - - -

MR BEASLEY: It just – it also seems inconsistent with the rest of it - - -

20

THE COMMISSIONER: This expression that - - -

MS SLATTERY: - - - saying, "We need to - - -"

25

THE COMMISSIONER: - - - it falls outside of the framework – I suppose – I mean, I would like to know, simply as a lawyer, how that is achieved. If it's right, then that's a different starting point for this Royal Commission. It would appear to be a rather curious omission from an environmental assessment of such matters, if this is legally correct.

30

MR BEASLEY: It is. I wonder if it's - - -

THE COMMISSIONER: And bearing in mind the significance to South Australia of the Menindee Lakes, this is not unimportant, bearing in mind that that has a knock-on – I keep trying to avoid saying flow-on – a knock-on effect in relation to water down the Murray.

35

MR BEASLEY: Yes. Now, wonder if they say it doesn't matter because – I mean, on the face, the fact that you say it falls outside the framework, you might say, well, that's unfortunately - - -

40

THE COMMISSIONER: They might be right. All I'm saying is that's not a self-explanatory sentence.

45

MR BEASLEY: Well, if it falls outside their framework, I'm not sure that helps make whatever they want to do lawful and you still don't have to have environmental equivalents. But I'm wondering whether the approach they're taking is part of the

MDBA's assertion that you consider all of these – as I'm saying this, this can't be right – but all of the supply measures as one, and work out environmental equivalence based on them all. The problem with that is if you don't know what the environmental equivalency of one supply measure is, I'm not sure how you can - - -

5

THE COMMISSIONER: That's no doubt why 7.17 (1) says if you can't be satisfied that something can be done, then reduce accordingly.

MR BEASLEY: Yes. And so I – just so that I understand what you were telling the Commissioner, I think this is right, you're saying because they haven't got a hydrological indicator site there, they can't do the scoring method that they've set out in the schedule 6.

MS SLATTERY: That's right. That's my understanding. When I originally read – read this, I had included the environmental equivalency in the Desperate Measures paper and I checked with some government people and asked why the – that very question, why there was – the Menindee Lakes fell outside the SDL adjustment mechanism framework, and I was told that there was a decision made by governments, probably at the Basin Officials Committee level, that the Menindee indicator – they would consider that outside the framework. And that was because there was no original hydrological test at Menindee itself.

MR BEASLEY: Right. But did you explore with them how that meant what they were doing was lawful?

25

MS SLATTERY: No.

MR BEASLEY: Right.

THE COMMISSIONER: Well, now, are we looking at schedule 6 or schedule 6(a) or both of them?

MR BEASLEY: Well I was looking at 6.6(a) is how you do the calculation, I think. But – yes, but 6 is the method.

35

THE COMMISSIONER: If I go to 6.01 the laughably described 'Simplified Outline', sub (2), what are you saying? That you gather that the MDBA thinks that you can't do any of those things for Menindee Lakes?

MR BEASLEY: (b) you can't identify the indicator sites, I imagine, if there aren't any.

THE COMMISSIONER: Why don't you choose them? Identify the indicator sites and regions that are to be used. I mean these people are supposed to be the most expert in the world about these matters.

45

MR BEASLEY: Yes.

THE COMMISSIONER: Why wouldn't they be able to choose the indicator sites and regions?

5 MR BEASLEY: I can't answer that. But, sorry, just to - - -

THE COMMISSIONER: You will see that - - -

10 MR BEASLEY: - - - ask the witness, they're saying, "There's no indicator sites so we can't do (b)," for example; is that right?

MS SLATTERY: That's my understanding, yes.

15 THE COMMISSIONER: So could you just go – have you got the Plan there with you?

MS SLATTERY: Yes.

20 THE COMMISSIONER: Just turn, please, to schedule 6, S6.01(2)(b). You see in the summary of the method, that second step is to identify indicator sites. Do you see that?

MS SLATTERY: Yes.

25 THE COMMISSIONER: The words in parentheses show that – I'm not making this up, this is a question of choice. The words are, and I quote:

...these will be chosen to be representative –

30 they will be chosen. In other words, part of the method involves the choice. Can you understand why I'm feeling frustrated about being told that because there are no indicator sites, the Menindee Lakes proposal falls outside this framework? I don't know whether I'm right or wrong, all I know is that I haven't seen anything to explain a rather striking omission.

35 MS SLATTERY: I'm not aware of legal basis for that decision. I would approach it a different way. The Menindee Lakes project is 106 gigs of the 605 gigs. It's significant.

40 THE COMMISSIONER: That's why I call it a striking omission.

MS SLATTERY: Yes.

45 THE COMMISSIONER: I agree with you completely, with respect. Could we go back to 6.01?

MR BEASLEY: Sorry, had you finished what you wanted to say.

MS SLATTERY: Yes. Well, I just would thought, just from a quantum, and the portion that it contributes, that it's - - -

5

MR BEASLEY: I see. Yes, yes. No, I understand. It's one sixth of the whole - - -

MS SLATTERY: Yes.

10

THE COMMISSIONER: You would think hard about omitting it from an environmental equivalency analysis.

MS SLATTERY: Yes.

15

THE COMMISSIONER: Well, now, 6.01(2)(b), as I say, requires the identification of indicator sites that are to be used, and these will be chosen to be representative, and then there's words:

...while ensuring that areas of high ecological value are given due weight.

20

So that's talking about this judgment by the world's leading experts in order to apply a method. Are you aware of anything – sorry, could you show me where I would look in schedule 6, then, for the details of what's summarised in 6.01(2)(b) which is the identification of indicator sites. 6.02 doesn't seem to help me. It talks about the benchmark model. 6.03 looks promising:

25

The indicator sites that are to be used are those used in the development of ESLT for which detailed assessments of environmental water requirements were done.

30

And is it by that method that we move from what was in 6.01 the identification of sites that are to be used which will be chosen to be representative, for Menindee Lakes to having no sites at all because it wasn't used for ESLT? Is that true, by the way, it was not used for ESLT?

35

MS SLATTERY: I haven't verified that myself. I'm just relying on the inquiries that I made. But the hydrological indicator sites are referenced in the benchmark model, which is that document MDBA 2012a. The description of the benchmark model.

40

MR BEASLEY: The inquiries you made were with who? You said "government," but Basin - - -

MS SLATTERY: MDBA people and ex-MDBA people, yes.

45

THE COMMISSIONER: So the 24 sites and reaches that are referred to in S6.03 come from one of the ESLT – it's the assessing environmental water requirements for the Basin's river. Have you cross-referenced to it in order to understand - - -

MS SLATTERY: No, I haven't myself.

THE COMMISSIONER: Is it possible that the Menindee Lakes have been treated specially because they are themselves, in their current configuration, the result of
5 earlier engineering?

MS SLATTERY: I haven't heard that argument.

THE COMMISSIONER: Well, there's not much that is in a state of nature in the
10 Murray-Darling is there?

MS SLATTERY: No. And you would have to apply the same logic to the
works and measures if that was the argument.

15 THE COMMISSIONER: Practically the whole of the length of the Murray.

MS SLATTERY: Yes.

THE COMMISSIONER: Yes. Well, I wonder if somebody can just pursue, but not
20 right now, what MDBA 2012b, which is the assessing environmental water
requirements for the Basin's rivers – what it's detailed assessments of the 24 sites
and reaches says about what appears to be an absence of Menindee Lakes from there.

MR BEASLEY: Just to complete that sentence that we read from the MDBA's
25 analysis of the Menindee Lakes project:

*Menindee Lakes falls outside the SDLAM framework for testing environmental
equivalence. As such, any trade-off of environmental outcomes associated with
generating water savings at Menindee Lakes will not contribute to lower
30 environmental outcome scores using the ecological elements method and,
therefore, is not taken into account in determining the adjustment volume.*

THE COMMISSIONER: Yes. Well - - -

35 MR BEASLEY: Now, that might be what they've done, but - - -

THE COMMISSIONER: If that's correct, then that's a significant thing to observe
about the Plan.

40 MR BEASLEY: Yes:

*Business case states that a separate assessment of the local environment needs
has been commenced and further work will be necessary as part of the formal
EIS process –*

45 Which somewhere else will tell doesn't need to be – isn't going to be done till 2020.
I imagine an EIS is needed for some form of State-based development approval, but

it's not clear from this whether the EIS process is some sort of substitution for what's in schedule 6.

5 THE COMMISSIONER: Does anyone have any idea what the last sentence of that section means:

At minimum, MDBA needs - - -

10 MR BEASLEY: Yes. Yes.

THE COMMISSIONER:

15 *...would expect that a qualitative assessment will be undertaken to confirm that the net environmental outcomes of the final proposal are environmentally equivalent.*

MR BEASLEY: That seems to be a concession or a statement that they still believe that environmental equivalency is a necessary component of this supply measure, but the scoring method won't work.
20

THE COMMISSIONER: Well, not for the first time it's relatively unimpressive about how the MDBA communicates these matters upon which, among other things, public consultation becomes necessary.

25 MR BEASLEY: Well, there was no communication. As we know, this is another document produced to the Senate that otherwise wouldn't have been. And it's hardly unimportant, given the matters raised at – the risks raised at the second bullet point on page 5 about 23,000 hectares of Golden Perch nursery, and waterbirds. Anyway.

30 THE COMMISSIONER: Thank you. Thanks for the help.

MR BEASLEY: Mr O'Flaherty has just passed me a note saying there are flow indicators for the Menindee Lakes. I'm just looking at the ESLT report. I don't know if you have got your ESLT folder there, Commissioner, which I think you do.
35 What Mr O'Flaherty – I don't have it, but what Mr O'Flaherty has just took me to is page 218. I've actually got it on the computer, but - - -

THE COMMISSIONER: So this is part of what's called the - - -

40 MR BEASLEY: This is the ESLT report.

THE COMMISSIONER: - - - the detailed assessments, is it?

45 MR BEASLEY: Yes. And, you know, it has got your environmental watering plan objectives, your environmental watering targets, specific site ecological targets and the flow indicators, flow so on this page it says 'Menindee Lakes Water Levels at Lake Cawndilla and Lake Menindee'. I don't know what that means.

THE COMMISSIONER: Well, it means - - -

MR BEASLEY: It's talking about filling to certain levels of the lakes, but - - -

5 THE COMMISSIONER: But as proxies for ecological targets which include recruitment of fish.

MR BEASLEY: Fish, frogs, turtles and invertebrates, yes. Breeding of colonial waterbirds.

10

THE COMMISSIONER: And it certainly includes - - -

MR BEASLEY: Native vegetation.

15

THE COMMISSIONER: It certainly includes filling of – filling and drawing down of Cawndilla.

MR BEASLEY: Yes, which, obviously, is not the current proposal in the supply measure in relation to - - -

20

THE COMMISSIONER: Ms Slattery, can you explain any of that for me?

MS SLATTERY: No, I can't, I'm sorry.

25

MR BEASLEY: Do you know what we're talking about? This is the – I will show the witness, so she knows... this is the ESLT determination report.

MS SLATTERY: Yes.

30

MR BEASLEY: That's the flow indicator... that's what we're looking at there.

MS SLATTERY: That's fine.

35

THE COMMISSIONER: Now, this is what they call MDBA 2011.

MR BEASLEY: Yes.

THE COMMISSIONER: Can we get hold of MDBA 2012b?.

40

MR BEASLEY: That's going to be the hydrologic - - -

THE COMMISSIONER: Indicator sites.

MR BEASLEY: Yes.

45

MS SLATTERY: I expect it will be explained in the technical report on the hydrological modelling, which is MDBA 2012a.

MR BEASLEY: It may not be – yes, it might be. But that b is a reference to a different report that we don't have currently on us.

THE COMMISSIONER: Righto. Well, rather than - - -

5

MR BEASLEY: We will have a look at it later. Yes.

THE COMMISSIONER: If there's something upon which we would like your assistance in relation to that after we've done some more detective work, would you mind us corresponding with you?

10

MS SLATTERY: No, that's fine.

THE COMMISSIONER: I'm obliged. Thank you. Sorry, Mr Beasley. I - - -

15

MR BEASLEY: Yes. I've got no idea where I am now.

THE COMMISSIONER: I think I stopped you going anywhere. I'm sorry.

20

MR BEASLEY: Yes.

THE COMMISSIONER: Is there something you want to correct in transcript, is there?

MR BEASLEY: Yes, there is. And I just need it to be given to me first. So it's page – better start at the beginning. These were questions about your paper regarding – 'Remember the '56 Flood' behind tab 3, where – have you got that '56 flood - - -

25

30

MS SLATTERY: Yes.

MR BEASLEY: - - - and page 9, I think. What you've really said in this paper is that it's a bit misleading for people to claim that only six per cent of the Barwon-Darling's water is available for irrigators, because that's based on using average inflows and average inflows includes a couple of massive flood events, which, if they're not considered, obviously, six per cent is a higher figure. It's also a much higher figure if you used a median. And it's a higher figure, again, in dry times when water for the environment might be particularly important.

35

MS SLATTERY: I was really trying to make the point in that report that using any average or any one number is really quite meaningless in such a variable system. Yes.

40

MR BEASLEY: That's right. Yes. All right. Now, so the Commissioner was asking you a question starting at 830:

45

5 *The Authority's consideration of the Northern Basin SDL has also been informed that by the Basin's long term climate record, covering 114 year period – and I think that's clear, isn't it? The date they have presented, the conclusions they have expressed in a number of different places call on that 114 year record.*

You said:

10 *The 114 year record is quite misleading, because there's not very many places in the Basin at all that you have 114 years' worth of data.*

Commissioner:

15 *Why do you say –*

Sorry:

What do you mean - - -

20 THE COMMISSIONER: Sorry. What page?

MR BEASLEY: I'm now on the top of 831.

25 THE COMMISSIONER: Thanks.

MR BEASLEY: Commissioner:

30 *What do you mean when you say misleading? I mean, the record, such as it is, is the one they've used. Right?*

Slattery:

Sorry? Climate record?

35 Commissioner:

Yes.

40 Slattery:

I'm not sure. I know that there's - - -

Commissioner:

45 *I'm just anxious we shouldn't under privilege accuse somebody of being misleading if they haven't been. There is a long term climate record. I mean, I'm not saying it's perfect, but there is one and it covers 114 year period.*

Slattery:

*The modelling – a lot of the modelling is based on, say, the northern Basin.
The only place you've got 114 worth of gauge data is Wilcannia.*

5

Commissioner:

Maybe so, but that's the record and they've got it and they've used it. Is that right?

10

Slattery:

That's my understanding, yes.

15

Commissioner:

That doesn't seem to me to be misleading. Can you explain to me why you would say that was misleading?

20

Slattery:

Can I withdraw it?

25

Commissioner:

Yes.

Slattery:

30

Yes.

Now, you want to add something to those answers?

35

MS SLATTERY: Yes.

MR BEASLEY: All right. Go ahead.

40

MS SLATTERY: I just wanted to make the point I'm not suggesting that MDBA is intending to mislead, but for many years I've heard that statement about 114 years' worth of data being used for the modelling and to underpin the modelling. And until quite recently that implied to me that there was a very comprehensive dataset, both spatially and over time. Last year I spent several months trying to do an analysis in the Barwon-Darling to understand the relationship between inflows and the end of system flows. That meant that I had to do quite a comprehensive examination of the dataset. I concluded that I couldn't draw a robust conclusion in relation to inflows and outflows using the observed data alone. And that was because of the paucity of

45

the data. And the paucity of the dataset I found quite surprising, even though, you know, being – working in water for 12 years.

MR BEASLEY: Yes.

5

MS SLATTERY: And, I mean, that exercise was very instructive for me. And ever since I've seen that statement around the 114 years' worth of data, it jars with me, because I find it misleading, because it certainly has a different meaning to me now than it did before I actually went through and spent quite a considerable amount of time going through the data. As an example in the Barwon-Darling, there's only three gauges that predate the 1990s. In all of New South Wales, there's only just over 40 gauges that predate the 1990s – sorry – 1900s. And a lot of those are on the east coast, so they weren't even in the Basin.

15 THE COMMISSIONER: Did you mean the 1990s in that first of those references or the - - -

MS SLATTERY: Yes, 1900s. Sorry.

20 THE COMMISSIONER: 1900?

MS SLATTERY: Yes. So it's just my opinion, but I find that the reference to 114 years implies a much more robust - - -

25 MR BEASLEY: Yes, I see.

MS SLATTERY: - - - dataset than actually exists.

30 MR BEASLEY: You want a footnote to that phrase saying there's an inadequacy – or a lack of really good data.

MS SLATTERY: Yes, there's never a caveat. That statement never comes with a caveat.

35 MR BEASLEY: All right.

THE COMMISSIONER: I guess it really comes down to the ambiguity of the word misleading, doesn't it?

40 MS SLATTERY: Yes.

THE COMMISSIONER: Sometimes it conveys a sinister motive.

MS SLATTERY: Yes.

45

THE COMMISSIONER: And sometimes it's just the inherent unreliability of an incomplete record.

MS SLATTERY: Yes.

THE COMMISSIONER: And it's the latter that you want to point out.

5 MS SLATTERY: That's right.

THE COMMISSIONER: I understand that. Thank you. Well, now, it does occur to me that this is all in the context of the approach the Authority says it's taking to the prospect of climate change.

10

MS SLATTERY: That's right. That was the context of that statement.

THE COMMISSIONER: Well, it just makes me wonder whether this chimes with what the statute requires in terms of the mandatory principles of ecologically sustainable development and that aspect of those principles, which reads as follows:

15

If there are threats of serious or irreversible environmental damage –

I interpolate that could well be a permissible view about climate change, do you think?

20

MS SLATTERY: Yes.

THE COMMISSIONER:

25

Lack of full scientific certainty –

I interpolate – that seems to me to be a rather naive expression, but nonetheless it's good English –

30

should not be used as a reason for postponing measures to prevent environmental degradation.

So all of that rather suggests that if there is this very incomplete 114 year record, you might regard that as – the incompleteness as a reason to be cautious.

35

MS SLATTERY: Yes, that's right.

THE COMMISSIONER: In terms of using it as a foundation to say, well, for the next 10 years at least we won't do anything particular, specific or peculiarly directed to climate change. Is that the point you're making?

40

MS SLATTERY: And certainly not being used as a defence.

45 THE COMMISSIONER: That's the point you're making?

MS SLATTERY: Yes, that's right.

THE COMMISSIONER: Thank you.

MR BEASLEY: Just to be clear, and I think we may have clarified this last time, but I just want to make sure I understand what you're saying again. On page 7 of
5 your submission – so you've got to go to tab 1 – the heading 'Northern Basin Review' where you've set out section 6.06 about:

A review must be undertaken having regard to the management of climate change risk.

10

Whatever the term "having regard to" means. But I think your evidence was that you have no knowledge of any up-to-date assessment of climate change risks having been performed by the Basin Authority.

15 MS SLATTERY: That's my understanding.

MR BEASLEY: All right.

20 MS SLATTERY: And when I read the three paragraphs that MDBA have included in their Northern Basin Review report, which I repeated in my submission, it seems to me that they're justifying doing no change to what they've done; they've just continued modelling the same way.

25 MR BEASLEY: Yes.

MS SLATTERY: And so they haven't done anything and used that as a justification to take climate change into account.

30 MR BEASLEY: All right. Speaking of modelling in the northern Basin, at page 9 of your submission, you start to mention the Barwon-Darling hydrological model. In paragraph 2 you say:

All Water Sharing Plans are underpinned by gazetted hydrological model.

35 I assume that's a reference to the fact that the – that IQQM model for Barwon-Darling is actually referred to in the Water Sharing Plan.

MS SLATTERY: That's right.

40 MR BEASLEY: Yes.

MS SLATTERY: And that – actually, that paragraph should say New South Wales Water Sharing Plans - - -

45 MR BEASLEY: Yes.

MS SLATTERY: - - - are not as close to the other States.

MR BEASLEY: Sure. And, dropping down, in the last paragraph you say:

5 *The Barwon-Darling hydrological model used in the Northern Basin Review is an uncredited model. It was audited and assessed in 2011. The auditor had said it had significant shortcomings and given only provisional accreditation until December '14 to give New South Wales time to address those shortcomings.*

10 Now, when you're saying the auditor, you're referring, I assume, to that report by Bewsher Consulting 2013.

MS SLATTERY: That's right.

15 MR BEASLEY: Which is in evidence. Someone will give me an exhibit number in a moment. Then you say:

Those issues were never fully addressed and the provisional accreditation lapsed.

20 And you've given a footnote reference of MDBA 2014, 'Response to NSW Accreditation of the New South Wales Cap Model', documents obtained by the Australia Institute under FOI. I asked this morning whether you had those documents. You do or you need to look for them or - - -

25 MS SLATTERY: I need to double-check.

MR BEASLEY: You're not sure about the footnote?

30 MS SLATTERY: I'm not sure about that reference to – yes, that footnote. I've definitely seen a letter back from the Chief Executive to New South Wales.

MR BEASLEY: Chief Executive of the MDBA?

35 MS SLATTERY: Of the MDBA.

MR BEASLEY: Which Chief Executive?

MS SLATTERY: Rhondda Dickson.

40 MR BEASLEY: Right.

MS SLATTERY: And we requested that through an FOI - - -

45 MR BEASLEY: Yes.

MS SLATTERY: - - - which is where we got most of this information around the Barwon-Darling Water Sharing Plan - - -

MR BEASLEY: Yes.

MS SLATTERY: - - - and the model. It should be in that - - -

5 MR BEASLEY: All right.

MS SLATTERY: In that package.

10 MR BEASLEY: So your understanding is that model is still not – it had a provisional accreditation. I think that was – that was the recommendation from Bewsher. And I'm fairly sure we have also got in evidence a document, internal document, from the MDBA where that was recommended - - -

MS SLATTERY: That's right.

15

MR BEASLEY: - - - by Ms Dickson when she was the CEO of the MDBA. But you're saying the provisional accreditation lapsed.

MS SLATTERY: Yes.

20

MR BEASLEY: And you're not aware of that model being accredited since.

MS SLATTERY: That's right.

25 MR BEASLEY: All right. But that's something you will check for us?

MS SLATTERY: I can check that I've got a copy of a letter advising - - -

MR BEASLEY: Yes.

30

MS SLATTERY: - - - that to New South Wales that it wasn't a priority for them to address the issues raised in the provisional accreditation.

35 MR BEASLEY: Because – I mean, the importance of this is that you've quoted significant shortcomings from that Bewsher report, but it's probably fair to say that you've undersold it there in terms of the concerns that Mr Bewsher had about the model and its inadequacy, or perhaps even as high as it's inappropriateness for Barwon-Darling.

40 MS SLATTERY: Yes.

MR BEASLEY: Particularly in relation to when there are low flows.

MS SLATTERY: Yes.

45

MR BEASLEY: Yes. All right. I just want to go back in your submission to page 4. We covered it briefly last time, but it might be that I have a better understanding

of what you're saying now than I did last time. This is, again, something that you've set out in the 'Desperate Measures' publication behind tab 8, but I think we can deal with it by looking at your submission. This is a concern you have about the modelling for the – what's the nickname for this EEW, is it hydro-cues?

5

MS SLATTERY: Hydro-cues.

MR BEASLEY: Hydro-cues SDL project. You're saying that it's clear from the hydrological modelling from the project that the project business case has higher flow rates than – sorry, the modelling for the project includes flow rates that are higher than the flow rates described in the business case. So the modelling that's set out, we've got the EEW Goulburn Modelling report. You've put an extract, and this is for – so for the Goulburn system the flow rate is 40,000 megalitres a day for a medium duration of four days between – is that June and November?

10
15

MS SLATTERY: Yes.

MR BEASLEY: Yes. And the Basin Plan target, 40 to 60 per cent benchmark, 58, limits of change, 52 per cent. What's 19 pack 116 a reference to?

20

MS SLATTERY: That's a group of supply measures.

MR BEASLEY: Yes. Okay. And then what's EEW – what is that Y?

25 MS SLATTERY: That must be a hydro-cues model run.

MR BEASLEY: Right. 67 per cent. But anyway, the – what you want to draw our attention to is the 40,000 megalitres a day and compared to the business plan lodged by the government, which you've extracted part of at page 6, final flow rates will – in the box:

30

Final flow rates will depend on the flow rates achieved through extensive consultation –

35 etcetera, etcetera, etcetera:

For example, Goulburn key focus area up to 20,000 megalitres per day shepherded for flows to the Murray, and to be represented by the benchmark model approach.

40

So the 20,000 megalitres a day is what the Victorian Government's position is on the project.

MS SLATTERY: Yes.

45

MR BEASLEY: But the modelling that the Basin Authority has done to – for that particular Goulburn key focus area is at 40,000 megalitres a day, which – what will the impacts be in relation to that, do you say?

5 MS SLATTERY: Well that's going to have quite a significant impact on the flow rates you can achieve in the Goulburn and in the Murray, and at the South Australian border, and that then equates to the ecological outcomes that you achieve and therefore the environmental equivalence test.

10 MR BEASLEY: So we've got the Basin Authority modelling at twice the flow rate as the business case - - -

MS SLATTERY: Yes.

15 MR BEASLEY: - - - for that area. So that will impact, will it not, on – for example, that might impact – would it not – on the environmental equivalent scoring test.

MS SLATTERY: Absolutely.

20 MR BEASLEY: Which may – and I assume also it would impact on how much water should be attributed to this SDL project in terms of a reduction in the amount of the amount of water that the environment is said to require.

25 MS SLATTERY: Yes. And it will also impact on how much water you can – the environment can actually use.

MR BEASLEY: Yes. All right.

30 MS SLATTERY: It's important to note that the 40,000 megs a day at Shepparton was always part of the benchmark.

MR BEASLEY: Yes.

35 MS SLATTERY: It was problematic right from the start, because it was – I think – considered a mistake to have a flow rate that high, and it was – became part of the constraints management strategy as a target to achieve that flow rate at Shepparton, but it has always been controversial and the Victorian government and Victorian landholders have always been opposed to such a high flow rate.

40 MR BEASLEY: We might have it, I haven't seen it though, but have you seen the MDBA's analysis of this business plan for hydro-cues?

MS SLATTERY: I don't think that – no, I haven't.

45 MR BEASLEY: Assuming there is one. There may not be one, someone is whispering to me, so - - -

MS SLATTERY: I just want to double-check, I'm not sure it came through in the order for production of documents for those assessments.

5 MR BEASLEY: The reason I'm raising that is that I'm curious to know what the response was from the Basin Plan to the different flow rate here.

MS SLATTERY: A journalist asked MDBA a couple of weeks ago.

10 MR BEASLEY: Yes.

MS SLATTERY: And MDBA said that they – the modelling report that we've quoted here wasn't the modelling for the hydro-cues project.

15 MR BEASLEY: I see.

MS SLATTERY: Despite the fact that it's actually on their website attached to the hydro-cues business case.

20 MR BEASLEY: So the extract on page 5 you got from the MDBA's website?

MS SLATTERY: Yes.

MR BEASLEY: Attached to the business case for this project?

25 MS SLATTERY: Yes.

MR BEASLEY: And they're now saying – MDBA has told a journalist it's not the right one.

30 MS SLATTERY: Yes. But they haven't actually provided the modelling for what they say is the right one. The Australia Institute has also written to MDBA, about four weeks ago, asking them specifically the flow rate that is used in hydro-cues model and the package of the modelling report that, they did the package of the supply measures for the flow rate at Shepparton and we haven't received a response.

35 MR BEASLEY: I was just going to ask you. So – okay. So there was no response to that. Did that – when you say a journalist ask the question, did that information find its way into the public domain through an article or is that something you've just been told?

40 MS SLATTERY: Yes. It was Peter Hunt from The Weekly Times reported on this probably about two weeks ago.

45 MR BEASLEY: Peter Hunt from The Weekly Times. All right. And I'm told, Commissioner, that in terms of our search through the documents produced in the Senate, there doesn't seem as though there's an MDBA analysis of this particular supply measure. I think we've dealt with Northern Basin Review and what you've

said there. We have dealt with the modelling. I think we dealt with last time reallocation of SDLs between valleys and I think we also dealt with the comments you had about 6.14.

5 THE COMMISSIONER: Could I just ask something about - - -

MR BEASLEY: Yes, go ahead, of course.

10 THE COMMISSIONER: - - - that please, Ms Slattery. Subdivision (b) of division 4 of part 2 of the Act, which is the object of 6.14 of the Basin Plan is, as you have observed in your submission – I think with respect correctly – a set of provisions exposing the Commonwealth to an obligation of what I will call compensation for changes. That is, diminutions in reliability.

15 MR BEASLEY: Can you just tell me what section you're on, Commissioner.

THE COMMISSIONER: In the Act, it starts at section 80.

MR BEASLEY: Right. Thank you.

20

THE COMMISSIONER: And that's all about changes to the Basin Plan.

MS SLATTERY: Yes.

25 THE COMMISSIONER: And I think the point you've made to me and in your submission is, on the face of it, 6.14 is a bit odd because in the Basin Plan as first promulgated it appears to be saying nothing in this Basin Plan, in its unchanged state, requires a change in reliability of a kind that would trigger provisions that apply if the Basin Plan is changed.

30

MS SLATTERY: That's right.

THE COMMISSIONER: And I gather that you're pointing that out that that is a really, really odd thing to say because that is in the nature of

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MS SLATTERY: I think - - -

THE COMMISSIONER: An unchanged Basin Plan won't trigger provisions that are triggered by a change in the Basin Plan.

40

MS SLATTERY: Yes.

THE COMMISSIONER: I agree.

45 MS SLATTERY: I've got a further concern that this has been interpreted by MDBA as a reading down provision, if that's the correct legal term.

THE COMMISSIONER: It is the correct legal term. I've read your submission, I think I agree with it as well. But just start first of all, if it's true, as I think it is, that subdivision 3 of part 2 of the Act is all about changes in reliability brought about by a change in the Basin Plan, furthermore, not being a reduction in the SDL,
5 furthermore being attributable to the Commonwealth, then to say that nothing in the Basin Plan as first promulgated, that is before any changes have occurred to it, requires a change in reliability of a kind that would trigger those provisions is really silly.

10 MS SLATTERY: Yes.

THE COMMISSIONER: And then you say, because – I might use that language but you're too polite, then you say, "Look, whatever" – however much your eyebrows are raised by that element of 6.14, the recorded understanding and approach within
15 the Authority of 6.14 seems to suggest it is in the nature of an override provision of a kind that interpretively would affect, as you say correctly with respect, by reading down other provisions of the Basin Plan so as to prevent them from operating according to their tenor if that tenor would bring about a change in reliability.

20 MS SLATTERY: Yes.

THE COMMISSIONER: Now, we talk about – it talks about change in reliability, but it has to be diminution in reliability because you don't get compensated for reliability being enhanced.
25

MS SLATTERY: No.

THE COMMISSIONER: Well, you don't, not surprisingly. There might be a zero sum game going on, namely one person's enhancement is another person's
30 diminution, but that's not what we're talking about here. In practical terms, how do you perceive that fallacy, as you identify it, actually affecting the operation of the Basin Plan? What are the provisions of the Basin Plan which, read down in the fashion that you have described, would appear to be misunderstood?

35 MS SLATTERY: The biggest – the most obvious impact on reliability will be environmental watering. If you have a quarter of entitlements that were previously owned for consumptive use, and you now acquire those by the government and use them in a different way - - -

40 THE COMMISSIONER: Yes.

MS SLATTERY: - - - then you are going to change – potentially change the reliability over a year.

45 THE COMMISSIONER: Why will you change reliability of the water that is allocated for consumptive use by reducing its amount?

MS SLATTERY: There's a couple of ways that can be changed.

THE COMMISSIONER: Bearing in mind that these are provisions that say they don't apply to things brought about because of reduction in SDL.

5

MS SLATTERY: Yes. There's a couple of ways that reliability can be affected. One is because the environment – because the Commonwealth has purchased water on behalf of the environment that was previously underused, so it's colloquially called a sleeper licence, and then that comes into full use, then that could potentially impact everyone else's reliability.

10

THE COMMISSIONER: How would it do that?

MS SLATTERY: Because that underuse, if you like, has been propping up other users' reliability.

15

THE COMMISSIONER: If it's genuine underuse, though, they will still be able to draw on their allocations, to their extent, won't they? Unless there wasn't enough water, unless there was an over allocation.

20

MS SLATTERY: It's essentially like an over allocation, if you like. It has been – underutilised licences have been propping up the allocations of the reliability for other licences.

THE COMMISSIONER: I can understand. I – see. Yes. We haven't yet practically seen this in effect, have we?

25

MS SLATTERY: I don't know. I know the governments are very concerned about it. I know New South Wales is very concerned about it.

30

THE COMMISSIONER: Very concerned about what?

MS SLATTERY: Very concerned about sleeper licences that the Commonwealth has bought and fully utilising those sleeper licences will impact on other users' reliability.

35

THE COMMISSIONER: Sorry, have another go. I'm a bit slow. Try and explain to me how it will impact on their reliability. I understand if there has been a genuine over allocation. I'm not quite sure whether – I understand why that would be something to be worried about, but I'm not quite sure why that affects what's called reliability. Reliability seems to be a technical term describing the ranking you have in terms of allocations being honoured.

40

MR BEASLEY: So a sleeper licence is one where - - -

45

THE COMMISSIONER: Isn't that right?

MR BEASLEY: - - - there was an entitlement owned by someone where they weren't taking any part of their allocation, they weren't using any of their water.

MS SLATTERY: Or only a small portion of that.

5

MR BEASLEY: All right. And so if that is bought by the Commonwealth, and we assume that all of that water is then used for the environment. So the sleeper licence of which, say, 10 per cent of the allocation used to be used, now 100 per cent is, is the concern there's just less water in that particular valley for the rest of the entitlement holders?

10

MS SLATTERY: That's right.

MR BEASLEY: Right.

15

THE COMMISSIONER: When we talk about used for the environment we are not talking about taking it out of the river?

MS SLATTERY: No. But it means that allocation - - -

20

MR BEASLEY: Shouldn't be pumped for irrigators, though.

MS SLATTERY: It could be – it doesn't necessarily have to be the environment. It could be another irrigator that is buying sleepers licence would have the same and then they fully utilise the licence.

25

MR BEASLEY: Or it could still be – be held in storage.

MS SLATTERY: That's a separate issue.

30

MR BEASLEY: Separate. All right.

THE COMMISSIONER: But do you understand what I mean? I don't understand at the moment why we would regard that as changing reliability of somebody's allocation so long as they remained in the same relative position in the hierarchy of capacity to take water.

35

MS SLATTERY: The concern is that the underutilised licences have been propping up the fully utilised licences reliability. So it's an over allocation issue.

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THE COMMISSIONER: But how is there anything in the Basin Plan which requires a change in reliability? The Basin Plan doesn't tell farmers use it or lose it.

MS SLATTERY: No, I agree.

45

THE COMMISSIONER: Maybe it could have and should have, but it doesn't.

MS SLATTERY: Yes. I agree.

THE COMMISSIONER: So that's another way of you saying 6.14 is a bit odd, but even odder is the way the Authority appears to understand it.

5

MS SLATTERY: Yes.

MR BEASLEY: Is your concern – I'm just wondering if it would help you to – behind tab 18 there's actually the Basin Authority's position statement on 6.13 and 6.14. So tab 18. Do you have that document, Basin Plan Water Resource Plan Requirements Position Statement 1: Potential Reliability Changes?

10

MS SLATTERY: Yes.

15 MR BEASLEY: Paragraph 1 says:

The Basin Plan does not require a change in the reliability of water allocations, nor does it prevent a Basin state from changing the reliability of water allocations if it chooses to do so.

20

But particularly, in relation to 6.14, you will see paragraph 15:

For example, the operation of s6.14 means that a water resource plan need not include new rules to give effect to particular requirements of Chapter 10 if it is not possible to include such rules without causing a change in reliability. Sections of the Basin Plan where this may become relevant include s10.17, ss10.18, 10.21, and s10.26.

25

You were talking about water environmental assets. 10.17 is about priority environmental assets; 10.18 is about – sorry, 10.17 is priority environmental assets and priority ecosystem functions and says that a water resource plan must be prepared having regard to whether it's necessary for it to include rules to ensure that the operation of the plan does not compromise the meeting of environmental watering requirements of priority environmental assets and priority exculpatory functions. I'm just going to ask anyone – someone to check whether the word "priority" is defined anywhere. 10.18, priority environmental assets dependent on groundwater. Similar provisions. It's 10.18 to 10.21. So Groundwater and surface water connections, 10.20 productive base of groundwater, 10.21 environmental outcomes relating to groundwater:

40

...water resource plan must be prepared having regard to whether it is necessary for it to include rules to prevent elevated levels of salinity and other types of water quality degradation within a groundwater SDL resource unit.

45 And 10.26 is about planning for environmental watering.

A water resource plan must provide for environmental watering to occur in a way that is consistent with the environmental watering plan and the Basin-wide watering strategy.

5 So your concern is that 6.14, to use your words, might be read as a reading down provision of those fairly important parts of chapter 10 that I just mentioned.

MS SLATTERY: Yes. And my understanding of it, and has been, that it's used as an excuse not to – for the states not to have to implement those parts of the Basin
10 Plan.

MR BEASLEY: All right. I have to ask you what - - -

THE COMMISSIONER: Which parts of the Basin Plan?
15

MS SLATTERY: Well, the ones that Mr Beasley just read out - - -

MR BEASLEY: The ones I just read.

20 MS SLATTERY: 10.17, 10.18 to 21 and 10.26.

THE COMMISSIONER: It just occurs to me that maybe 6.14 was intended by those who drafted it to be a shorthand way of describing not the result of a change to the Basin Plan, which is what subdivision B division 4 part 2 does, but, rather, the
25 kind of change in reliability which, had it been brought about by a change to the Basin Plan, would have triggered, etcetera. At least that would be a reading that would prevent 6.14 from being silly. And, by and large, we should interpret things that way. Well, if that's true, it would appear that changes in reliability – the kind of changes of reliability in question are not those brought about by reductions in SDL,
30 because those provisions leave them out. They seem just to be changes in reliability.

MS SLATTERY: Yes.

THE COMMISSIONER: But not brought about by reduction in SDL.
35

MS SLATTERY: Yes.

THE COMMISSIONER: How does that happen? How do you change reliability without a change in an SDL?
40

MS SLATTERY: Well, you can change reliability by changing the timing of use. I mean, it's a difficult question, because there's no - - -

THE COMMISSIONER: So you mean an environmental watering plan?
45

MS SLATTERY: Environmental water that's used at a different time to when it was used historically might have an impact on reliability. Keeping the water in a storage so you have greater spills might have an impact on reliability.

5 THE COMMISSIONER: What I don't quite understand is what do you understand the purpose of 6.14 is? Those provisions are provisions that expose the Commonwealth, not the states, to liability to compensate.

MS SLATTERY: Yes.

10

THE COMMISSIONER: So whatever "trigger" means, it means triggering the liability. So nothing in the Basin Plan requires states to do something that would expose the Commonwealth to liability.

15 MS SLATTERY: Yes.

THE COMMISSIONER: It might be what the political purpose is. But how does that work legally? How can the states do something that would expose the Commonwealth to liability? I'm not saying they can't, but do you know the answer to that?

20

MS SLATTERY: My understanding that the argument was that through the water resource plans, if the water resource plans were doing something to comply with the Basin Plan, like the environmental watering – environmental – planning for environmental water, and that was shown to have an impact on reliability and MDBA credits the Water Resource Plans - - -

25

THE COMMISSIONER: Lo and behold, the Commonwealth is liable.

30 MS SLATTERY: Yes.

THE COMMISSIONER: And so you read their explication of 6.14 as meaning that the Basin Plan might appear to require watering plans to bring about the environmental outcomes in question, but not if that would require any money from the Commonwealth Treasury?

35

MS SLATTERY: Yes, if the states bring forward their water resource plans that includes, say, planning for environmental watering and they can demonstrate that there's a change in reliability, then the MDBA will not require them to – they can ignore that part of the Basin Plan and still get a Water Resource Plan.

40

THE COMMISSIONER: So that would mean then that the Plan which is designed to carry out the outcomes mandated by the Act has within it this just over two-line provision that says "but not really".

45

MS SLATTERY: That's right.

THE COMMISSIONER: Now, that is an interpretation that I – if I were a judge, I would find very, very unattractive. That is, I would doubt that the words should be read that way. Leave aside the stream not rising higher than the source, to use a fluvial metaphor.

5

MR BEASLEY: I have just noticed, Commissioner, in paragraph 15 of that position statement that I've taken the witness to behind tab 18 - - -

THE COMMISSIONER: Yes.

10

MR BEASLEY: - - - it says:

Sections of the Basin Plan where this may become relevant include section 10.17.

15

And then it says:

See, also, position statement 4A.

20

And it also says – for 10.21, it says

Position statement 4B to 4E.

And for 10.26, position statement 6B. I will ask someone to get those.

25

THE COMMISSIONER: Yes.

MR BEASLEY: We don't have them. They might be relevant.

30

THE COMMISSIONER: Right.

MR BEASLEY: All right.

35

THE COMMISSIONER: Well, that's odd, because 10.17 is a provision that – it may be paraphrased as saying that you've got to make sure that operating the plan doesn't compromise the meeting of environmental watering requirements. It would seem an odd one to be sidelined. 10.20, even more strikingly – 10.18 is – 10.16 describes these provisions generally as:

40

...setting out the requirements in relation to the sustainable use and management of water resources of the Water Resource Plan area within the long-term annual diversion limit for an SDL resource unit.

MR BEASLEY: Yes.

45

THE COMMISSIONER: I understand, with respect, your concern that somebody could think that that can be written out by 6.14.

MR BEASLEY: I asked someone about the word “priority” for environmental assets and ecosystem functions in 10.17. If you look at the note, it says:

5 *The environmental watering requirements of priority, environmental assets and ecosystem will be set out in long-term watering plans.*

So perhaps we don’t know what the priority assets are yet until we see the watering plans, and whether a priority environmental asset differs from a key environmental asset.

10 THE COMMISSIONER: At 10.41(1) - - -

MR BEASLEY: Hang on. 8.49 and 8.50 – yes.

15 THE COMMISSIONER: 10.41(1) requires a Water Resource Plan to be prepared having regard to current and future risks to the condition and continued availability of the water resources of the Water Resource Plan area. It doesn’t sound like it’s the kind of requirement that would be eliminated by saying “but not so as to bring about any change in reliability”. Risks to the condition and continued availability of water
20 resources will include risks to, among other things, reliability. Thanks for identifying that for us.

MR BEASLEY: Just before the break, 8.49 of the Plan – section 8.49. There is a definition of “priority environmental asset”:

25 *An environmental asset that requires environmental watering, and its environmental watering requirements, must be identified having regard to the information on the environmental assets and ecosystem functions database, using the following method –*

30 (a) and then (b):

Identify the environmental asset that can be managed with environmental watering.

35 And that’s a priority environmental asset. Something similar about ecosystem functions in 8.50.

THE COMMISSIONER: Then, if you look at 8.50(1) - - -

40 MR BEASLEY: Yes.

THE COMMISSIONER: - - - it’s scientific and empirical in nature, this exercise.

45 MR BEASLEY: Yes.

THE COMMISSIONER: It seems odd that that would all be swept to one side if reliability could be affected.

MR BEASLEY: It does.

5

THE COMMISSIONER: I don't know that the Act empowers any of that.

MR BEASLEY: No. I'm curious about why 8.49 and 8.50 use this term "priority environmental assets" as though they're the ones that have got to be not
10 compromised, whereas the Act uses the term "key" and they're the ones that can't be compromised. I haven't thought that through. Perhaps there's no problem with that, but I'm not sure.

THE COMMISSIONER: So you've got to have an environmental watering plan
15 - - -

MR BEASLEY: Yes.

THE COMMISSIONER: - - - under sections 22 and 28.
20

MR BEASLEY: Yes, that's chapter 8.

THE COMMISSIONER: I think, Ms Slattery, that's your point, isn't it, that the Act says you've got to have one?
25

MS SLATTERY: Yes. My - - -

THE COMMISSIONER: And the Act nowhere says that the water plan can impinge on the requirements of the Act.
30

MS SLATTERY: Yes. My reading of 6.14 – my interpretation has always been it would override parts of the Water Act, the way MDBA have interpreted it.

THE COMMISSIONER: Section 28, which is important – Mr Beasley says go to chapter 8 of the Plan. That pronounces as one of its purposes the treaty obligations, among other things.
35

MR BEASLEY: Well, you can't ignore those.

THE COMMISSIONER: Well, that's right. Yes. Well, is your point capable of being simplified in this fashion, that section 21 imposes an obligation to prepare a Basin Plan in terms which leaves no room for dispensing with environmental watering provisions by reason of possible effects on reliability of water allocations? Is that one of your points or the point?
45

MS SLATTERY: One of my points. I would probably rephrase it, not in a legal sense, but it's a \$13 billion reform to restore the Basin to a sustainable level of

ecological health. And one provision in a subsidiary piece of legislation shouldn't be able to override - - -

5 THE COMMISSIONER: We don't know that anyone has actually - - -

MS SLATTERY: - - - everything else.

THE COMMISSIONER: - - - used it in that fashion, do we?

10 MS SLATTERY: I do know that that's how MDBA interpreted it and that's the intent of the policy position.

THE COMMISSIONER: So you're saying that from this position statement 1H?

15 MS SLATTERY: I'm saying that from years of being in this debate and - - -

THE COMMISSIONER: What, people are saying that they don't have to have an environmental watering plan because that would affect reliability?

20 MS SLATTERY: Yes.

MR BEASLEY: I might, after the break, ask the witness about discussions.

25 THE COMMISSIONER: Thank you.

MR BEASLEY: Yes.

THE COMMISSIONER: A quarter to?

30 MR BEASLEY: Yes. All right. Thank you.

ADJOURNED [11.33 am]

35 **RESUMED** [11.46 am]

40 MR BEASLEY: I want to take you to page 18 of your submission, 'Manipulation of Cap Factors,' and you've said in the second paragraph:

MDBA New South Wales have recently finalised cap factors to finalise the water recovery targets.

45 And you've footnoted a recent publication by the Department of Industry, 'Water Reform Technical Report: Derivation of LTDLE factors in NSW.' If we go to tab 21 of that volume, I think you will find that publication, I think if we go over the page

it's published by the New South Wales Department of Industry, but it has got acknowledgements, Murray-Darling Basin Authority. Now – just so we go through, cap factors are relatively complex, so before we go through anything that has been done, I just want to make sure that I have sufficient understanding of cap factors and you can tell me whether I'm wrong or right. So it's – the cap factors are a – is a modelling tool to find out exactly how much water is being diverted in a particular valley as distinct from the total of full entitlements; correct?

MS SLATTERY: It's probably closer to say the amount of water that's being allocated against an entitlement.

MR BEASLEY: Yes.

MS SLATTERY: Yes.

MR BEASLEY: All right. And so if someone has a water licence that's a 100 megalitre entitlement, that's its face value, but if the long-term average of allocations show that only 70 megalitres of that is used, then the long-term division limit equivalent LTDLE will be a factor of 0.7.

MS SLATTERY: That's right.

MR BEASLEY: Right. Okay. So that's important in this sense: so that if a Water Resource Plan area has 100 gigalitres of surface water entitlements but the cap factor is 0.7, then the surface water baseline diversion limit for that area is going to be 70 gigalitres; correct?

MS SLATTERY: That's right.

MR BEASLEY: All right. So if we assume that the SDL for that area is 50, so you've a baseline of 70 even though entitlements are 100, the SDL is 50. On its face that would require, obviously, a reduction of 20 gigalitres of actual water.

MS SLATTERY: Yes.

MR BEASLEY: 70 minus 20 is 50, but you've got to buy more entitlements than 20 because of the cap factor.

MS SLATTERY: Yes, that's right.

MR BEASLEY: So you need to make sure whatever you buy in entitlements, if you multiple it by 0.7, the cap factor, you will get down to 20; correct?

MS SLATTERY: Yes, correct.

MR BEASLEY: And assume the maths is right, 28.7 gigalitres – assume Mr O'Flaherty's maths is right, 28.7 gigalitres by point 7 is 20. So that's how it works.

MS SLATTERY: Yes.

MR BEASLEY: And cap factors are important in terms of the value of an entitlement. So the closer the cap factor is to one the more valuable your entitlement,
5 is because the more the actual entitlement is reflected in how much water you're allocated.

MS SLATTERY: That's right, it's a higher security, higher yield product.

10 MR BEASLEY: So if you – yes, so if your cap factor is .95 you've got a much more valuable entitlement than someone whose cap factor is, say, .3.

MS SLATTERY: Yes.

15 THE COMMISSIONER: What does the word "cap" refer to?

MS SLATTERY: I couldn't tell you the origins of the term.

20 THE COMMISSIONER: That's all right.

MS SLATTERY: Yes.

MR BEASLEY: Now, what has been done recently – and I think your concern in relation to this paper is a lack of transparency in terms of how these cap factors were
25 done. There were cap factors set in 2011; correct?

MS SLATTERY: They were set earlier than that.

30 MR BEASLEY: Yes.

MS SLATTERY: So there was originally - - -

MR BEASLEY: You explain the process, yes, go on.

35 MS SLATTERY: As I understand it - - -

MR BEASLEY: Yes.

40 MS SLATTERY: Cap factors were used for a range of different things, which is explained very nicely in a report written by Darren Boucher – I'm sorry, Darren Barma, and that report is called 'The History of Long Term Diversion Limit Equivalent Factors.' So they used to be used when cap was being calculated and you had permanent trades between valleys and you had to find some measure for adjusting for the amounts between valleys. So that was one of the uses. They were
45 used to calculate the amount of water recovery under the original Living Murray Initiative and they were used to ascertain the purchases under the – when the Commonwealth started buying water in 2007.

The – it was sort of cap factors as an output of the BDL models used for the Basin Plan and they were – MDBA produced a document to update the cap factors based on the BDL outputs, and they were published on the Department of Sustainable and Environment’s website and they changed the amounts of water recovery based on the
5 BDL cap factors.

MR BEASLEY: Yes.

MS SLATTERY: And that caused a lot of concern with water entitlement holders, quite rightly, because it changed the book value of their entitlements overnight. That was – the issue was taken to Ministerial Council in 2011, and the Ministerial Council directed the Commonwealth to revert back to the original cap factors, and those cap factors became known as the 2011 cap factors.
10

15 MR BEASLEY: Yes.

MS SLATTERY: And at the time, Ministerial Council directed governments to go and resolve the cap factors issue, and it’s taken seven years to do that.

20 MR BEASLEY: Yes. They’re fundamental to the baseline diversion limit and the sustainable diversion limit and how much water you’ve got to – how many entitlements you have got to buy to get the amount of water you need that’s being modelled that you need for the environment; correct?

25 MS SLATTERY: Yes.

THE COMMISSIONER: So when – to describe them as being used to inform the recovery of water entitlements, it means that they are used to provide – for the purposes of counting towards what was originally the 2,750 gigalitres, the so-called
30 recovery, recovered amount when, say, an entitlement was acquired by the Commonwealth, and it was an entitlement that had a nominal value of X gigalitres, these factors multiplied X by something between zero and one, in order to achieve the value which would count towards the 2,750; is that correct?

35 MS SLATTERY: That’s right.

THE COMMISSIONER: So it was to ensure that you didn’t count as recovered the nominal value of an entitlement that was not, over the long-term on average, wholly used.
40

MS SLATTERY: That’s right. So - - -

THE COMMISSIONER: I understand, thank you.

45 MS SLATTERY: Yes.

MR BEASLEY: So to use my – sorry, Mr O’Flaherty’s example where we were talking about a cap factor of 0.7 and you need to recover 20 gegalitres of real water to get your SDL, you had to buy 28.6 gegalitres of entitlement, times 0.7 gets you 20. If, for example, you have recovered, say 25 gegalitres of the 28.6, 25 gegalitres times 0.7 leaves 17.5. So the maths is correct. So still 2.5 gegalitres have got to be recovered to get to your sustainable diversion limit. However, if the cap factor goes up to 0.8, then you will have already recovered what you need.

10 MS SLATTERY: That’s right.

MR BEASLEY: And so – and what we have in this publication that I’ve taken you to – behind 21, the new modelling that’s being done, if we go through the document and look at the new cap factors for various of the valleys, in many instances there has been a significant change in the cap factors, and I think the overall position is that the assertion is, at page – where is it – 38.

THE COMMISSIONER: 38 of?

20 MR BEASLEY: The document behind tab 21.

THE COMMISSIONER: This is the New South Wales May 2018 - - -

MR BEASLEY: Yes - - -

25 THE COMMISSIONER: This is a consultation document, isn’t it, for revising the 2011 factors?

MR BEASLEY: Yes. That’s right.

30 THE COMMISSIONER: And what am I looking at? Page?

MR BEASLEY: 38.

THE COMMISSIONER: Table 25?

35 MR BEASLEY: Table 25. Am I right ultimately that in that far right-hand column, ‘Shared Recovery Shortfall/Excess,’ as a result of the changes to the cap factors made in 2018, that the New South Wales Government is claiming that it has recovered about 46,458 megalitres more per year than it was previously saying it had recovered.

THE COMMISSIONER: Sorry, help me read that table again.

45 MR BEASLEY: Is that right?

MS SLATTERY: Yes – I think so.

MR BEASLEY: Some have gone up, some have gone down, but the overall position claimed now is that there has been - - -

MS SLATTERY: An over recovery.

5

MR BEASLEY: Yes, an over recovery.

THE COMMISSIONER: An over recovery of what, 128 gigalitres, is it?

10 MR BEASLEY: No, 46.458. Bottom right corner is the total.

THE COMMISSIONER: I'm finding table 25 not very easy.

15 MS SLATTERY: I can't see where the 45 gigalitres – what that is a product of, the net – and why that's different to the third-last column, 'Net Change Due to Factors.'

MR BEASLEY: Yes. So the way I've read this table is, for example, we've got Barwon-Darling. And the assertion is recovery under 2011 cap factors, 32,000-odd megalitres, no change under 2018, because the cap factors didn't change. But, to use the example of Macquarie-Castlereagh, 2011 cap factors, 82,525 recovered. But under the 2018 factors it's claimed that 102,000 megalitres has been recovered.

20

THE COMMISSIONER: Sorry, which one was that?

25 MR BEASLEY: Macquarie-Castlereagh.

THE COMMISSIONER: Yes, but nothing changed on the Barwon-Darling. Is that right?

30 MR BEASLEY: No, because the cap factors didn't change.

THE COMMISSIONER: Right. So what does the negative figure mean for the Namoi?

35 MR BEASLEY: That means that it has recovered less than previously claimed.

THE COMMISSIONER: That less recovery is needed?

40 MR BEASLEY: No, less recovery has been made than previously calculated under the 2011 cap factors.

THE COMMISSIONER: It's just that the table is headed 'Water Recovery Targets.'

45 MR BEASLEY: Yes, that's the target. Then there's the actual recovery using the 2011 cap factors.

THE COMMISSIONER: So the target for Namoi was - - -

MR BEASLEY: The target is based on the 2,075. Yes.

5 THE COMMISSIONER: Yes, 25,500.

MR BEASLEY: Yes.

10 THE COMMISSIONER: What does the next column mean, 'Recovery Under 2011 Factors'?

MR BEASLEY: That's how much has been recovered if you're using the 2011 cap factors. Then how much is said to be recovered under the 2018 cap factors. The net difference - - -

15

THE COMMISSIONER: So less has been recovered.

MR BEASLEY: Yes. The net difference between those two figures.

20 THE COMMISSIONER: The cap factor has gone down there, has it?

MR BEASLEY: 334 megalitres. And there's still a shortfall to get – that needs to be recovered of 8,795.

25 THE COMMISSIONER: Yes.

MR BEASLEY: Which is, I think, a combination of the shortfall between - - -

30 THE COMMISSIONER: So when we say - - -

MR BEASLEY: the 25,500, the 11,205 and factoring in the shared reduction amount. Yes.

35 THE COMMISSIONER: The shared amount, is, as it were, a spreading of what's necessary over the various valleys. But, as to Macquarie-Castlereagh - - -

MR BEASLEY: Yes.

40 THE COMMISSIONER: - - - what am I reading in this table, that there was a target for recovery under the adjusted amounts - - -

MR BEASLEY: Yes.

45 THE COMMISSIONER: - - - of 61,800 megalitres?

MR BEASLEY: Yes. They seem to be saying recovered more than that, even under the 2011 factors, by almost 20,000 megalitres.

THE COMMISSIONER: So what's going on there?

MR BEASLEY: I don't know. But – and they're now saying they've actually recovered 102,000.

5

THE COMMISSIONER: Yes. And so if I go to the southern Basin, so, what, the cap factor has gone down for the Murrumbidgee, down for the Murray. Is that right? Less is recovered under the 2018 factors?

10 MR BEASLEY: Yes. Yes.

THE COMMISSIONER: Down for the Lower Darling. Meaning what, that there is more to be - - -

15 MR BEASLEY: Yes. We have recovered 41,000. For example, New South Wales Murray we've recovered 41,533 less than what we said we claimed under the 2011 cap factors.

THE COMMISSIONER: So then what does the zero in the next column mean?

20

MR BEASLEY: I don't know. I don't know why that's zero.

THE COMMISSIONER: Well, that's what I mean. I'm finding the table difficult.

25 MR BEASLEY: Yes. Yes. So am I.

THE COMMISSIONER: Do you understand it, Ms Slattery?

30 MS SLATTERY: No I don't. I don't understand the last column. I can't see how that – what that's a function of. So the third-last column, 'Net Change Due to Factors (ML/y) northern Basin', 28,354 megalitres. Those numbers correspond to the tables in the same document that talk about the amount of over or under water recovery. So I don't understand how they got to the 44,816.

35 THE COMMISSIONER: So what's the bottom line, if any?

MR BEASLEY: By changing the cap factors in relation to some valleys, they're saying there has been an over recovery of water. And the total figure that seems to be contained in table 25 is the 46,458 megalitres a year. If we - - -

40

THE COMMISSIONER: The closing words of the rather nauseating self-praise on page 40, that these results produce an enhanced estimate of water recovery, what does an estimate of water recovery mean, Ms Slattery? Does that mean that which has been done or that which is required to be done or what?

45

MS SLATTERY: I think it's a combination of both.

THE COMMISSIONER: Well, it can't be both.

MS SLATTERY: Well, what has been done and what else has to be - - -

5 THE COMMISSIONER: And, therefore, what needs to be done?

MS SLATTERY: Yes.

10 THE COMMISSIONER: And where would I find that, do you know? In this document, as to where I would find numbers on this enhanced estimate?

MS SLATTERY: Well, I think what they're referring to is the method that they're using.

15 THE COMMISSIONER: It's not just method; it's figures.

MS SLATTERY: Yes, to come to those figures.

20 THE COMMISSIONER: Yes.

MR BEASLEY: But your concern is it doesn't really tell you what – what is the basis for the change in the cap factors.

25 MS SLATTERY: They have explained in here what they have done. I've tried to replicate that based on the way they've described the method.

MR BEASLEY: Yes.

30 MS SLATTERY: And based on data that's available on the Department of Industry website.

MR BEASLEY: Yes.

35 MS SLATTERY: And I come up with different numbers in the valleys I've looked at.

MR BEASLEY: All right.

40 MS SLATTERY: I think there's a widespread concern across all water users that there's a general lack of transparency in this and it's not clear how they've come up with some of the numbers.

MR BEASLEY: Yes.

45 MS SLATTERY: I think there's a concern, again, by, you know, all water users, so irrigation and the community sector that some of these numbers are a foregone

conclusion. I've also provided to you the Australia Institute submission on cap factors which goes into this in a lot more detail.

5 MR BEASLEY: Right tab 10. This is brand new, is it? July? So this contains a number of recommendations which all relate, I assume, to matters of transparency about how the figures were arrived at.

MS SLATTERY: Yes, that's part of the recommendations.

10 MR BEASLEY: Yes.

MS SLATTERY: We have concerns that the cap factors are now, whereas they used to be an output of the BDL models and the same cap factors were used for the water recovery targets and, therefore, the SDL models, that the messaging that we're hearing from MDBA and Department of Industry now is that the cap factors will only be used for water recovery and they will be a different cap factor number in the BDL model.

20 MR BEASLEY: How does that make any sense?

MS SLATTERY: I don't think it does.

25 MR BEASLEY: Because one has got to relate to the other, doesn't it, with the same cap factor? Otherwise - - -

MS SLATTERY: Yes, that's the argument we've put forward in our submission. It makes – in our view, it makes the SDL quite meaningless if you're using different cap factors for the BDL and the SDL.

30 MR BEASLEY: Because your baseline has to be based on using a – let's say the cap factor is .7, your baseline will be that cap factor multiplied by the full extent of entitlements to get your – what is the baseline diversion limit, how much water is actually being allocated. Correct?

35 MS SLATTERY: Yes.

MR BEASLEY: And then it should be the same cap factor to work out how much water needs to be recovered to get your sustainable diversion limit. Correct?

40 MS SLATTERY: If you wanted the - - -

THE COMMISSIONER: Haven't they done that? I don't find it easy. On page 6 - - -

45 MS SLATTERY: Of?

THE COMMISSIONER: Of the Department of Industry's consultation paper report. The second dot point says that the report compares, for each SDL resource unit, the difference in the value of entitlements under the BDL between the 2011 factors and the 2018 factors. So my language not theirs, so I hope not inexact. They
5 do convert the BDL to – using 2018 factors or not?

MS SLATTERY: The Australia Institute wrote to Department of Industry and MDBA to try to clarify the impact that the cap factor numbers would have on the BDL - - -
10

THE COMMISSIONER: Yes.

MS SLATTERY: - - - because on face value, if you change the cap factors, you've changed the water recovery numbers, but you also change the BDL. And
15 Department of Industry replied back to us that the cap factors in the BDL would be different to – between the BDL and the water recovery targets. And the cap factors in this document, the Department of Industry's document, are only relevant to the water recovery number.

20 THE COMMISSIONER: So what does that second dot point mean?

Compares the difference in the value of entitlement under the BDL between the 2011 factors and the 2018 factors.

25 MS SLATTERY: I think they've included those numbers in their tables that they have got for each valley.

THE COMMISSIONER: All right. So let's use an example, so that I - - -

30 MS SLATTERY: So let's go to Murrumbidgee.

MR BEASLEY: Yes. What page are we on then?

MS SLATTERY: This is on page 29.
35

MR BEASLEY: Yes.

MS SLATTERY: We asked – specifically asked the question about the impact to the BDL and used the Murrumbidgee as an example and said does that mean that the
40 BDL is going to change from – so at the bottom of table 18 – 2,181,503 megs - - -

MR BEASLEY: Yes.

THE COMMISSIONER: 2,000,000.
45

MS SLATTERY: - - - to 2,116,997. And they explicitly said no, that's an incorrect reading of it. They just provided this comparison for – I'm not really sure what value it adds.

5 MR BEASLEY: Sorry. This is in – this has been put in writing?

MS SLATTERY: Yes.

MR BEASLEY: All right. Have you given us these documents? No.

10

MS SLATTERY: I might have given you – yes, I have.

MR BEASLEY: You have?

15 MS SLATTERY: Yes.

MR BEASLEY: All right. I haven't seen them. So - - -

20 THE COMMISSIONER: I'm just trying to read table 18. Where do I find – in the key, super script (a) is said to be:

2011 factors version 2.05 as agreed by Ministerial Council in 2011.

Where is that used in the table?

25

MS SLATTERY: I think they're referring to column – the third column under 2011 factors.

MR BEASLEY: The green column?

30

MS SLATTERY: Yes.

MR BEASLEY: Yes.

35 THE COMMISSIONER: So whoever formatted this – so that it records that the 2011 factors for domestic and stock was 0.85 and the 2018 factors for domestic stock – factor for domestic stock was 0.805. Have I read that correctly?

MS SLATTERY: Yes.

40

THE COMMISSIONER: Now, the BDL, however, they have shown as affected. So you can compare it with the new 2018 factor with – with the 2011 factor, can't you? So they have shown us the comparison of 2011 and 2018 for BDL.

45 MS SLATTERY: But they've also said to us that you can't – you can't infer that the BDL number that they have in that last column will – will be a change to the BDL – will be reflected in the BDL.

THE COMMISSIONER: But it is true that we can see here that they're saying for, say, general security, that the BDL share under the 2011 factors is 1,116,179, but under the revised factor for 2018 that they're proposing, that general security BDL share would be 1,031,429 megalitres.

5

MS SLATTERY: But then they've subsequently - - -

THE COMMISSIONER: They have said that, haven't they, in that table?

10 MS SLATTERY: They've implied that in this table.

THE COMMISSIONER: Actually expressed it, haven't they? I've just read figures. They've exactly expressed that in this figure in this table.

15 MS SLATTERY: Yes.

THE COMMISSIONER: It's what they do with that is what you're trying to draw to my attention.

20 MS SLATTERY: Yes.

THE COMMISSIONER: But they do say, "Look we can - " it's arithmetic, "We can produce BDLs which are time specific; they don't shift." That's what the B means, BDL, it's baseline, "We can produce a recalculated BDL using the new 2018 factors, and we have, in table 18 for the Murrumbidgee."

25

MS SLATTERY: Yes.

THE COMMISSIONER: In order to work out what needs to be recovered, like for like, as Mr Beasley was asking you about, you would use - one supposes and this is an inquiry by me of you - would you use, then, the 2018 factored BDL as the baseline from which to calculate what is necessary to recover, itself factored by the same 2018 amount?

30

35 MS SLATTERY: That's the way that I read it initially.

THE COMMISSIONER: Is that how you, in principle, would do it?

MS SLATTERY: Yes. Yes.

40

THE COMMISSIONER: Where, in this document - leave aside the conversations to which we will come back - where in this document do we find that not being done?

45 MS SLATTERY: I'm not sure it is in this document.

THE COMMISSIONER: Right. Thank you.

MS SLATTERY: Yes.

THE COMMISSIONER: So you've been told that they are not going to use the 2018 factored BDL; is that what you are saying?

5

MS SLATTERY: That's right.

THE COMMISSIONER: What are they going to use?

10 MS SLATTERY: I don't know. They've - - -

THE COMMISSIONER: And this is for work that is meant to culminate by mid next year?

15 MS SLATTERY: Yes.

THE COMMISSIONER: They use the expression "error" at the foot of table 18 to describe the difference between 2,181,503 and 2,116,997. That's right, isn't it?

20 MS SLATTERY: Yes.

THE COMMISSIONER: And that's just an expression they use to describe a difference thrown up when they've moved to what they regard as a superior factor, the 2018 factor.

25

MS SLATTERY: Yes.

THE COMMISSIONER: So they themselves there seem to say that it would be an error to stick with the 2011 factors. That's their word.

30

MS SLATTERY: Yes.

THE COMMISSIONER: And you're saying, "So be it, in all use of these concepts you should avoid the erroneous figure." That's your point. You should not reproduce the error if you've corrected it; you should correct it consistently.

35

MS SLATTERY: Yes, yes. You need to have consistent cap factors between the BDL and the water recovery, is my view.

40 THE COMMISSIONER: Who told you that they would not do that?

MS SLATTERY: That was from the Department of Industry.

THE COMMISSIONER: No, who? Who, a name.

45

MS SLATTERY: Peter Hyde from the Department of Industry.

THE COMMISSIONER: And what did he say?

MS SLATTERY: I think I've got it in my submission.

5 THE COMMISSIONER: I confess I didn't pick that up.

MS SLATTERY: Sorry, my submission in the Australia Institute to the Department of Industry submission.

10 MR BEASLEY: Tab 10. Is it tab 10?

MS SLATTERY: Yes.

MR BEASLEY: Page 7.

15

THE COMMISSIONER: Well, no the tables they have been looking at show cap factor is changing to BDL, does it not?

MS SLATTERY: So on page 7 of the - - -

20

THE COMMISSIONER: No, I can read that. What I'm saying is the table we've just been looking at shows that cap factors do change the BDL or can be used to change the BDL.

25 MS SLATTERY: Can be used – can be used to change the BDL.

MR BEASLEY: But where you've got "NSW DoI replied" and the answer is:

No – cap factors do not change the BDL.

30

The words after that "separately", is that him still talking?

MS SLATTERY: Yes.

35 MR BEASLEY: Right.

MS SLATTERY: And that – I think I've passed on that full email exchange to you and that included a specific question about the Murrumbidgee BDL.

40 MR BEASLEY: Yes.

MS SLATTERY: And I think the reply was something along the lines of that was an incorrect interpretation to assume the BDL to - - -

45 THE COMMISSIONER: How do I read those words that you attribute to this man from the Department? That the – on any view of it these are superseded words, aren't they? 2,750 gegalitre recovery volume has not remained fixed.

MS SLATTERY: No.

THE COMMISSIONER: What do you understand by his reference to changes in BDL will also alter the SDL? What do you understand that to mean?

5

MS SLATTERY: The messaging has been that the water recovery number is fixed in accordance with these cap factors.

THE COMMISSIONER: But it's not fixed. Please, 2,750 has changed.

10

MR BEASLEY: When was this conversation, though, Ms Slattery, roughly?

MS SLATTERY: Beginning of July.

15 MR BEASLEY: Okay. So it's – yes, right.

MS SLATTERY: So - - -

20 THE COMMISSIONER: By then 2,750 had changed. I'm not criticising you; I'm trying to work out. 2,750 had changed by then, had it not?

MS SLATTERY: I'm not sure if it had gone through both Houses –

25 THE COMMISSIONER: It doesn't have to go through both Houses of Parliament.

MS SLATTERY: Sorry. I'm not sure if the disallowance vote had actually happened when we had this conversation.

30 MR BEASLEY: I suppose some people might quibble and say 2,750 still applies, it's just 605 is through an adjustment mechanism. I don't know.

THE COMMISSIONER: No. Nobody using English would say that 2,750 still applies when it has been reduced by 605.

35 MR BEASLEY: I'm pretty sure that someone would say that, but - - -

THE COMMISSIONER: Yes. Well, not sensibly.

40 MS SLATTERY: So just back to your question about “any changes in the BDL will also alter the SDL”. The argument has been put forward that there's the BDL changes and the water recovery amount is fixed then that will have a corresponding flow-on effect to the SDL.

45 THE COMMISSIONER: But isn't this the problem, if you don't start with what the environment needs?

MS SLATTERY: Yes.

THE COMMISSIONER: Everything just floats without any foundation.

MS SLATTERY: Yes, I agree.

5 THE COMMISSIONER: If you start with what it needs, which is what I presently think the Act means – nobody has brought anything to my attention to the contrary of that, then that gives you the components for an SDL, but it is true that you do need – don't you – you do need a BDL to work out recovery mode?

10 MS SLATTERY: Yes. And I think what's happened now is there has been a disconnect between the SDL and the ESLT, and the SDL is seen as a residual of the BDL minus water recovery, and my concern is this sort of creative accounting with the cap factors gives us a different water recovery number and then the BDL changes again with a different cap factor number.

15 THE COMMISSIONER: Thank you. Yes. I understand, thanks. We can move on from that.

MR BEASLEY: The conversation you had with the Department of Industry here
20 reminds me that I forgot to ask you about discussions you were involved in when you were at the MDBA regarding the Basin Authority's interpretation of 6.14. So we know you have a concern based on the actual published document, but in terms of it being a – in terms of other concerns they are actually based on things you heard while you were at the Basin Authority; correct?

25 MS SLATTERY: That's right. Yes.

MR BEASLEY: All right. Can you tell the Commissioner about those in terms of it being a reading down provision?

30 MS SLATTERY: Well, I heard – I heard the first - - -

MR BEASLEY: Give us some context first. These were discussions where this clause was being specifically discussed for some reason or?

35 MS SLATTERY: It was sort of a hot topic of conversation over many years, because of the interpretation by some parts of the MDBA, and the implications that that would have on parts of the Basin Plan.

40 MR BEASLEY: All right. Well, which part of the Basin Authority was interpreting it in the reading-down manner that you've described?

MS SLATTERY: The biggest advocate for that was Tony McLeod.

45 MR BEASLEY: All right. Who is he?

MS SLATTERY: He is now the General Manager of SDL Accounting. He was the General Manager of Water Resource Plans for a long time.

5 MR BEASLEY: Right. And you had – there were discussions involving him that you were present at?

MS SLATTERY: Yes.

10 MR BEASLEY: All right. And well, explain – give us the details of those discussions as best as you can remember.

15 MS SLATTERY: Tony has been very, very concerned about the impact of reliability that might – the effect that the Basin Plan policy might have on water holders' reliability and that the Commonwealth might be subject to a compensation claim down the track. And this, in my observation, overrode anything else in the Basin Plan in his view. And many sections of the Basin Plan he saw as a threat to evoking that risk of compensation.

20 MR BEASLEY: All right. These – but is that a paraphrase of words he actually said?

MS SLATTERY: Yes, it is. There was a – was a document that Tony tried to develop in 2016, I think.

25 MR BEASLEY: Yes.

MS SLATTERY: Early 2016, that started off being called 'Foundations Principles Document.'

30 MR BEASLEY: Right.

MS SLATTERY: And he tried to set out a set of positions of – relating to the Basin Plan, sort of an abbreviated version of the position statements, if you like.

35 MR BEASLEY: Yes.

40 MS SLATTERY: And in that it was very clear that this idea of turning off – the reliability provision overriding everything else, and turned off other requirements of the Basin Plan, it was very clear that that was – you know, that was his concern.

MR BEASLEY: This was some form of draft document that was circulated, was it, or - - -

45 MS SLATTERY: Yes. It was originally put to the Executive and was cleared by the Executive about the end of 2015, I think. Some of the Directors, when we became aware of it, raised some concerns and quite strongly because we were, you

know, there was quite a lot of strong disagreement against that document and it was revisited with - - -

5 MR BEASLEY: Who was involved in these discussions?

MS SLATTERY: That was - - -

MR BEASLEY: They at formal meetings?

10 MS SLATTERY: I think there was an opportunity for the Directors to – to – the interested Directors to come along and sort of have a discussion about that document in probably about March 2016.

15 MR BEASLEY: Right. And that included you?

MS SLATTERY: Yes.

MR BEASLEY: All right.

20 MS SLATTERY: Now, Dave Bell and Bill Johnson were also quite invested in – in Tony’s interpretation of the – of 6.14.

MR BEASLEY: I think Mr Bell gave some evidence about it. Yes, go on.

25 MS SLATTERY: So there were some sort of quite – quite divergent views about it, because those of us that had a different view of what 6.14 meant were quite concerned about how it was being interpreted and applied.

30 MR BEASLEY: Now, the position statement that we looked at, position statement 1.8, ‘Potential Reliability Changes.’ just explain – who is responsible for drafting a position statement like that?

MS SLATTERY: That was drafted by Tony McLeod and Mike Makin’s section.

35 MR BEASLEY: Who’s he?

MS SLATTERY: He – I can’t recall what his title – he was a General Manager in the same division as the Water Resource Plans.

40 MR BEASLEY: Are either of them lawyers?

MS SLATTERY: No.

45 MR BEASLEY: That wasn’t a joke.

THE COMMISSIONER: Did they have legal assistance?

MS SLATTERY: They said they had legal assistance. The legal advice that I read was not consistent with their interpretation from - - -

5 THE COMMISSIONER: I don't want to hear about legal advice that you may have read while within a confidential circle.

MS SLATTERY: Can I – there was also this position paper was taken to the Authority a couple of times.

10 MR BEASLEY: Hang on. Hang on. When you say taken to the Authority, do you mean the Board.

MS SLATTERY: To the Board, yes, for approval.

15 MR BEASLEY: Yes.

MS SLATTERY: I was on a teleconference that heard the paper being delivered the first time it was taken to the Board.

20 MR BEASLEY: Yes.

MS SLATTERY: The - - -

25 MR BEASLEY: This is sometimes in 2016, I assume, is it? Because this has been – the document – the position statement says issued 6 September 2016.

MS SLATTERY: Yes. It would have been either late 2015 or early 2016.

30 MR BEASLEY: Right. Okay. Go on.

MS SLATTERY: I was very concerned about the – not only the reading down provision interpretation, but also the definition that was being used to assess whether there was a reliability impact. It was – it's unprecedented that definition that was being proposed.

35 MR BEASLEY: What are you referring to there?

MS SLATTERY: It's not in the package that you've got?

40 MR BEASLEY: I see. Yes.

MS SLATTERY: But it was part of the original paper that went to the Authority.

45 MR BEASLEY: Right.

MS SLATTERY: It was an incredibly strict definition that just about anything would – would have impacted reliability according to the definition that was being

used. One of the Board members, Barry Hart, flagged that he didn't believe that the – he had some questions over the definition, and the paper was withdrawn and it was taken back a few months later. Now, there was quite a heated debate around the definition that was raised by David Dreverman, who was the Executive Director for River Management, and Russell James, and Tony McLeod. And I understand it was quite a protracted debate. It went on at the Executive level over several months on this issue.

MR BEASLEY: Was that – did it centre around paragraph 15 and what became the ultimate position statement or was it broader than that?

MS SLATTERY: I think it was – I think the issues that I've raised in my submission is a summation of the concerns that David had.

MR BEASLEY: Okay.

THE COMMISSIONER: Again, what is the practical outcome of this difference of opinion? That there won't be environmental watering or what?

MS SLATTERY: That in the – when states bring forward their Water Resource Plans for accreditation that there will be parts of the Basin Plan that they – that the Water Resource Plans won't have to be - - -

THE COMMISSIONER: Which parts?

MS SLATTERY: Well - - -

THE COMMISSIONER: Just in general terms.

MS SLATTERY: The environmental watering provisions are the ones that I read from the position statement, 10.17 and 10.26 in particular.

THE COMMISSIONER: And this is presumably timing, not amount? Because reductions are not meant to – reductions in allocation are looked after by a different part of the Act for which the Commonwealth might become obliged to compensate. 6.14 doesn't apply to it. At least, I don't think so. Did Mr McLeod think that 6.14 could be used to shield the Commonwealth from claims for compensation under section 77?

MS SLATTERY: Well, I don't know. This sort of starts to overlap with parts of my submission around protection of environmental water.

THE COMMISSIONER: Yes. Well, one thing seems clear that 6.14 is not. What do you suggest I should be reporting in relation to 6.14? That it should just disappear or should be replaced by something else, or what?

MS SLATTERY: Yes. Certainly made clearer. And made clear - - -

THE COMMISSIONER: What would you make clearer? What - - -

MS SLATTERY: For a start whether it's a reading down provision or not.

5 THE COMMISSIONER: Yes. Well, you may assume that the Basin Plan is not allowed to contain a provision which purports to - - -

MR BEASLEY: Ignore the Water Act.

10 THE COMMISSIONER: - - - amend the Act. All right? So we don't have to worry about that. I can't see any Henry VIII clause provisions, so we can leave that aside. So what else – what would be made clear? I mean, I'm sorry to say this. but 6.14 reads to me as if someone is trying very hard to make the states behave in such a way that the Commonwealth will not have to pay compensation.

15

MS SLATTERY: Yes.

THE COMMISSIONER: Yes.

20 MR BEASLEY: Does that exhaust the relevant conversations? Yes. All right. Thanks.

THE COMMISSIONER: Thank you.

25 MR BEASLEY: I wanted to take you to page 20 of your submission and the relevant publication is one entitled 'That's Not How you Hagggle,' which is behind tab 7 and it relates to a purchase of a 29 gigalitres of water by the government from a company called Eastern Australian Agriculture or EAA. Leaving aside the matters you've referred to in relation to the price that was struck, the agreed price that was
30 struck, one of the – the point I think you seek to make at page 20 and 21 of your submission, that is set out also on pages 14 to 15 of the publication 'That's Not How you Hagggle' is that what is being bought here is not a water entitlement to pump water from a river, but an overland flow licence which, for the reasons you set out, should be equated with 29 gigalitre right to take water from a river.

35

MS SLATTERY: Yes.

MR BEASLEY: Is there anything further that you seek to draw to the Commissioner's attention about that?

40

MS SLATTERY: There's two points.

MR BEASLEY: Yes, go on.

45 MS SLATTERY: Water in a river has been detached from land or separated from land, and that's the function that allows it to be traded. Overland flow licences in

Queensland aren't separate to land, so they only exist or have a legal recognition at the point that - - -

5 MR BEASLEY: On the land.

MS SLATTERY: On the land.

MR BEASLEY: On the land to which the licence is attached; correct?

10 MS SLATTERY: Yes.

MR BEASLEY: So once the water has left - - -

15 MS SLATTERY: Yes.

MR BEASLEY: - - - it has lost its – the legal ownership is gone.

20 MS SLATTERY: Yes. So that's the first point, and that means that in Queensland you can't trade overland flow licences despite the fact that the Commonwealth has purchased overland flow licences. The second point is - - -

MR BEASLEY: You can't trade them because they're useless to you, I imagine, unless you own the land.

25 MS SLATTERY: That's right.

MR BEASLEY: Yes.

30 MS SLATTERY: The second point is in relation to the levee banks.

MR BEASLEY: Well, they may not be useless, I suppose, but they would require the owner of the land to ensure that you got the water somehow.

35 MS SLATTERY: Legally, I don't know how you would do that.

MR BEASLEY: Yes. No, it might be too difficult.

40 MS SLATTERY: Even if the water was somehow separate to the land, there's the question of the levee banks. So the levee banks capture that overland flow licence. There was nothing in the contract for – so there's two properties, Kia Ora and Clyde. One sits just above Cubbie Station and one is to the west of Cubbie Station.

MR BEASLEY: The levee bank is keeping water on the land, is it?

45 MS SLATTERY: Yes. There was nothing in the contract for Clyde to decommission the levee banks. So even if there was some legal recognition there's no physical means to get it off the property.

THE COMMISSIONER: When you say get “it” off, you’re talking about water?

MS SLATTERY: Yes.

5 THE COMMISSIONER: So what do you understand was being bought?

MR BEASLEY: The licence to keep that amount of water on your land?

10 THE COMMISSIONER: Well, the Commonwealth can’t own that licence because it doesn’t own the land. Sorry, I shouldn’t say that. It could, but it would be a different set of slightly more elaborate arrangements by which the Commonwealth was licensed to use the land in order to store the Commonwealth water.

MS SLATTERY: Yes.

15

THE COMMISSIONER: Is that what’s being bought?

20 MS SLATTERY: Yes. Well, it’s just a straight up transfer of the licence. I’m not aware of any other arrangements, certainly not in the documents that we saw around getting that water off the property or using it elsewhere. We put questions to the MDBA and the Department of Ag and the Commonwealth Environmental Water Holder around this and we, you know, basically got a response that they were looking into how they would protect environmental – this water.

25 THE COMMISSIONER: You say “protect this water”, the water has identity only to the extent that it is penned on private land; is that correct?

MS SLATTERY: That’s right.

30 THE COMMISSIONER: Where it is either used consumptively, soaks in, or evaporates?

MS SLATTERY: Yes.

35 MR BEASLEY: But it doesn’t get to a river?

MS SLATTERY: No.

40 THE COMMISSIONER: Well, then, what could be the environmental use of that?

MS SLATTERY: Well, that’s my point. I don’t think there is any.

45 THE COMMISSIONER: And do you understand that what’s being sold includes trapping fresh or future flows across that land?

MS SLATTERY: That’s – yes, that’s what the overland flow licence provides for.

THE COMMISSIONER: So that means, in effect that the purchaser of that licence has purchased what must be a close to exclusive right to use that part of the land?

5 MS SLATTERY: Yes. Well, not use the land, access to the water.

THE COMMISSIONER: All sorts of short-circuits are occurring in my property lawyer's brain at the moment.

10 MS SLATTERY: Yes.

THE COMMISSIONER: What is actually happening – you are aware of, on the ground? Has the Commonwealth, as it were, taken over control of that part of the land?

15 MS SLATTERY: No. There's nothing else in the contract relating to the use of that water other than the transfer of the licence.

THE COMMISSIONER: You keep talking about water. The water is only there because there's land that is formed into a basin.

20 MS SLATTERY: With levee banks.

THE COMMISSIONER: Yes.

25 MR BEASLEY: So you say the contract, the contract has been produced somewhere under a process or is it available?

MS SLATTERY: Yes. We obtained at least documents through an order for production of documents through the Senate.

30 MR BEASLEY: Right, yes.

MS SLATTERY: We – so there's two – there's issues of levee banks at both properties. At Clyde there was nothing in any of the documentation about removal of the levee banks. At Kia Ora, which is up closer to St George the former water Minister, Barnaby Joyce, requested that some levee banks be removed to relieve flooding at St George. There was a big flood there in 2013, and the locals were blaming the levee banks at Kia Ora pushing water back up in to St George. The levee banks failed in some sections during the 2013 flood, and that provided some more relief to St George. Just having a look at the Google search, it looks as though the levee banks haven't been repaired, and I've talked to some locals that have confirmed that. So it looks as though no actual work has been done on the levee banks at Kia Ora.

45 MR BEASLEY: All right. The contract you're talking about is a contract between the Commonwealth and Eastern Australia to purchase the water licence?

MS SLATTERY: That's right.

MR BEASLEY: That's the only contract between them?

5 MS SLATTERY: That's all I've seen.

MR BEASLEY: Yes. Right. Okay. I will have to get that later to tender it. I think we have got it, but I haven't been given it.

10 THE COMMISSIONER: As fascinating as this may be to the Auditor-General of the Commonwealth which of my Terms of Reference, apart from 13, does this fit within?

15 MR BEASLEY: Well, the objects of the Water Act, wouldn't it? In terms of whether they are going to be achieved. If water is being bought – if water is said to have been recovered for the environment and it actually hasn't been, because of the nature of the licence, then I suppose I would have thought that was sufficiently relevant to the Terms of Reference.

20 THE COMMISSIONER: As I understand it, this is water that might later be delivered into the Narran Lakes.

25 MS SLATTERY: Possibly the water at Clyde could be. So there was some negotiations about using one of the on-farm storages at Clyde to store their water and then put back into Narran Lakes later. That was originally included in the negotiated price, and then the offer of the Commonwealth owning the dam or using the dam was taken off the table subject to later negotiation.

30 MR BEASLEY: I'm sorry, you - - -

THE COMMISSIONER: You see, it's not really a transaction under which molecules of H₂O of being purchased even if some of them go along with it, it's the permission to capture and store, to a certain volume, in a certain place. That's what's being transferred, isn't it?

35 MS SLATTERY: No, I think what has been transferred is the licence. There doesn't - - -

40 THE COMMISSIONER: Licence means permission.

MS SLATTERY: The licence to the water.

45 THE COMMISSIONER: The licence means a permission, right. I'm telling you. So what's being transferred is a permission to trap and keep that water in that place.

MS SLATTERY: Yes.

THE COMMISSIONER: From which it could be deployed to environmental use or not?

MS SLATTERY: Possibly, yes.

5

THE COMMISSIONER: Do you know what's happening on the ground in relation to that water?

MS SLATTERY: I know that the property is being marketed with the existing infrastructure in place, which includes the levee banks. I know – well, I haven't seen.

10

MR BEASLEY: Marketed by Eastern Australia?

MS SLATTERY: By an agent of Eastern Australia, yes.

15

MR BEASLEY: Yes. Right, yes.

THE COMMISSIONER: On page 11, you make a comment – page 11 of 'That's Not How You Haggle,':

20

The properties are currently for sale, presumably any agreement on the use of the storage would need to be agreed with the new owners, if it has not been included as a caveat over the property through the sale.

25

Don't let's worry about your lawyering in that last part of the sentence. You're saying, "Look, attention needs to be paid to the fact that this is water that has its character only because it's captured and stored on a particular piece of land."

MS SLATTERY: Yes.

30

THE COMMISSIONER: Unlike what I will call river flow.

MS SLATTERY: Yes.

35

THE COMMISSIONER: As such its so-called ownership under a so-called acquisition by the Commonwealth needs to be understood as to the reality of the control over that water and its storage including the physical improvements to the land necessary to achieve the storage and you're not at all sure, and your drawing to my attention and to the world's attention – you're not at all sure that, from the published material, that that has been adequately attended to?

40

MS SLATTERY: That's right.

THE COMMISSIONER: Well, Mr Beasley, that's a classic job for the Auditor-General, isn't it?

45

MR BEASLEY: Yes.

THE COMMISSIONER: I shall probably so report.

5 MR BEASLEY: Yes.

THE COMMISSIONER: That's what the Auditor-General does: has the Commonwealth spent money appropriately under a program and got that which it ought prudently get?

10

MR BEASLEY: Yes.

THE COMMISSIONER: I'm not an Auditor-General.

15 MR BEASLEY: You're not.

THE COMMISSIONER: And I agree with Ms Slattery. Not provisionally, but finally: this is something that is worth looking at by an Auditor-General. Maybe by others, but the Auditor General would be the obvious first and in many cases last stop, because the Auditor-General reports to the Commonwealth Parliament which is the democratic forum in which this expenditure is accountable.

20

MR BEASLEY: Well, if he is also looking at whether the water recovery target for the current Basin Plan is going to be met, then - - -

25

THE COMMISSIONER: Yes.

MR BEASLEY: - - - he would be – or she would be - - -

30 THE COMMISSIONER: He or she as the case may be from time to time.

MR BEASLEY: - - - covering the field.

THE COMMISSIONER: Yes. I agree, thanks.

35

MR BEASLEY: Can I ask though, in terms of the clarifications the Australia Institute has sought from the government regarding this purchase, have you provided us with that correspondence?

40 MS SLATTERY: No, I don't think so.

MR BEASLEY: All right. Could you do that, please?

THE COMMISSIONER: In particular, the striking aspect of the matter which is summed up by the title 'That's Not How You Haggle' and the quotation from - - -

45

MR BEASLEY: Monty Python.

THE COMMISSIONER: One of the canonical works of Monty Python, that is absolutely the kind of subject matters with which Auditors-General have been concerned with for a number of centuries – I think.

5 MR BEASLEY: Yes. I now – sorry, you are still making a note.

MS SLATTERY: It's all right.

10 MR BEASLEY: I wanted to take you to page 23 of, and following - - -

THE COMMISSIONER: Of the submission.

15 MR BEASLEY: Of the submission, yes. So where you start talking about the water efficient program, so efficiency measures. You say in the last paragraph on 23 that:

The water efficiency program is administered by the Department of Agriculture and Water Resources.

20 You then say:

I approached the Director of that section in early 2016 seeking information about the size of on-farm storages that were funded by the Commonwealth under the program.

25 Now, were you still with the MDBA then?

MS SLATTERY: Yes, I was.

30 MR BEASLEY: All right. Was it part of your work that you were seeking that clarification for information?

35 MS SLATTERY: Yes. We were trying to do a project, having a look at where environmental water was going out of the Gwydir River into the Barwon-Darling River using satellite imaging.

MR BEASLEY: Right.

MS SLATTERY: And we - - -

40 MR BEASLEY: Is this Data Cube?

MS SLATTERY: This is the Data Cube project. We found some things that – some anomalies in what we were seeing and we attempted to do a water balance.

45 MR BEASLEY: When you say anomalies you were concerned that you were seeing water being pumped when it shouldn't have been? Is that – yes, go on.

MS SLATTERY: Yes. That's right.

MR BEASLEY: Yes, go on.

5 MS SLATTERY: And so one of the ideas was to attempt to do a water balance and
- - -

MR BEASLEY: What does a water balance mean?

10 MS SLATTERY: You know, water at the start of a period, inflows and outflows
and what we have got at the end.

MR BEASLEY: Yes.

15 MS SLATTERY: We had most of that information for us to be able to do a water
balance at two properties what we didn't have was information about the depth of
storages. So the satellite imaging can show you the surface area, but not the depth.

MR BEASLEY: So therefore you need the depth to work out – estimate how much
20 water might be in storage, yes.

MS SLATTERY: And we thought that – we thought it would be likely that – we
knew that the Commonwealth had funded for increased storages in that region.

25 MR BEASLEY: In the sense that an efficiency measure might be a deeper storage
and hence less evaporation?

MS SLATTERY: That's right.

30 MR BEASLEY: Yes. Go on.

MS SLATTERY: And so we approached the Department of - - -

MR BEASLEY: So approached the Director of the Department, is that a reference
35 to – should I - - -

MS SLATTERY: Yes, Director of the section.

MR BEASLEY: Yes. Go on.
40

MS SLATTERY: So - - -

MR BEASLEY: Sorry, that section being the section responsible for the efficiency
45 program?

MS SLATTERY: That's right.

MR BEASLEY: Right. Yes, go on.

MS SLATTERY: And I asked her if she had information about the storage sizes
and her response was that the Commonwealth didn't – didn't keep that information.
5 There was technical information that the states had and - - -

MR BEASLEY: So they provide the funding - - -

MS SLATTERY: Yes.
10

MR BEASLEY: - - - on an application by the states but they don't know the
specifics of what the money is going towards. That's a matter for the – an element of
trust with the states, is it?

MS SLATTERY: That's right.
15

MR BEASLEY: Yes.

MS SLATTERY: And I found that quite – I didn't really believe that. I couldn't
20 - - -

MR BEASLEY: Yes.

MS SLATTERY: And she, that Director moved on a few months later and I put the
question back to - - -
25

MR BEASLEY: So now you're at the top of page 24, are you?

MS SLATTERY: Yes.
30

MR BEASLEY: Where this was confirmed, yes.

MS SLATTERY: And I put the question back to the new Director of that program
in probably early 2017.
35

MR BEASLEY: Are you still at the Basin Authority then?

MS SLATTERY: No, I was with the Commonwealth Environmental Water Holder
then.
40

MR BEASLEY: Right. But you were on secondment to the CEWH?

MS SLATTERY: That's right.

MR BEASLEY: So why were you ringing on this occasion.
45

MS SLATTERY: I really just wanted to get to the bottom of it. There was a question at the time, that's still live around the Commonwealth Environmental Water Holder being over-recovered in some valleys, and so I wanted to understand what the process was around this efficiency program and the verification of that water. And
5 so I put the question back to the new Director and she confirmed that the Commonwealth didn't have any records about the change in storage sizes that they had funded.

MR BEASLEY: The words you've used here are:
10

...who also told me the Commonwealth does not verify the water savings under the efficiency program at any time.

What - - -
15

MS SLATTERY: That's right.

MR BEASLEY: So – well, can you – doing the best you can to recollect, how did that conversation go? You asked what and she said what?
20

MS SLATTERY: Gee.

MR BEASLEY: Words to the effect. It doesn't have to be – yes.

MS SLATTERY: I was asking how the water savings that the Commonwealth had acquired through the efficiency program were actually verified. And - - -
25

THE COMMISSIONER: What did you mean by “verified”?

MR BEASLEY: Accounted for, is that what you mean?
30

MS SLATTERY: If the water saving is supposed to be 100 megs, how do you know that it's 100 megs?

MR BEASLEY: Yes. Right.
35

MS SLATTERY: And - - -

MR BEASLEY: What is done to check that?
40

MS SLATTERY: Yes.

MR BEASLEY: All right. Go on.

MS SLATTERY: And she told me that the Commonwealth doesn't – doesn't check the 100 megs was a saving.
45

MR BEASLEY: But – all right. When you say the “Commonwealth”, you’re talking about the Department of Agriculture and Water Resources?

MS SLATTERY: That’s right.

5

MR BEASLEY: But does that include the Basin Authority?

MS SLATTERY: This process has got nothing to do with the MDBA.

10 MR BEASLEY: Right. But they make assertions about how much water is being recovered through efficiency measures, though.

THE COMMISSIONER: You mean they don’t administer the program by which there is 90 per cent subsidy?

15

MS SLATTERY: No, that’s the Department of Ag.

THE COMMISSIONER: But what they do, however, is adjust an SDL on the basis of saving?

20

MS SLATTERY: Yes, that’s right.

MR BEASLEY: So they - - -

25 THE COMMISSIONER: They certainly have a lot to do with it they just don’t administer the process which produces the figure they use to adjust the SDL.

MS SLATTERY: No. That’s right.

30 THE COMMISSIONER: Can I just ask this – I should have in mind, should I, basically the deepening of on-farm storage, is that what we’re talking about?

MS SLATTERY: Yes.

35 THE COMMISSIONER: It’s as simple as reducing the ratio of surface area to volume?

MS SLATTERY: That’s the concept, yes.

40 THE COMMISSIONER: It’s also the practice, I hope, is it?

MS SLATTERY: Well, we don’t know.

45 THE COMMISSIONER: Sorry, unless there’s – unless there’s a real mishap, the only way you could get a saving would be to reduce seepage or evaporation in – if you’re talking about on-farm storage; is that correct?

MS SLATTERY: Yes. So there's a - - -

THE COMMISSIONER: Thank you. Sorry and you can produce seepage in various ways, but we are not talking about that here; is that correct?

5

MS SLATTERY: No. That's right.

THE COMMISSIONER: So we're talking about dams which are worth deepening because they don't leak too badly; is that right?

10

MS SLATTERY: Yes.

THE COMMISSIONER: So you would say one of the first things is to make sure you are talking about dams that don't leak too badly? Some farm dams are rotten. They leak too much. Doesn't matter how much water you put in, they're never full or only full for a little, short while. So presumably a decent program wouldn't bother deepening one of them; is that right.

15

MS SLATTERY: Yes.

20

THE COMMISSIONER: Another way of reducing evaporation are the various expedients – I don't know that any of them have had any wide take up at all – for literally covering the surface.

25

MS SLATTERY: Yes, I don't know.

THE COMMISSIONER: We can put them to one side as, at the moment, not a serious part of the game; is that right?

30

MS SLATTERY: Yes.

THE COMMISSIONER: And so we are left with the old idea – old and good idea – that in relative terms you reduce evaporation for a given volume of water by reducing its surface area.

35

MS SLATTERY: That's – that's the intent, yes.

THE COMMISSIONER: It's not just a concept or intent. It actually works if it's done properly; isn't that right?

40

MS SLATTERY: And my point is that I don't – if the Commonwealth isn't checking those savings - - -

THE COMMISSIONER: I think that is your point. I'm just trying to get it in an ordered fashion. And so if you're paying 90 per cent of the work to deepen on-farm storages, I'm just going to call them dams because that's what we call them, you would need a number of checks, you're telling me, in order to ensure that the 90 per

45

cent is worth spending and then to proceed to work out a so-called water saving. The first is: is this dam worth deepening? Will it hold water sufficiently well? The second is, are we using artificial cover techniques? No, we are not. So we are just going to reduction of surface area for a volume of water. You're not going to reduce the amount of evaporation in absolute terms; you are only reducing it in relative terms for the volume of water.

MS SLATTERY: Yes.

10 THE COMMISSIONER: Well now, it means that there needs to be what I will call a volumetric calculation in order to work out the supposed water saving; isn't that right?

MS SLATTERY: Yes.

15 THE COMMISSIONER: That means you need to know the physical configuration of pre-works and post-works of each of the storages?

MS SLATTERY: Yes.

20 THE COMMISSIONER: And then, on something rather better than back of the envelope, you work out this so-called saving by a reduction of the proportion of the volume of stored water which has evaporated.

25 MS SLATTERY: Yes.

THE COMMISSIONER: Then, and only then, do you have an amount that can contribute towards ultimately an adjustment of an SDL.

30 MS SLATTERY: Or a contribution to a water recovery target.

THE COMMISSIONER: Yes. Along the way, as I think you've been drawing to attention, there's the not unimportant question of the expenditure of money from consolidated revenue for the 90 per cent subsidy which, to use old language, ordinarily would require as its quittance a demonstration of the carrying out of stipulated works to a stipulated standard.

MS SLATTERY: Yes.

40 THE COMMISSIONER: And it's about all of those things that you feel you received no reassurance in these conversations; is that right?

MS SLATTERY: That's right.

45 THE COMMISSIONER: What could it mean to say that the Commonwealth – what have you said – takes no steps to verify. It would surprise me to hear that money is paid without any demonstration of an occasion for it to be paid, and I'm not an

Auditor-General, and I can certainly in the report say that the Auditor-General would no doubt be interested in this, but it does sound surprising to me. Were words ever used to the effect that contractors were being paid without it being known whether they had done what they were being paid for?

5

MS SLATTERY: The states administer – the Commonwealth provides the money and the states administer the program.

THE COMMISSIONER: Yes.

10

MS SLATTERY: And - - -

THE COMMISSIONER: That means there's two levels of check, surely, doesn't it?

15

MS SLATTERY: Yes. Well, two levels of check.

MR BEASLEY: Presumably, the states though then get the information either given to them or acquire it in order for them to verify what the water saving is.

20

MS SLATTERY: And I have heard that the state doesn't keep that information on the dam sizes either.

MR BEASLEY: Right. Okay. Right.

25

THE COMMISSIONER: Job for the state Auditor-General as well.

MS SLATTERY: So I suppose there's two concerns. One is the expenditure of public moneys, but the reason that I've raised this in the previous examples of the water purchases relate more to whether the water recovery numbers are valid.

30

THE COMMISSIONER: Quite. I understand.

MR BEASLEY: Yes.

35

THE COMMISSIONER: I mean, public money is very important, but that's what an Auditor-General is for.

MR BEASLEY: All right. Well, before I go to the Basin Irrigation Modernisation Program, is that a convenient time for lunch break?

40

THE COMMISSIONER: Yes, it is. Thank you.

MR BEASLEY: So 2 o'clock?

45

THE COMMISSIONER: Yes.

ADJOURNED

[1.02 pm]

RESUMED

[2.00 pm]

5

MR BEASLEY: I just have to tender some documents otherwise we will lose track. During the course of Professor Grafton's evidence a number of reports were tendered but two that I dealt with him and didn't tender were a journal article from 2012, 110
10 – Agricultural Systems, pages 10 to 16, by Jiang, J-i-a-n-g, and Grafton entitled 'Economic Effects of Climate Change in the Murray-Darling Basin, Australia.' I tender that.

15 Another article from 2010 from 17(2) Agenda, page 17, article by Grafton 'How to Increase the Cost Effectiveness of Water Reform and Environmental Flows in the Murray-Darling Basin.' And another publication from the Crawford School of Public Policy, the ANU, 18 October 2017, Grafton and Williams, 'Comments of Draft Report by Productivity Commission on National Water Reform, an Inquiry into Progress with the Reform of Australia's Water Resources Sector.' I tender that.

20

In relation to the evidence given by Dr Loch and Dr Adamson, I tender an article from 2018, 62, Australian Journal of Agricultural and Resource Economics at 83, Adamson and Loch, 'Achieving Environmental Flows Where Buyback is Constrained;' 2017, 61 Australian Journal of Agriculture and Resource Economics
25 at 385, Adamson, Loch and Shwabe, S-c-h-w-a-b-e, 'Adaption Responses to Increasing Drought Frequency.' I tender that. 2014, 145 Agricultural Water Management 134, Adamson and Loch, 'Possible Negative Feedbacks From Gold Plating Irrigation Infrastructure.' I tender that.

30 And from 2014 36(1) Land Use Policy at page 396, Loch, Wheeler et al, 'Irrigator Preferences for Water Recovery Budget Expenditure in the Murray-Darling Basin.' And submission number 19 to the House of Representatives Standing Committee on Agriculture and Water Resources (Commonwealth), Adamson and Loch, 'Inquiry into Water Use Efficiency in Australian Agriculture' 2017.

35

Just going back quickly to the document behind tab 18, the Water Resource Plan position statement 1H regarding section 6.14 of the Basin Plan, can I hand up, Commissioner, the other position statements that are referred to.

40 THE COMMISSIONER: Yes. Thank you.

MR BEASLEY: So you will see what's said – just the whole bundle. Yes. You will see the first one is Position Statement 4A, Consistency with Section 10.17 on Priority Environmental Assets and Priority Ecosystem Functions. If you go to the
45 MDBA position statement at point 7 at page 2:

In addressing the requirements of 10.17, Basin States should be aware that section 6.14 of the Basin Plan applies. See position statement 1H.

Dropping down to the last paragraph under Rationale:

5

A Basin state may include rules to meet environmental watering requirements that also have a reliability impact of the kind referred to in 6.14 of the Basin Plan. This can only be done if the Water Resource Plan also includes an express statement that the Basin state is doing this of its own volition, rather than to meet a Water Resource Plan requirement.

10

THE COMMISSIONER: That's the kind of thing that I saw earlier that led me to the view that this is about deflecting Commonwealth liability to compensate.

15 MR BEASLEY: Yes. Now, that - - -

THE COMMISSIONER: Query whether, if there be a discretion about the recommendation to accredit AWRP, it's a relevant or proper consideration to avoid Commonwealth compensation. But that's probably not a high priority for me.

20

MR BEASLEY: No. Now, there's similar statements in relation to all of the other documents.

THE COMMISSIONER: Yes.

25

MR BEASLEY: But there's no need to go through them all. So I will tender that as one bundle.

THE COMMISSIONER: Thank you.

30

MR BEASLEY: It's probably just – I'm going to tender this Maryanne Slattery briefing volume 1.

THE COMMISSIONER: Yes.

35

MR BEASLEY: They can just be part of the bundle of documents from tab 18, I think.

THE COMMISSIONER: I agree.

40

MR BEASLEY: Yes. So now back to – we were on page 24 of your submission. And I just wanted to draw your attention to the part of your submission regarding the New South Wales program under the Commonwealth's SRWUIP program, the 'New South Wales Sustaining the Basin Irrigation Farm Modernisation Program.' Now, you've mentioned there that the process is for getting an efficiency project accredited and improved is that the applicant lodges an infrastructure farm water use efficiency assessment. There has got to be an accredited consultant. Consultants include those

45

people you've outlined – sorry – those organisations you've outlined in the bullet points. I take it all of that information, am I right, is you've obtained from the DPI website?

5 MS SLATTERY: That's right.

MR BEASLEY: So that's all available there. And then in 25 you set out what you say your concerns regarding weaknesses in the process. The first one is there's no independence in the accreditation process:

10

Many of the accreditation bodies are not independent from their members and have a vested interest in seeing projects approved.

15 *I take it from that you mean that one of the members of these bodies could actually apply for an efficiency project to their own representative body. Is that the concern?*

MS SLATTERY: Yes, that's right.

20 THE COMMISSIONER: Sorry. When you say "no independence in the accreditation process", you're talking about accrediting a consultant?

MS SLATTERY: That's right.

25 THE COMMISSIONER: But what you're suggesting is a membership organisation should not be able to accredit a consultant?

MS SLATTERY: If a membership organisation can accredit a consultant, then I would expect to see compensating checks and balances in that control process.

30

MR BEASLEY: So are you saying, for example, Irrigation Australia Limited can accredit one of their members to be a consultant - - -

MS SLATTERY: Yes, that's right.

35

MR BEASLEY: - - - under the IFWUEA program?

MS SLATTERY: Yes.

40 MR BEASLEY: Has that happened? Do you know?

MS SLATTERY: I don't know.

MR BEASLEY: Right.

45

THE COMMISSIONER: Speaking for myself, I wouldn't regard it as inappropriate for the Bar Association to accredit a mediator.

MR BEASLEY: No.

THE COMMISSIONER: They don't, but that wouldn't be inappropriate. It's a membership organisation.

5

MR BEASLEY: It might be entirely appropriate.

THE COMMISSIONER: That's right.

10 MR BEASLEY: There is little or no relevant technical or hydrological prerequisite qualifications for a consultant. What are the - - -

THE COMMISSIONER: Do we know – yes. Do we know what the accreditation requirements are?

15

MS SLATTERY: It seems to be very little. I actually went on the website and went through the process myself, not seeking – not going to one of these bodies for accreditation, but there's a very short - - -

20 MR BEASLEY: Don't tell me I could get accredited as a - - -

MS SLATTERY: Well, it took me about 20 minutes to go through the process on the website, and I don't have any of the qualifications that I would see as - - -

25 MR BEASLEY: Did it ask for – what sort of qualifications did it ask for?

MS SLATTERY: I don't recall that it did ask for qualifications.

30 THE COMMISSIONER: So you've pointed out here what I might call systemic or design weaknesses, as you identify them, in the quittance for the 111 million program.

MS SLATTERY: And I'm basing that on my background as a chartered accountant and a former financial auditor.

35

THE COMMISSIONER: No. I understand.

MS SLATTERY: And I look at that process.

40 THE COMMISSIONER: No, I understand.

MS SLATTERY: And that seems as though it has got some – what I would see as some internal control - - -

45 THE COMMISSIONER: So you ask the basic questions: how do we know that we've got what we paid for?

MS SLATTERY: Yes.

THE COMMISSIONER: I understand.

5 MR BEASLEY: When you say actual water savings are never verified, how do you know that?

MS SLATTERY: In New South Wales – just let me go back a sec.

10 MR BEASLEY: Yes.

MS SLATTERY: There's – in New South Wales the process seems as though – as described on the website, that the actual water savings are not – there's not a step in the process for the accreditor to go back and check the actual water savings.

15

MR BEASLEY: Right. So at least as far as the website tells you, there's no requirement to check what the water savings are. But is there some – does the – yes. All right.

20 THE COMMISSIONER: What would be a good example, a typical example, of an efficiency measure that's funded by this program?

MS SLATTERY: It's things like deepening dams, lining irrigation channels. I know that it's being used to fund laser levelling of paddocks, for example.

25

THE COMMISSIONER: Have you seen documentation in relation to applications under this program?

MS SLATTERY: No, I haven't.

30

MR BEASLEY: No.

THE COMMISSIONER: All right.

35 MR BEASLEY: I wanted to take you to – sorry, have you finished asking questions about that, Commissioner? Yes. Page 33 of your submission refers to the article you've – the publication from The Australia Institute co-authored with Mr Campbell, Northern Disclosure. That, I think, is a publication which you've largely also used for appendix A.

40

MS SLATTERY: That's right.

MR BEASLEY: Yes. And it's simply showing the various rather rapid changes that the Basin Authority was asserting for, as an example for South Australia in terms of a loss of water from the Northern Basin Review.

45

MS SLATTERY: That's right.

MR BEASLEY: With the figures – I mean, the document, I think, speaks for itself but they fluctuated rather wildly. Did you seek any clarification as to why there were so many changes over the last few weeks?

5 MS SLATTERY: That has been a subject of questions on notice and also questions through Senate Estimates.

MR BEASLEY: Yes.

10 MS SLATTERY: MDBA have said that they've made the changes because they were still modelling the toolkit measures through the Northern Basin Review. And
- - -

MR BEASLEY: Even after they've decided it's 70 gegalitres?

15

MS SLATTERY: That's right.

MR BEASLEY: What's the explanation for that? Or what – was there any?

20 MS SLATTERY: Phillip Glyde said in the last Senate estimates, which was in May, that they were looking for the “sweet spot,” was his term.

MR BEASLEY: Sorry, what does that mean? Well, he used that term, do you have an understanding of what he meant by that?

25

MS SLATTERY: That makes no sense to me given they had already made the recommendation and what they are essentially doing is playing around with modelling assumptions.

30 MR BEASLEY: What was the “sweet spot” a reference to?

THE COMMISSIONER: It will be a matter for the committee as to what they do with that evidence. The Senate Committee.

35 MS SLATTERY: Senate Estimates, not a Committee.

THE COMMISSIONER: Well, it's an Estimates Committee.

MS SLATTERY: Yes.

40

THE COMMISSIONER: Yes.

MS SLATTERY: Yes.

45 MR BEASLEY: Page 35 you set out some concerns regarding the peer reviewing of the MDBA's work. You say:

The MDBA selects the consultants, sets the Terms of Reference, frequently edits or influences the final report and pays the consultant.

5 In terms of MDBA selecting the consultant, are you suggesting that someone else should select the consultant to review their own analysis, whether it's an analysis concerning watering our targets or setting an SDL or socio-economic analysis? Should someone else select a consultant to peer review their work?

10 MS SLATTERY: That certainly would be a good control to put in place to help create some independence that isn't there now.

THE COMMISSIONER: Who should select a consultant?

15 MS SLATTERY: It could be something that – let me go back.

THE COMMISSIONER: Well, we don't have – we don't strictly have, do we, an analogy with scholarly or scientific publishing where, at least in the ideal form, there's an editorial board or committee, and perhaps sometimes a sole editor, who will mostly anonymously for the prospective submitting authors, select one or more peer reviewer. That's a bit difficult to apply that by analogy to the MDBA, isn't it? There is no journal to have an editorial board.

25 MS SLATTERY: No. I draw on my financial accounting experience where you would have a financial auditor, who is subject to, you know, standards at law.

THE COMMISSIONER: Sure, But they're quite often selected by the body whom they're auditing.

30 MS SLATTERY: Yes – yes. And the control, I suppose, is the fact that they have professional ethical standards and they also have standards at law to undertake an audit.

35 THE COMMISSIONER: Yes, I understand. Right. Thank you. We don't need to spend too much time on that.

MR BEASLEY: No.

40 THE COMMISSIONER: And the example from the Northern Basin Review has been well and truly canvassed.

MR BEASLEY: I suppose the Act would provide for some independent panel to be set up.

45 THE COMMISSIONER: Yes.

MR BEASLEY: One that sets terms of reference and selects consultants. Then you say, "frequently edits or influences the final report." Is that a reference to anything

beyond – I mean, you may have heard evidence here of the MDBA having an input into at least one of the CSIRO reports regarding a 2,800 gigalitre recovery scenario. Is there any other – are you referring to knowledge about editing or influencing final reports from your time at the MDBA?

5

MS SLATTERY: Yes. It's a pretty standard practice, from my experience.

MR BEASLEY: All right. You might need to give the Commissioner some examples then, of that, of when the MDBA has edited or influenced a final report from an external consultant.

10

MS SLATTERY: Certainly with the Independent River Operations Review Group, IRORG, I'm aware of - - -

15 MR BEASLEY: Who is that group?

MS SLATTERY: That's a group that undertakes an independent review each year of river operations.

20 MR BEASLEY: Yes.

MS SLATTERY: And in the last probably six or so years, they've also been doing a review of environmental watering trials. They were asked to do a review of the MDBA's assessment of the unimplemented policy measure as well.

25

MR BEASLEY: Yes.

MS SLATTERY: And there is certainly a – certainly an exchange between, you know, their draft final version and an iteration with MDBA on getting from a draft to a final.

30

MR BEASLEY: You know that because?

MS SLATTERY: I was – I was yes, working – like often I was working very closely with IRORG. And part of that – it's not entirely inappropriate because there's questions of clarification and it's complex, etcetera.

35

MR BEASLEY: Right, yes.

MS SLATTERY: I did notice in – I was watching one of these reviews quite closely, the Bewsher review, and I did notice language in the final report that really stuck out to me that there was an MDBA audit.

40

MR BEASLEY: When Bewsher report are you referring to?

45

MS SLATTERY: This is the one that I included in the submission.

MR BEASLEY: The one down the bottom, the 2016 one.

MS SLATTERY: Yes. Which was the review of the - - -

5 MR BEASLEY: So that's reviewing the modelling framework for both the Northern Basin Review and the SDL adjustment.

MS SLATTERY: Yes.

10 MR BEASLEY: Which I think is in – you've seen, what, a draft of that?

MS SLATTERY: No, this was the – this was the final.

15 MR BEASLEY: Right. You've seen a final. You've seen – all right, maybe we should – I will just try and find it so is there any particular language in that report?

20 MS SLATTERY: There was a phrase that – I couldn't tell you the page, I haven't looked at it since – since back in 2016 or '17. There's reference to reliability and Bewsher has used the definition that emerged through the position statement that MDBA had developed. Now this was, as I said before, this was sort of quite contentious and hard fought inside MDBA. And for Bewsher to come up with a nuanced definition which happened to agree - - -

25 MR BEASLEY: Description of what?

MS SLATTERY: Reliability.

30 MR BEASLEY: Reliability.

MS SLATTERY: A description of reliability.

35 MR BEASLEY: Just looking for that now. So the report you're talking about should be behind tab 6, if you go to that.

MS SLATTERY: Tab 6.

MR BEASLEY: Yes.

40 MS SLATTERY: I'm probably going to struggle just to go straight to it.

MR BEASLEY: It's something we can do on notice, if we can't find it quickly.

MS SLATTERY: Yes.

45

MR BEASLEY: So reliability of what are we looking for?

MS SLATTERY: Reliability of entitlements. It might be better if I find it - - -

MR BEASLEY: Sorry, reliability of?

5 MS SLATTERY: Entitlements, or reliability of water, water licences.

MR BEASLEY: You can take that on notice. Okay?

MS SLATTERY: Yes.

10

MR BEASLEY: Yes. Rather than go flipping through it now. Yes. There's another example of that, sort of curious phrasing in one of the IRORG reports on the – their assessment of the prerequisite of the MDBA's assessment of unimplemented policy measures for the Murray.

15

MR BEASLEY: Yes.

MS SLATTERY: I had been working with IRORG for about six years and they had - - -

20

MR BEASLEY: Who sits on it?

MS SLATTERY: Peter Hoey is the chair. Peter is an ex-South Australian official, I think he was a Commissioner.

25

MR BEASLEY: Who appoints these people to this group? The MDBA, or someone else, or the government?

MS SLATTERY: It must be MDBA.

30

MR BEASLEY: Right.

MS SLATTERY: Because they're a section 203 committee, but I'm pretty sure that they get approval by the states. MDBA runs them past the states.

35

MR BEASLEY: All right. Go on.

MS SLATTERY: At that stage it was Peter Hoey, Gary Smith who is an ex-Victorian bureaucrat who now is a consultant, Kim Alvarez who's an ex-New South Wales consultant, and Terry Hillman who amongst other things is part of the Wentworth Group. He was there from an ecological perspective.

40

MR BEASLEY: Yes.

45 MS SLATTERY: There was a phrase in the report, it was an interpretation that was again being hard-fought inside the organisation and it struck me as quite curious

because it just happened to be identical to the terminology that the other side of the argument was using.

MR BEASLEY: Yes.

5

MS SLATTERY: And very different to what IRORG had been – the terms they had been using over the previous six years. I phoned Peter and said, you know, I found it curious that, you know, their position had changed and his first words were, “We weren’t got at.”

10

MR BEASLEY: “We weren’t got at?”

MS SLATTERY: That’s what he said.

15

MR BEASLEY: Right.

MS SLATTERY: I wasn’t accusing him of being got at; I was asking where the phrase came from. So there’s some examples like that, that, you know, it looks to me that it’s quite clear that it’s MDBA editing the document.

20

MR BEASLEY: All right. Then you say:

The terms of reference are intentionally restrictive.

25

I take it the word “intentionally” is your interpretation, or was that a statement in your submission that’s actually based on conversations you’ve been part of where intentionally restricting Terms of Reference has been a subject raised or is it - - -

MS SLATTERY: Yes. It’s both, I think.

30

MR BEASLEY: Right.

MS SLATTERY: In regards to the Bewsher review - - -

35

MR BEASLEY: Yes. You have given the example of Bewsher 2016, which is a review of a framework which specifically excludes looking at the IQQM model.

MS SLATTERY: Yes. And I do recall a - - -

40

MR BEASLEY: Even though that was audited by the same person in 2013.

MS SLATTERY: Yes. So that review was as a result of a lot of criticism by the Northern Basin Advisory Committee and those - - -

45

MR BEASLEY: Yes, specifically because they had a concern that the model didn’t work - - -

MS SLATTERY: Yes.

MR BEASLEY: - - - for the Northern Basin or wasn't appropriate for the northern Basin particularly in terms of its reliability for modelling low flows.

5

MS SLATTERY: Yes.

MR BEASLEY: Which are not uncommon in that part of the system.

10 MS SLATTERY: Yes. And it became – the debate became quite heated over several meetings, and MDBA finally agreed to do a review of the models, but the statement was made - - -

15 MR BEASLEY: Just let me stop you there. The debate became quite heated over some of the meetings. What are these meetings that you're talking about?

MS SLATTERY: The Northern Basin Advisory Committee meetings.

20 MR BEASLEY: Right. Okay. All right. So the Committee members are saying, "We want the model actually reviewed and audited again."

MS SLATTERY: That's my understanding.

25 MR BEASLEY: Right. Were you present at these meetings?

MS SLATTERY: Not all of them, no.

MR BEASLEY: So this is not all of them; some of them?

30 MS SLATTERY: Yes.

MR BEASLEY: Where it was a heated discussion about, "Please do this modelling, please look at this modelling again?"

35 MS SLATTERY: It came up at nearly every meeting that I was present at about the concerns around the model.

MR BEASLEY: All right. Okay. And this is people like Mr Clements, is it and - - -

40

MS SLATTERY: Yes.

MR BEASLEY: And Geoff Wise.

45 MS SLATTERY: Yes.

MR BEASLEY: All right.

MS SLATTERY: And I might just add that John Clements in particular has got a very good grasp of the models.

MR BEASLEY: Yes. He told us that.

5

MS SLATTERY: Yes.

MR BEASLEY: Go on. Anything - - -

10 MS SLATTERY: And there was a conversation after MDBA agreed to do a review of the modelling.

MR BEASLEY: Yes.

15 MS SLATTERY: And it was said to me that the Terms of Reference would be written in such a way that there wouldn't be a whole revisiting of everything in the model. It would just be on the process around using the model.

MR BEASLEY: Right. And that ended up being the 2016 Bewsher report that
20 you're talking about?

MS SLATTERY: That's right.

MR BEASLEY: Okay, which I think expressly states, "We are not looking at the
25 IQQM model."

MS SLATTERY: Yes.

MR BEASLEY: Yes. Right. Yes, sorry, I think on the top of page 36 of your
30 submission, there's a reference to a Mr Graeme Turner and you wanted to clarify some part of your submission about that.

MS SLATTERY: Yes, I've said in my submission that Brett Tucker and Graeme
35 Turner prepared business cases for the SDL projects and that they were also part of the independent review of the SDL adjustment process.

MR BEASLEY: Yes.

MS SLATTERY: That was on the basis of a presentation – a joint presentation by
40 Brett Tucker and Graeme Turner about a month ago on the SDL projects where Brett Tucker said that he and Graham had both been involved in one or more business cases.

MR BEASLEY: Right.
45

MS SLATTERY: Sarah Hanson-Young – Senator Sarah Hanson-Young put a question on notice to MDBA asking for who had been involved in which business cases, and that came back that Graham Turner hadn't been involved - - -

5 MR BEASLEY: Right. Had not been.

MS SLATTERY: - - - in the supply measures, in developing the business cases.

10 MR BEASLEY: So you want to delete the reference to Graham Turner there.

MS SLATTERY: That's right.

15 MR BEASLEY: All right. We will cross that out. All right. Now, I want to go back for a moment, if I can find the document – so remember we were talking about the cap factors and whether the BDL was going to be changed as a result of the new 2018 cap factors, and you mentioned that you had sought clarification from, I think it was Peter Hyde, you mentioned at DPI. So we need to go to the document behind tab 21 again because your email, which I'm about to show you – and I will just find my copy needed to have it – at page 30 dealing with the Murrumbidgee, which I think you – sorry, page 29. You – I think it actually was Mr Campbell, asked some questions to Mr Hyde who was the Director, water planning, land and water division of Lands and Water Division of the DPI, including the question:

25 *Will the 2018 cap factors change the BDL?*

And the question goes on to say:

30 *For example, is it correct to interpret the old BDL (adjusted for the Basin Plan amendments) in the Murrumbidgee as 2,181 gicalitres?*

And I notice there's – in the 2011 for BDL share on page 29, there's a reference to 2,181 gicalitres. And the new BDL in the valley as – this email says 2,117, but I think we can take that as 2116, 997. So that's the question:

35 *Will the 2018 cap factors change the BDL?*

Answer:

40 *No. Cap factors do not change the BDL. The suggested interpretation is incorrect. The figure of 2181 gicalitres was never the BDL but is used to draw attention to the scale of the error associated with the 2011 factors. Separately, the process followed to develop cap factors highlighted some issues –*

45 thank you. Is that – the witness has now got the email. It's about halfway down the page, Commissioner.

5 *New South Wales is working with the MDBA to update the BDL models as part of the Water Resource Plan development process and this is work that is now nearing completion. As has been telegraphed on a number of occasions over the last five years, any changes in BDL will also alter the SDL. However, the 2,750 giganlitre recovery volume remains fixed. This enables New South Wales and MDBA to provide better estimates of the baseline condition limits as part of the NSW WRP process.*

10 So just picking up that: “Cap factors do not change the BDL,” that doesn’t seem consistent with the table on page 29; do you agree with that?

MS SLATTERY: Yes, I agree.

15 MR BEASLEY:
...suggested interpretation is incorrect. The figure of 2,181 was never the BDL
—

20 well, it was, for a while, seven years I would have thought —
but is used to draw attention to the scale of the area associated with the 2011 factors.

25 Is that — do you — I mean asking someone to interpret someone else’s words is usually not allowed, and fraught with difficulties, but what’s your understanding of what he is attempting to convey there? That 2181 was never the BDL because the cap factors are wrong in 2011? Or - - -

30 MS SLATTERY: The 2011 cap factors weren’t used in the original BDL.

MR BEASLEY: Right.

35 MS SLATTERY: But it just doesn’t make sense to me, mathematically, how you can just have different cap factors in the BDL to water recovery.

MR BEASLEY: I have to say, I’m not — I must be missing something. Where it says:

40 *As has been telegraphed on a number of occasions over the last five years, any changes in BDL will also alter the SDL. However, the 2,750 recovery volume remains fixed.*

What does that mean?

45 MS SLATTERY: It means that the BDL — if the BDL moves up by - - -

MR BEASLEY: It will be proportionally - - -

MS SLATTERY: BDL – if the BDL moves up by 100 gigalitres, and water recovery stays the same, that the SDL will move up by 100 gigalitres. So they're setting the SDL as BDL minus water recovery, not SDL equals sustainable level of take.

5

MR BEASLEY: Yes. All right. Was there anything else in that email you wish to draw to our attention?

MS SLATTERY: No, I don't think so.

10

MR BEASLEY: All right. Well, I will tender the email from Peter Hyde to Rod Campbell, dated 14 June 2018, sent at 9.18 am. And I suppose for completeness I should tender the email from Rod Campbell to Carl Binning and Peter Hyde dated 4 June 2018 at 12.54 pm. That email I've just mentioned says:

15

Thanks for the opportunity for The Australia Institute to attend your briefing session on cap factors. Maryanne tells me it was a very worthwhile session to attend.

20 That obviously tells me you attended.

MS SLATTERY: Yes.

MR BEASLEY: Where was that held?

25

MS SLATTERY: In Sydney.

MR BEASLEY: And was that – what was the basis for that briefing session to be organised? Was that something you asked for or were they - - -?

30

MS SLATTERY: No. It was a – it was a – the launch of the cap factor document for consultation with invited stakeholders.

MR BEASLEY: Right. I was going to say it wasn't open to members of the public. No?

35

MS SLATTERY: No. It was - - -

MR BEASLEY: Limited audience that had got interested in cap factors, but it was – so it was targeted – it was a target. You were one of the people that were invited?

40

MS SLATTERY: Yes.

MR BEASLEY: All right.

45

MS SLATTERY: I think we did have to invite ourselves, but - - -

MR BEASLEY: Right, okay. You indicated an interest in going and then were invited.

MS SLATTERY: Yes.

5

MR BEASLEY: All right. Speaking of the Bewsher 2013 report, that was the audit of the IQQM model for the Barwon-Darling Plan, you have prepared a couple of tables based on the figures in that 2013. Can the witness have the Bewsher Consulting core reports. Do you have a volume of material called Bewsher Consulting core - - -

10

MS SLATTERY: I don't have that in my folder.

MR BEASLEY: Okay. So what I'm after is exhibit RCE137, which is behind tab 4 of my - - -

15

MS SLATTERY: sorry.

MR BEASLEY: So tab 4. Yes. That looks like it.

20

MS SLATTERY: Yes.

MR BEASLEY: Now, you've just been handed a copy of the graph you've prepared. And there's – well two graphs. Looking at the first one, where have you gotten the figures for this one that's headed Flows At Bourke, Actual and Modelled Flows?

25

MS SLATTERY: I've taken the actual flows at Bourke off the Department of Primary Industries website.

30

MR BEASLEY: Right.

MS SLATTERY: And the modelled flows at Bourke The Australia Institute obtained under a freedom of information request.

35

MR BEASLEY: Right. Okay.

THE COMMISSIONER: Is that modelled for the purposes of the Basin Plan?

40

MS SLATTERY: Yes.

THE COMMISSIONER: Just explain to me why – if there were data in existence for actual flows, what was the exercise by which they were being modelled?

45

MS SLATTERY: Can you ask that question again?

THE COMMISSIONER: If there are actual – if there are data on actual flows, for what purpose would one use modelled flows, rather than actual flows?

MS SLATTERY: Okay.

5

THE COMMISSIONER: That is, is it an exercise to suppose a hypothetical position or what?

MS SLATTERY: All of the Basin Plan hydrological numbers are based on a model. And we have to use a model – or a model is used to simulate a certain level of development. Like '93/94 level of development.

10

THE COMMISSIONER: So it is what I said.

MS SLATTERY: Hypothetical, yes.

15

THE COMMISSIONER: You are supposing a state of hypothetical.

MS SLATTERY: Yes.

20

THE COMMISSIONER: But the model has as one of its variables, does it, the data on actual flows?

MS SLATTERY: The way the – this particular model is developed, it takes – as is described in this Bewsher's report, it takes – it took a 12 year sequence of inflows.

25

THE COMMISSIONER: Actual data.

MS SLATTERY: Actual data that happened to coincide with high inflow period. It took 12 years worth of data of diversions, which happened to coincide with low inflow and, therefore, low diversions. It took a three-year period of production. And it has other variables, as well, but they're the three most important ones. And then it puts those together and calibrates those over a three-year period. And that calibration then deems that the model is working. And then it's extrapolated over 114 years worth of the climate data.

30

35

THE COMMISSIONER: Do I understand correctly that when the model operates one of the inputs comprises data on actual flow?

MS SLATTERY: For a set period, yes.

40

THE COMMISSIONER: But, like many models – not necessarily all of them, but like many models, it involves sampling and extrapolation.

MS SLATTERY: Yes.

45

THE COMMISSIONER: Now, what is the significance, then, of observing the difference between model flows and actual flows?

5 MS SLATTERY: I did that exercise because in Bewsher's report he makes the observation that the model performs very poorly against observed flows and that Murray-Darling Basin Authority modellers had mentioned that to him and said that they had – when they used the model for compliance that they had to correct the inflows, I think.

10 THE COMMISSIONER: So this is a - - -

MR BEASLEY: He has got – sorry.

15 THE COMMISSIONER: This is a graphic that makes good his proposition?

MS SLATTERY: And I've taken what – I'm just looking for the table.

THE COMMISSIONER: Is that right?

20 MS SLATTERY: That's right.

MR BEASLEY: If you go to 54, he has got a table of modelled and observed flows. And it's only for a three year period, including at Bourke. 54.

25 MS SLATTERY: Yes.

MR BEASLEY: That's part of it, I think.

30 MS SLATTERY: He then goes on in table – on page 60.

MR BEASLEY: Yes.

MS SLATTERY: Figure 8.1.

35 MR BEASLEY: Yes.

40 MS SLATTERY: Where he says that – I'm going to paraphrase him – that because he was concerned about the performance of the calibration over this three year period and the comment that MDBA had made to him about the observed flows not lining up with the model flows, that he extended his inquiry - - -

MR BEASLEY: Yes.

45 MS SLATTERY: - - - over several years to have a look at what was happening with the models, model versus observed.

MR BEASLEY: Yes.

MS SLATTERY: And I've just taken – he has just reported the difference year on year. I've just taken what he has done and done a cumulative total, rather than a year on year total.

5 MR BEASLEY: Yes. And he comments about figure 8.1 on the top of page 65. So:

10 *As can be seen from 8.1, the variation to diversions is predicted reasonably well, but diversions such as '01, '02 are poorly replicated and this detracts from the model's robustness.*

THE COMMISSIONER: Figure 8.1 is Mr Bewsher's selection of five years to compare recorded – what's called "recorded (de-trended)" and "cap model". Is that right?

15

MS SLATTERY: Yes.

THE COMMISSIONER: What does "recorded (de-trended)" mean?

20 MS SLATTERY: I don't know, sorry.

THE COMMISSIONER: In any event, that doesn't seem to be different from recorded. So those same values have been plotted by you in a cumulative fashion.

25 MS SLATTERY: Yes.

MR BEASLEY: And that's the blue line.

30 THE COMMISSIONER: Yes, I understand.

MR BEASLEY: And then - - -

THE COMMISSIONER: What does the second sheet mean?

35 MR BEASLEY: The second sheet.

THE COMMISSIONER: I don't have a key that tells me what the orange line is.

40 MR BEASLEY: No.

MS SLATTERY: Sorry.

THE COMMISSIONER: That's all right. You can tell me now. What is it?

45 MS SLATTERY: This is just – on the left-hand side axis is where the blue line is plotted. And that relates to the cumulative difference between observed flows and model flows.

THE COMMISSIONER: So that is a continuation - - -

MS SLATTERY: Yes.

5 THE COMMISSIONER: - - - of the first sheet. Yes.

MS SLATTERY: Yes.

10 MR BEASLEY: So that's a difference of approximately 4,752 gicalitres.

MS SLATTERY: Yes.

MR BEASLEY: Yes.

15 MS SLATTERY: And on the right-hand side is the cumulated cap credits.

MR BEASLEY: Right.

20 THE COMMISSIONER: Just remind me, what does that mean?

MS SLATTERY: So every year when cap is assessed you have a cap target and you have the actual diversions. And the difference between the actual diversions and the cap target gives rise to either a cap debit or a cap credit.

25 THE COMMISSIONER: So what's the significance of that?

MS SLATTERY: And then that accumulates over time, for a cumulative cap debit or cap credit.

30 MR BEASLEY: So is 596.23 a reference – first of all, is that a reference to approximately 600 gicalitres?

MS SLATTERY: That was the cumulative cap credit in the Barwon-Darling.

35 MR BEASLEY: Yes.

THE COMMISSIONER: What's the significance of the cap credit when it's accumulated? Is it for carry over purposes or what?

40 MS SLATTERY: It just means that you can exceed cap in a year and you've got the cap credit to exceed cap by.

THE COMMISSIONER: It just keeps carrying over.

45 MS SLATTERY: Yes.

MR BEASLEY: So they've exceeded the cap by 600 gigalitres in the period you've plotted here?

THE COMMISSIONER: No. They have room to do so. Is that what it means?

5

MS SLATTERY: No. The cumulative cap credit at the end of 2016 was nearly 600 gigalitres in the Barwon-Darling.

MR BEASLEY: Yes.

10

THE COMMISSIONER: It doesn't mean that anybody actually has exceeded by 600 gigalitres, though, does it?

MS SLATTERY: No. That's right. It's supposed to be - - -

15

THE COMMISSIONER: What's the point of observing this capacity to exceed capacity? It still depends on how much water is there and - - -

MS SLATTERY: That's right.

20

THE COMMISSIONER: And operating rules and everything else.

MS SLATTERY: Yes. That's right.

25

THE COMMISSIONER: So what's the point of it?

MS SLATTERY: It's part of a bigger story that – of concerns around how the cap credits were originated in the first place. So there was a - - -

30

THE COMMISSIONER: The cap credits can't be used to deprive the river of all water, can they?

MS SLATTERY: No.

35

THE COMMISSIONER: What can they be used for?

MS SLATTERY: Perhaps I can just go back a step.

THE COMMISSIONER: Sure.

40

MS SLATTERY: There is a minute that I'm not sure has been tendered, or it has been made available to you from Tony McLeod to Rhondda Dickson around the accreditation of the Barwon-Darling cap model.

45

MR BEASLEY: I think you're referring to – is this the document – I'm not sure whether you obtained it – it's that. I don't know what the exhibit number is. 154. Is that what you're talking about?

MS SLATTERY: That's right.

MR BEASLEY: Go ahead.

5 MS SLATTERY: And that sets out some of the problems with the model as set out,
or as explained in Bewsher's report. But, importantly, it also shows that the change
in the model from the old cap model to the new Water Sharing Plan model turned the
cap – what was a cap debit in the Barwon-Darling to a very healthy cap credit. At
10 that stage it went from, I think it was negative 13 cap debit to over 300 gig cap
credit.

THE COMMISSIONER: What is the significance of that?

15 MS SLATTERY: That just means that – it means that in a valley you can exceed
your cap up to your cap credit for the following year, but I think more concerning is
the idea that the cumulative cap credits might roll over to the new SDL as moving
from a cap – moving from cap to SDL, when the Water Resource Plans under the
Basin Plan come into effect.

20 THE COMMISSIONER: I'm sorry, you've lost me. What does that actually mean?
That there is, what? Not enough water for the environment or draining the river to
dry or what do you mean by a concern that accumulated credits will rise to a certain
level?

25 MS SLATTERY: If the – the cap credits – the cap credits are a reflection of how –
if the numbers are right, right – the cap credits are meant to be to be – meant to
reflect how much the consumptive pool has underutilised to their target. So if there's
a cumulative cap credit it means that in past years they've used less and in future
years they can use more.

30 THE COMMISSIONER: When you say "use more". What do you mean? They
can't go past 100 per cent of the river.

35 MS SLATTERY: No, they're always going - - -

THE COMMISSIONER: They can't get anywhere near 100 per cent of the river.

MS SLATTERY: They're always going to be limited by physically what's in the
river.

40 THE COMMISSIONER: Not just physically, but also there are other limits, aren't
there?

45 MS SLATTERY: There are account limits, for example, yes. But they're also
limited by cap. And if you have a cap - - -

THE COMMISSIONER: All it means then there comes a point where the cap is not a meaningful limit because other limits will operate first.

MS SLATTERY: Yes.

5

THE COMMISSIONER: So are we concerned?

MS SLATTERY: I'm concerned.

10 THE COMMISSIONER: Why?

MS SLATTERY: You're always going to be limited by water in the river and what's in your account, but also by cap. And cap is an important tool.

15 THE COMMISSIONER: They can all operate separately, as I understand it. At any given time, it's the most stringent of any one of any number of limits that will actually operate.

MS SLATTERY: Yes.

20

THE COMMISSIONER: It doesn't mean the others are meaningless, it just means they didn't operate in that time and place.

MS SLATTERY: Yes. That's right.

25

THE COMMISSIONER: What you've pointed out is these are circumstances which means that the cap is unlikely ever to be the most stringent of the limits.

MS SLATTERY: Yes, that's right.

30

THE COMMISSIONER: You had better have a go at explaining to me why that matters, if the other limits are okay. The limiting factors appear to have a probably good degree of redundancy built in.

35 MS SLATTERY: Well, relying on the limits in the river as the – you know the most stringent limit, you know, ignores the other policy settings that we have in place around - - -

40 THE COMMISSIONER: No doubt. No doubt. But there are other policy settings, aren't there?

MS SLATTERY: Well, an important one is cap.

45 THE COMMISSIONER: What you haven't done, I'm afraid, is explain to me what is actually happening if the cap limit gets so – what I gather you think is inappropriately or artificially inflated. What is actually going to happen on the

ground with respect to extraction for consumptive use as opposed to environmental use?

5 MS SLATTERY: It just means that – well, it just means that cap – cap no longer becomes a control if your cap credits are so high.

THE COMMISSIONER: I understand that.

10 MS SLATTERY: Yes.

THE COMMISSIONER: I understand the logic of it.

MR BEASLEY: People are still limited by their entitlement, first of all, correct?

15 MS SLATTERY: By their – by what’s in their accounts, yes.

MR BEASLEY: Yes, which – yes, does include their carryover. So - - -

20 THE COMMISSIONER: And doesn’t – are there not also environmental watering requirements that have to be met?

MS SLATTERY: That’s not going to pose a restriction on an individual’s use directly.

25 THE COMMISSIONER: Not directly, but if they’ve met that limits what’s left over, doesn’t it?

30 MS SLATTERY: Yes. So if you’re talking about things like planned environmental water that are setting in the Water Resources Plans or the Water Sharing Plans - - -

35 THE COMMISSIONER: I’m trying to understand – and I know it’s down to me, but I’m trying to understand what it is that suffers, what bad or unfavourable outcome occurs when the cap ceases meaningfully to operate as a limit because it becomes so high.

MS SLATTERY: Okay. So – well then your only two limits, as you said, are going back to what’s in your account and what’s in the river. And so you don’t - - -

40 THE COMMISSIONER: And so?

MS SLATTERY: Well - - -

45 THE COMMISSIONER: That’s a bad thing, is it?

MS SLATTERY: Well, it - - -

THE COMMISSIONER: I'm not saying it's not. You have to explain it to me, I don't have your knowledge and background.

5 MS SLATTERY: It just renders – it rendered the cap, as a control – you know, pointless.

THE COMMISSIONER: I understand that, but there are other controls.

10 MR BEASLEY: I think the Commissioner is asking: what's the consequence of that?

THE COMMISSIONER: Why does it matter? Why does it – I'm not saying it doesn't matter, I'm asking you to explain to me. The cap ceases to be a meaningful control, that's the circumstance. I'm asking why does that matter? You can't answer that by saying, "Because it ceases to be a meaningful control." I'm asking why does it matter that it ceases to be a meaningful control? I'm willing to accept the possibility that it does matter. I just don't understand why at the moment. It doesn't mean I doubt it. I just – you need to explain it to me. Why does it matter that it ceases to be a meaningful control?

20

MS SLATTERY: Well - - -

THE COMMISSIONER: And one answer, logically, would be there is no other control and people will pump the river dry. Well, that's not the case, you've told me, and I think I know. So why does it matter?

25

MS SLATTERY: You could – you could have a situation where you – you're increasing allocations that would otherwise be beyond cap, that your over allocating, if you like, beyond cap. So - - -

30

THE COMMISSIONER: How can your recovery allocate if there's an operative SDL?

MS SLATTERY: The cap becomes the SDL.

35

THE COMMISSIONER: Well, this is one of the problems of using this other language.

MS SLATTERY: Yes.

40

THE COMMISSIONER: If it's an SDL under the Water Plan, it's not a cap. I don't know whether it's colloquially called one or called one by the MDBA. I'm talking about a SDL which is a statutory construct.

45

MS SLATTERY: Yes.

THE COMMISSIONER: The SDL does not cumulatively increase, does it?

MS SLATTERY: My understanding was that the cap credit gets reset at 2019 and then the SDL, the gap between the target annual target SDL and the actual diversions will start to re-accumulate from 2019. And there - - -

5 THE COMMISSIONER: But there are methods of adjusting the SDL stipulated in the Act.

MS SLATTERY: I think it's important to distinguish between the annual target, that's the SDL, and the SDL as a long-term average.

10 THE COMMISSIONER: There – it is.

MS SLATTERY: So the annual – my understanding is the annual target, it will be the same mechanism that currently exists under cap.

15 THE COMMISSIONER: But annual targets can't, in aggregate, exceed the long-term SDL.

MS SLATTERY: No. But the difference every year between the target SDL and the actual diversions will create an equivalent debit or credit. And that will accumulate. That's how I think the mechanism works, will cumulate every year, the same way that the cap credits have been accumulating.

25 THE COMMISSIONER: Yes.

MS SLATTERY: The – I think it's a policy rather than in the legislation, is that the cap – cumulative cap credits will reset at 2019, but there certainly has been some advocacy from the irrigation sector to roll over the cumulative cap creates credits at 2019 when the SDL kicks in.

30 THE COMMISSIONER: Thanks.

MR BEASLEY: Which would mean at some stage in the future there would have to be a massive reconciliation to get you back to your long-term average.

35 MS SLATTERY: Yes. Well, I think the concept was meant to be, you know, sort of an unders and overs type of thing. What we are seeing now is this massive cap credits.

40 MR BEASLEY: Overs and overs.

MS SLATTERY: Massive cap credits. You know, for the whole Basin, it's up to 19,000 gigalitres as at 2016/17, and if the total extraction - - -

45 THE COMMISSIONER: I will just have one more go. Does that impact on water for the environment?

MS SLATTERY: If it results in an exceedance of the SDL, then yes.

5 THE COMMISSIONER: How can it do that lawfully bearing in mind the requirement, the legal requirement, for environmental watering requirements to be met?

MS SLATTERY: To be met under the SDL?

10 THE COMMISSIONER: To be met under the Act.

MS SLATTERY: If more water is taken on the consumptive side and it doesn't – it doesn't create a breach of the cap or the SDL, because of an accumulated credit, then by default there's less water going to the environment either - - -

15 THE COMMISSIONER: So what you're proposing to me is that by this accumulation approach, some people understand that they will actually be able to reach a happy state of affairs where one year all the available water will be used consumptively and none for the environment. Is that what you're trying to tell me? Because I had not appreciated that as a possibility.

20 MS SLATTERY: I'm concerned that cap, or SDL will be able to be exceeded by more than was envisaged under the sort of the 20 per cent limit because of the cap credit, SDL credit.

25 MR BEASLEY: Well, ultimately then, you wouldn't be left with a SDL that reflects an ESLT. So it would be illegal; correct?

30 THE COMMISSIONER: What you're really focussing my mind on is whether the SDL does, in truth, operate to avoid taking water beyond the point at which it would compromise long-term - - -

MR BEASLEY: Yes.

35 THE COMMISSIONER: I understand. Thank you.

MS SLATTERY: Mmm.

40 MR BEASLEY: All right. Now, page 39 of your submission, you've made some recommendations – or The Australia Institute has made some recommendations:

Conduct a governance review which includes safeguards to ensure that the Board and MDBA cannot be politically captured.

45 What are you suggesting should happen for that? Is it a change to the Water Act in terms of who can be appointed to the Board or something more fundamental than that?

MS SLATTERY: I'm not trying to pre-empt what a governance review might find.

MR BEASLEY: Yes.

5 MS SLATTERY: But I have identified what I think are some of the risks or shortcomings of the current process.

MR BEASLEY: Where does that concern come from? Does it come from the current make-up of the Board?

10 MS SLATTERY: I wouldn't really like to talk about – I don't really want to talk about individuals, I don't think. I think - - -

MR BEASLEY: I'm just trying to understand the recommendation.

15 MS SLATTERY: I think what we're seeing is – I think we are witnessing political capture of the organisation and possibly the Board.

20 THE COMMISSIONER: When you say "political capture", section 178 of the Act - - -

MR BEASLEY: Yes.

25 THE COMMISSIONER: - - - regulates the appointment of members of the Authority, which will, obviously, be done upon advice to the Governor-General. It's not a personal appointment by the Governor-General. So at Ministerial advice. And, speaking for myself, I am content to accept the risk of politics involved in Ministers advising the Governor-General on appointments. It's the way our society operates, that Ministers and those that vote with them will have to answer politically inside the chamber and then in the electorate for such appointments as rise to sufficient importance to concern their fellow members and/or the electors. Sounds good in theory.

30 In practice, obviously, most appointments are never election issues and are rarely issues that lead to resignations or censures in the House. But that's the theory. Again, speaking for myself, it's highly unlikely that I would consider that we should move away from that process. But I don't think you mean by political capture simply the, as it were, inevitable political element in every statutory appointment, do you?

40 MS SLATTERY: No. I'm really talking about the balance between having to act – it's a conflict between having to act in accordance with best available science and versus being an agency that's trying to land a policy, I think.

45 THE COMMISSIONER: Why is that a conflict? I share your concern about the observance of that statutory requirement, but why is it a conflict? If I were a public

servant, I would be delighted to be told I had the law on my side and acting on the best available science.

5 MS SLATTERY: I suppose it's what the – your political masters are willing to bear.

THE COMMISSIONER: Well, when we talk about political masters, the Minister can give directions to the Authority - - -

10 MS SLATTERY: Yes.

THE COMMISSIONER: - - - of certain kinds, but they have to be recorded, so that there's, to use an expression, transparency. The political masters are as much bound by the best available science, in a sense, as anybody else, in that a direction that was
15 to the contrary of that would be an illegal direction. So does this – one of your recommendations really amount to saying, “Now, look, it's really important that this is best available science and everybody, those who appoint, those who direct, those who would purport to influence, whether they are from industry, universities, policy institutions or the public service or a Minister's office, everyone needs to understand
20 that the Authority is bound to proceed on best available science”?

MS SLATTERY: Yes.

25 THE COMMISSIONER: That's not to be monkeyed around with, is it your point?

MS SLATTERY: That's right.

THE COMMISSIONER: Yes.

30 MS SLATTERY: Yes.

THE COMMISSIONER: Well, I don't think you will find much disagreement with me on that. Now, when you say a conflict of interest in finalising the Plan and regulating the Plan, it's a difference of role, but why is there a conflict between the
35 Authority recommending the Plan and recommending adjustments to it, and also in the manner that is set out in detail in the Act and the Plan, holding the various players, including the States, to its provisions? What's wrong with that?

40 MS SLATTERY: I think what I've observed over the last few years is illustrative of the problems with that. And, just to go back a step, if the timing was – we didn't have the SDL adjustment and we weren't still negotiating SDLs, it might not be as much of a problem. But we do. And we've seen negotiations around – several negotiations around adjusting the SDLs and New South Wales and Victoria both threatening to walk away from the Plan for several years, and MDBA giving
45 undertakings, at least to New South Wales, to go soft on different parts of the regulation of the Basin Plan. So that, to me, is a very clear conflict of interest that has played out in the last few years.

THE COMMISSIONER: It may be that it's just a terminological question. I understand the point. Yes. Thanks.

5 MR BEASLEY: Do you have any questions, Commissioner, about page 40, Recommendations?

THE COMMISSIONER: No, I don't.

10 MR BEASLEY: No.

THE COMMISSIONER: I think we've covered all of them.

15 MR BEASLEY: Yes. Now, is there anything you feel hasn't been covered or anything additional you want to say?

MS SLATTERY: No.

MR BEASLEY: All right. Do you have any further questions?

20 THE COMMISSIONER: No, but thank you very, very much. The amount of labour and thought is palpable and greatly appreciated. Thank you very much.

MR BEASLEY: Now, you've got a few things that you're going to check for us.

25 MS SLATTERY: Yes.

MR BEASLEY: Thank you. All right. Thank you very much.

30 THE COMMISSIONER: We will adjourn until - - -

MR BEASLEY: Thursday.

THE COMMISSIONER: - - - Thursday next - - -

35 MR BEASLEY: 10 am.

THE COMMISSIONER: - - - here at 2 pm.

40 MR BEASLEY: 2 pm, is it?

THE COMMISSIONER: 2pm.

MR BEASLEY: Is it? All right. I'm told that's right.

45 THE COMMISSIONER: 2 pm.

<THE WITNESS WITHDREW

[3.06 pm]

MATTER ADJOURNED at 3.06 pm UNTIL THURSDAY, 2 AUGUST 2018

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