



Land and Environment Court New South Wales

Medium Neutral Citation: *Harrison v Baring* [2012] NSWLEC 117

Hearing Dates: 14 May 2012

Decision Date: 15/05/2012

Jurisdiction: Class 5

Before: Pain J

Decision: The Defendant is guilty of each of the ten offences as particularised in the summonses (50856 - 50865 of 2011) filed on 20 September 2011.

Catchwords: PROSECUTION - ex parte hearing in absence of the defendant - multiple offences of take water from a water source otherwise than in accordance with an access licence and use water supply work to take water otherwise than in accordance with a water supply work approval established - prosecutions commenced within limitation period

Legislation Cited: Criminal Procedure Act 1986 s 14, s 250
Evidence Act 1995 s 139
Land and Environment Court Rules 2007 r 5.2
Supreme Court Rules 1970 Pt 75 r 11A
Water Management Act 2000 s 341(1)(a), s 343(1)(a1)(i), s 364(3), s 367

Cases Cited: *R v Naa* [2009] NSWSC 851; (2009) 76 NSWLR 271

Texts Cited: S Odgers, *Uniform Evidence Law*, 9th ed (2010) Thomson Reuters

Category: Principal judgment

Parties: Russell James Harrison (Prosecutor)
Dean Patrick Baring (Defendant)

Representation: Crown Solicitor's Office (Prosecutor)

Ms L Sanderson (Prosecutor)
No appearance (Defendant)

File Number(s): 50856, 50857, 50858, 50859, 50860, 50861, 50862, 50863, 50864, 50865 of 2011

JUDGMENT

- 1 The Defendant Mr Baring has been charged with ten offences under the *Water Management Act 2000* (the WM Act) in relation to the watering of a wheat and a canola crop each on two separate occasions in 2008 on a property called Baring Park east of Condobolin on the Lachlan River. The Prosecutor is employed in the NSW Office of Water and commences this action pursuant to the common informer provisions in s 14 of the *Criminal Procedure Act 1986*. The Defendant did not appear and was not represented at the hearing, has not appeared or been represented at any of the mentions of these charges and has not entered a plea. The Prosecutor's application for the matter to proceed ex parte was granted under s 250 of the Criminal Procedure Act and in the alternative Pt 75 r 11A of the Supreme Court Rules 1970 which apply in this Court by virtue of r 5.2 of the Land and Environment Court Rules 2007 (the Court Rules) at the outset of the hearing.
- 2 The relevant provisions of the WM Act are s 341(1)(a) which provides that it is an offence to take water from a water source otherwise than in accordance with an access licence, and s 343(1)(a1)(i) which provides that it is an offence to the use of a water supply work to take water otherwise than in accordance with an access licence. The offences are strict liability offences. Section 363 provides for charges against a director of a company if the person knowingly authorised or permitted the act or omission constituting the offence.
- 3 The Defendant is charged as a (the sole) director of Baring Park Pty Ltd, now deregistered by the Australian Securities and Investments Commission (ASIC), who knowingly authorised or permitted the act or omission constituting the

offence. The canola and wheat crops referred to in the evidence below were sold by Baring Park Project Pty Ltd to Cargill Australia Limited and GrainCorp Operations Limited respectively. The Defendant is the sole director of that company which has also been deregistered by ASIC.

Limitation period

- 4 Under the WM Act as in force up to January 2008 charges had to be commenced within 12 months of the events giving rise to them. Under the amended WM Act the limitation provision in s 364(3) provides that:
- Proceedings for an offence against this Act or the regulations may also be commenced at any time within, but not later than, 3 years after the date on which evidence of the alleged offence first came to the attention of any relevant authorised officer.
- 5 As submitted by the Prosecutor at par 77 - 81 of the Statement of Facts (SOF) (MFI 1):
77. Under the pre-2009 limitation period of 12 months (provided by repealed s 364(2)(b)), proceedings for an offence could have been instituted at any time within 12 months after the offence was committed. The earliest offence charged is alleged to have occurred in April 2008. The limitation period in respect of each offence charged had not, therefore, expired as at 1 January 2009.
78. The limitation periods under the current s 364, as substituted by the *Water Management Amendment Act 2008* and commencing on 1 January 2009, apply to the offences charged by virtue of clause 109 and Schedule 7, clause 18 of the *Water Management (General) Regulation 2004*.
79. There are two limitation periods available. These alleged offences have been charged in reliance on the limitation period under s 364(3), which allows proceedings to be commenced within three years after the date on which evidence of the alleged offence first came to the attention of any relevant authorised officer.
80. Evidence of the first, second, sixth and seventh offences (the offences relating to the watering of the wheat crop) first came to the attention of a relevant authorised officer on 21 July 2010 (paragraphs 17 and 18 of the first affidavit of Mark Smith dated 2 September 2011). The prosecutor admits that evidence of the other offences (being the third to fifth offences and the eighth to tenth offences relating to the watering of the canola crop) first came to the attention of a relevant authorised officer on 22 September 2008 (paragraph 22 of the affidavit of Maria Nikolakopoulos).
81. Accordingly, the summonses for the offences charged have been filed within the applicable limitation period.
- 6 I agree with the statement in par 81 of the SOF that the charges were commenced within time in light of the matters referred to at par 77 - 80 including the evidence relied on by the Prosecutor.

Charges

- 7 A useful summary of the charges is contained in the schedule of charges contained in the Prosecutor's tender bundle of documents.

No.	Offence under the Water Management Act	Short description	Date of offence	Proceedings No.
1	Section 341(1)(a) take water from a water source otherwise than in accordance with an access licence (Condition 5(B), WAL 2302)	Water not ordered under access licence	mid-April 2008	50856/2011
2	Section 343(1)(a1)(i) use water supply work to take water otherwise than in accordance with a water supply work approval (Condition 7, Approval 70CA603217)	Water not ordered under works approval	mid-April 2008	50857/2011
3	Section 341(1)(a) take water from a water source otherwise than in accordance with an access licence (Condition 5(B), WAL 2302)	Water not ordered under access licence	mid-May 2008	50858/2011
4	Section 343(1)(a1)(i) use water supply work to take water otherwise than in accordance with a water supply work approval (Condition 7, Approval 70CA603217)	Water not ordered under works approval	mid-May 2008	50859/2011
5	Section 343(1)(a1)(i) use water supply work to take	Failure to report	mid-May 2008	50860/2011

	water otherwise than in accordance with a water supply work approval (Condition 5, Approval 70CA603217)	meter not functioning		
6	Section 341(1)(a) take water from a water source otherwise than in accordance with an access licence (Condition 5(B), WAL 2302)	Water not ordered under access licence	late July / early August 2008	50861/2011
7	Section 343(1)(a1)(i) use water supply work to take water otherwise than in accordance with a water supply work approval (Condition 7, Approval 70CA603217)	Water not ordered under works approval	late July / early August 2008	50862/2011
8	Section 341(1)(a) take water from a water source otherwise than in accordance with an access licence (Condition 5(B), WAL 2302)	Water not ordered under access licence	late August / early September 2008	50863/2011
9	Section 343(1)(a1)(i) use water supply work to take water otherwise than in accordance with a water supply work approval (Condition 7, Approval 70CA603217)	Water not ordered under works approval	late August / early September 2008	50864/2011
10	Section 343(1)(a1)(i) use water supply work to take water otherwise than in accordance with a water supply work approval (Condition 5, Approval 70CA603217)	Failure to report meter not functioning	late August / early September 2008	50865/2011

- 8 There is substantial commonality between the elements of the offences, particularly in relation to eight of them. Much of the evidence relied on relates to all the charges. The Prosecutor must first establish for all ten offences that water was taken from the Lachlan River on four occasions being the two occasions the wheat crop was watered in mid-April 2008 and late July/early August 2008 and the canola crop in mid-May 2008 and late August/early September 2008.
- 9 Secondly the Prosecutor must establish the Defendant's role knowingly authorising and permitting the use of water on those four occasions for each offence.
- 10 Thirdly, for eight offences the Prosecutor must establish that no water was ordered as required by the WM Act.
- 11 Fourthly, for the two failure to report meter not functioning offences (50860 and 50865 of 2011) the Prosecutor must establish that the meter was not working and that failure was not notified to the appropriate authority.

Ministerial certificate

- 12 Section 367 of the WM Act "Evidentiary certificates" provides that the Minister (including by his or her delegate) may issue a certificate which can state various specified matters identified in subsection 2. Such a certificate is admissible in any legal proceedings and is evidence of the fact or facts so stated. A certificate was issued by the Minister's delegate dated 21 February 2012 and tendered as exhibit B. It identifies that Baring Park Pty Ltd was the holder of a combined water supply and water use approval 70CA603217 which applied to Lots 881 and 882 in DP 525320, a copy of which was annexed to the certificate. The approval was in force in the relevant period. Baring Park Pty Ltd was also the holder of a regulated river (general security) water access licence WAL 2302 during the relevant period, a copy of which was also annexed to the certificate. The conditions of that licence are specified in Schedule 1. Water supply works are identified as Pump 1 in Lot 882 and Pump 2 in Lot 881. These pumps were the subject of water supply works and water use approval 70CA603217. During the relevant period the Lachlan River located on Lots 881 and 882 in DP 525320 was within the water management area regulated by the Water Sharing Plan for the Lachlan Regulated

River Water Source 2003. Lots 881 and 882 were within the water management area regulated by the water sharing plan.

Admissibility of admissions

13 There is one evidentiary issue that must be resolved, being whether the Prosecutor can rely on admissions made by the Defendant recorded in the affidavits of Mr Lennox affirmed 14 September 2011 and Mr Hamilton affirmed 15 September 2011 in light of s 139 of the *Evidence Act* 1995. Section 139(1)(c) states that:

(1) For the purposes of section 138 (1) (a), evidence of a statement made or an act done by a person during questioning is taken to have been obtained improperly if:

...

(c) before starting the questioning the investigating official did not caution the person that the person does not have to say or do anything but that anything the person does say or do may be used in evidence.

14 At par 35, 40 and 44, Mr Lennox's affidavit records conversations with the Defendant where he admits that he watered the canola crop in May (2008). Mr Hamilton in his affidavit identifies admission by the Defendant of crop watering in May and August at par 16 to 17, and that the meter was broken at par 20 and 21. The Prosecutor accepts that the deponents could be considered investigating officers and did not issue a caution as referred to in s 139(1)(c) of the Evidence Act to the Defendant at the time of the conversations attested to. The Prosecutor relies on *R v Naa* [2009] NSWSC 851; (2009) 76 NSWLR 271 at [98] - [99] per Howie J who differentiates between asking questions of someone or interrogating a person quoted in S Odgers, *Uniform Evidence Law*, 9th ed (2010) Thomson Reuters at [1.3.15365]. The admissions were made voluntarily to the officer, were not caused by coercion or pressure of any kind and were proffered by the Defendant in one case, that is, were not a response to a question. I consider they can be relied on.

15 I agree with the Prosecutor that the admission of the Defendant to Mr Walsh, a previous employee of the Defendant, at par 25 can be relied on. Section 139 of the Evidence Act has no role to play in that context.

Evidence of Prosecutor

16 The Prosecutor read a large number of affidavits and relied on the following: affidavit of Mr Walsh, former property manager at Baring Park, affirmed 16 September 2011; affidavits of Mr Smith, compliance officer, NSW Office of Water, affirmed 2 September 2011 and 6 December 2011; affidavits of Mr Lennox, Project Technical Officer, State Water Corporation of NSW, affirmed 14 September 2011 and 16 September 2011; affidavit of Mr Hamilton, formerly a river operator at State Water Corporation of NSW; affidavit of Ms Bray, licensing officer, NSW Office of Water, affirmed 15 September 2011; affidavit of Ms Nikolakopoulos, compliance officer, NSW Office of Water, affirmed 19 September 2011; affidavits of Ms Sato, solicitor, affirmed 19 September 2011, 20 September 2011, and 2 November 2011; affidavit of Mr Joyce, company secretary, Cargill Australia Limited, affirmed 14 December 2011; affidavit of Mr Sefton, Senior Legal Counsel, GrainCorp Operations Limited, affirmed 7 February 2012; affidavit of Ms Brook, community relations officer, NSW Office of Water, affirmed 17 February 2012; and affidavit of Mr Anderson, General Manager Commercial Business, State Water Corporation of NSW, affirmed 10 February 2012.

17 The Prosecutor also relied on the expert report of Mr Ivey, agricultural and management consultant, dated 22 February 2012.

18 Mr Walsh was the former property manager at Baring Park who lived and worked at the property from mid to late September 2007 to late September 2008. Much of the time he was employed by the Defendant, the Defendant was at the property making decisions about what needed to be done. When the Defendant was at the property, Mr Walsh and the Defendant would speak every day about what needed to be done on the property. If the Defendant was away, they would speak every other day. The Defendant made all the main decisions such as what to grow and how often to water the crops. Most of the work Mr Walsh did was at the Defendant's request.

19 He states that at the pump at the northern part of the land, which Mr Walsh refers to as Pump 1 (w03 used for the canola crop), there was a meter, but the Defendant told him that it was dodgy and rarely worked and never asked him to have a look at the meter or repair it. Mr Walsh did not know that the Defendant was supposed to report it to the government and said he was never asked to do so. In relation to the pump which Mr Walsh calls Pump 2 (w04 used for the wheat crop), he states there was no meter. Mr Walsh states he made an incorrect statement in his witness statement that the wheat crop was only watered once in late June 2008. In preparing the affidavit he has given more detailed thought to all the crop-waterings on the property and has no doubt that the crop was watered once in mid-April 2008 and a second time in late July or early August 2008. The canola crop was watered once in around mid-May 2008 and a second time in late August or early September 2008. Mr Walsh states that buying water was the Defendant's responsibility. He does not know whether water was ordered and was not asked to order any.

20 In August 2009 Mr Smith was appointed as an authorised officer at NSW Office of Water. Subject to the supervision of

his manager, Mr Smith has had primary responsibility for the conduct of the investigation of the alleged offence. He interviewed the Defendant on 31 March 2010.

- 21 In his first affidavit Mr Lennox states that the water supply works and water use approval owned by Baring Park Pty Ltd nominated the means by which water could be taken using WAL 2302. Mr Lennox conducted a site inspection on 11 September 2008 and based on his observations believed that water had recently been extracted from the Lachlan River and used to irrigate the canola crop. This concerned him because there was little water available in Baring Park's accounts with State Water, no water had been ordered, and there was a zero allocation or available water determination for water due to the persistent drought. That day Mr Lennox asked the Defendant whether he had watered the canola crop and the Defendant admitted he had pumped for some hours to put water in the channel for watering stock and that the canola was moist because the ex lucerne paddock was watered in January. On 12 September 2008 Mr Lennox had a telephone conversation with the Defendant during which he said that he could not live with what he has done as he had taken water to irrigate the crop. That day Mr Lennox took Mr Hamilton to the property. Mr Hamilton said that the crop appeared to have been watered within the last week. During a conversation between Mr Hamilton, Mr Lennox and the Defendant, he admitted he had watered the crop in May as well, that he had not placed any orders for water recently, and knew he did not have any water in his accounts. On 22 September 2008 Mr Lennox reported the alleged offence via email to the Water Compliance Branch of what was then the Department of Water and Energy.
- 22 In his second affidavit Mr Lennox describes the process of ordering water from State Water and states that water orders were recorded on a water accounting system. He also describes the process of reporting a broken water meter.
- 23 Mr Hamilton in his affidavit recalls that during his and Mr Lennox's conversation with the Defendant at Baring Park in September 2008, the Defendant admitted to watering the canola crop in May and in August and that the meter broke in May and he did not repair it.
- 24 Ms Bray states that her searches of NSW Office of Water's records in relation to Baring Park Pty Ltd's water supply works and water use approval confirm that no water was ordered and no information was received about a water meter being broken during January to December 2008.
- 25 Ms Nikolakopoulos was monitoring the water compliance mailbox on 22 September 2008 when the email from Mr Lennox was received. She conducted a risk assessment of the alleged offence and was not an authorised officer for the purpose of the WM Act at the time. It is her evidence that the information came to the attention of authorised officers on 9 January 2009.
- 26 Ms Sato's first affidavit annexes an ASIC historical company extract for Baring Park Pty Ltd showing that the Defendant was the only director and secretary, until 29 May 2011 when it was deregistered. The principal place of business and registered office was in Isle of Capri, Queensland. Mr Sato's second affidavit annexes a spreadsheet received from Mr Smith of water orders for water supply works and water use approval 70CA603217 placed between July 2005 and June 2011 for Baring Park Pty Ltd's water supply works and water use approval. No water orders are recorded in 2008 in the spreadsheet.
- 27 Mr Joyce affirms that Cargill purchased 117.340 metric tonnes of canola from Baring Park Project Pty Ltd under a contract dated 25 November 2008. Annexed to his affidavit was a remittance advice dated 2 June 2010.
- 28 Mr Sefton states that GrainCorp purchased 246.32 metric tonnes of wheat from Baring Park Project Pty Ltd and took delivery of the wheat in December 2008. Annexed to his affidavit was a tax invoice dated 30 June 2009.
- 29 Mr Ivey estimated the canola crop to be 48ha and the wheat crop to be 125ha. His expert opinion is that potential yield of the crops in the absence of irrigation would be 0.12 tonnes per hectare for canola and 1.49 tonnes per hectare for wheat. The actual yields were 2.42 tonnes per hectare for canola and 2.37 tonnes per hectare for wheat.
- 30 As already identified the Prosecutor prepared a SOF (MFI 1) which addresses all of the elements for each of the ten offences in relation to the evidence relied on to establish these. I incorporate much of that SOF into the judgment.

The defendant's company's property

3. At the time of the offences charged, Baring Park Pty Ltd ("**BPPL**") owned the property "Baring Park" of about 766 hectares some 30 kilometres east of Condobolin in the central west of New South Wales. The defendant, Dean Patrick Baring, was the sole director of BPPL and ran the property on behalf of BPPL.

4. BPPL purchased Baring Park (formerly known as "Kilburnie") in 2005 and owned it until it was sold in 2010. A receiver and manager was appointed to BPPL in July 2009. BPPL came out of receivership in February 2011 and was deregistered by the Australian Securities and Investments Commission on 29 May 2011 for non-payment of fees.

5. At the time of the offences charged, Baring Park was used for grazing sheep and cattle and for growing crops. There were at least three areas for growing crops. Of the two areas relevant to the offences charged, one was of

48 hectares on the north-western boundary of the property on Lot 881/525320 adjacent to the Lachlan River and the other was of some 121 to 125 hectares known as the 'top wheat paddock' on the north-eastern boundary of the property on Lot 882/525320 adjacent to the Lachlan River.

6. BPPL relied on rainwater tanks and one bore for stock and domestic uses and water from the Lachlan River and the Island Creek for irrigation and stock.

Licences under the Water Management Act 2000

7. The Lachlan River and the Island Creek are regulated rivers and are subject to the Water Sharing Plan for the Lachlan Regulated River Water Source 2003 ("Water Sharing Plan"), which commenced on 1 July 2004.

8. At the time of the offences charged, BPPL held two water access licences under Part 2 of Chapter 3 of the WMAct. The licences were a regulated river (general security) access licence (licence number **WAL 2302**) and a specific purpose domestic and stock access licence (licence number WAL 2303).

9. In addition, BPPL held a water supply works approval under Part 3 of Chapter 3 of the WMAct for six numbered water supply works, which were nominated works for WAL 2302 and WAL 2303 (part A of schedule 1 to approval number **70CA603217**). BPPL also held a water use approval, authorising the use of water on the parcels of land which made up Baring Park for the purpose of irrigation (schedule 2 to approval number 70CA603217). The water supply works approval and the water use approval were subject to the conditions in schedule 3 of the approval number 70CA603217.

10. Two of the water supply works approved under approval number 70CA603217 were work number w03, a 300mm Centrifugal Pump which was located on Lot 881/525320 on the Lachlan River, and work number w04, a 610mm Axial Flow Pump which was located on Lot 882/525320 on the Lachlan River.

Relevant conditions of the access licence and water supply works approval

11. BPPL's regulated river (general security) access licence (licence number WAL 2302) permitted BPPL to take water from the Lachlan River and the Island Creek subject to the conditions of the licence. One of those conditions, condition 5(B), provided that the licence holder must not take any water under the licence unless it is in accordance with a water supply order approved and accepted by State Water. This was a mandatory condition for a regulated river (general security) access licence under clause 57(6) of the Water Sharing Plan.

12. BPPL's water supply works approval permitted BPPL to use the nominated water supply works to take water from the Lachlan River and the Island Creek subject to the conditions of the approval. One of those conditions, condition 7, provided that the approval holder must not take water using the approved works under a regulated river (general security) access licence (among other licence types) unless it is in accordance with a water supply order lodged with and approved by the nominated State Water customer service officer not less than 10 days prior to when the water is to be taken.

13. Another condition of BPPL's water supply works approval, condition 5, provided that the approval holder must inform the NSW Office of Water within seven days if the device used for measuring the volume of water taken from the approved work ceases to record water usage accurately. Condition 5 also required in such cases that the approval holder notify the Department of the duration of the failure of the measuring device, the total hours that the work was operated while the measuring device was not functioning, and, where irrigation is undertaken, the area of land in hectares that has been irrigated during the period where the measuring device was not functioning.

The charges

The first charge - against s 341(1)(a) - April 2008 (wheat) 50856/11

15. The first charge against the defendant [LEC No 50856/2011] is an allegation that BPPL committed an offence under s341(1)(a) in that, in or around mid-April 2008, BPPL took water from a water source under the WM Act otherwise than in accordance with its access licence, and that, by reason of s 363(1), the defendant committed that offence because he was at the time a director of BPPL and he knowingly authorised or permitted the act or omission that constituted the offence.

16. The breach by BPPL occurred because, it is alleged, BPPL took water without placing a water supply order with State Water and without a water supply order being approved and accepted by State Water, as required under condition 5(B) of BPPL's water access licence WAL 2302.

17. The evidence that BPPL took water from the Lachlan River is:

- a. the evidence contained in the affidavit of Mr Matthew Walsh, who at the time worked at Baring Park as a property manager, as to the watering of a wheat crop in or around mid-April 2008 (paragraphs 49 to 57 of the affidavit of Matthew Walsh);
- b. the evidence of the wheat crop from Baring Park for the 2008/09 season purchased by Graincorp (paragraph 6 and Annexures A and B to the affidavit of Julian Sefton); and
- c. the expert opinion as to the irrigation needed to grow the wheat crop (paragraphs 4.4.2 and 4.5.2 of the expert report of Richard Ivey).

18. The evidence that BPPL did not place a water supply order with State Water, and that State Water did not approve or accept any water supply order, is:

- a. paragraph 15 of the certificate under s367 of the WM Act certifying under s367(2)(s) that nil water was ordered in relation to WAL 2302 during the period January 2008 to December 2008;
- b. evidence that neither the NSW Office of Water's Licensing Administration System nor its paper files has any record of any water being ordered or any water order being accepted or approved (paragraph 32 of the affidavit of Kathleen Bray); and
- c. evidence that State Water's Water Accounting System has no record of any water being ordered or any water order being accepted or approved (paragraph 5 and Annexure C to the second affidavit of Kaye Sato dated 20 September 2011).

19. An offence under s 341(1) is an offence of strict liability.

20. The evidence that the defendant knowingly authorised or permitted BPPL to commit the offence is primarily the evidence that:

- a. he supervised the running of the farm and made all significant decisions about the running of the farm (paragraphs 14 to 21 of the affidavit of Matthew Walsh);
- b. he was the sole director of BPPL (Annexure A to the first affidavit of Kaye Sato dated 19 September 2011);
- c. he made decisions about watering (paragraph 18 of the affidavit of Matthew Walsh);
- d. he decided to water the wheat and directed the watering of the wheat (paragraph 52 of the affidavit of

Matthew Walsh);

e. he operated the pump and did most of the work for the watering (paragraphs 55 and 56 of the affidavit of Matthew Walsh);

f. he was responsible for ordering water (paragraphs 75 and 76 of the affidavit of Matthew Walsh); and

g. he made relevant admissions in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011).

The second charge - against s 343(1)(a1)(i) - April 2008 (wheat) (50857/11)

21. The second charge against the defendant [LEC No 50857/2011] is an allegation that BPPL committed an offence under s343(1)(a1)(i) in that, over several days in or around mid-April 2008, BPPL used a water supply work to take water from a water source under the WM Act otherwise than in accordance with a water supply work approval that authorised the use of that work, and that, by reason of s 363(1), the defendant committed that offence because he was at the time a director of BPPL and he knowingly authorised or permitted the act or omission that constituted the offence.

22. The breach by BPPL occurred because, it is alleged, BPPL took water using an approved water supply work without lodging a water supply order with the nominated State Water customer service officer not less than 10 days prior to when the water was taken, as required under condition 7 of BPPL's water supply works approval 70CA603217.

23. The evidence that BPPL took water from the Lachlan River using the water supply work number w04 is:

a. the evidence as to the watering of a wheat crop in or around mid-April 2008 using water supply work number w04 ("Pump 2") (paragraphs 49 to 57 of the affidavit of Matthew Walsh);

b. the evidence of the wheat crop from Baring Park for the 2008/09 season purchased by Graincorp (paragraph 6 and Annexures A and B to the affidavit of Julian Sefton); and

c. the expert opinion as to the irrigation needed to grow the wheat crop (paragraphs 4.4.2 and 4.5.2 of the expert report of Richard Ivey).

24. The evidence that BPPL did not lodge a water supply order with State Water, whether at least 10 days prior to when the water was taken or at all, is:

a. paragraph 15 of the certificate under s367 of the WM Act certifying under s367(2)(s) that nil water was ordered in relation to WAL 2302 during the period January 2008 to December 2008;

b. evidence that neither the NSW Office of Water's Licensing Administration System nor its paper files has any record of any water being ordered or any water order being accepted or approved (paragraph 32 of the affidavit of Kathleen Bray); and

c. evidence that State Water's Water Accounting System has no record of any water being ordered or any water order being accepted or approved (paragraph 5 and Annexure C to the second affidavit of Kaye Sato dated 20 September 2011).

25. An offence under s 343(1) is an offence of strict liability.

26. The evidence that the defendant knowingly authorised or permitted BPPL to commit the offence is primarily the evidence that:

a. he supervised the running of the farm and made all significant decisions about the running of the farm (paragraphs 14 to 21 of the affidavit of Matthew Walsh);

b. has been the sole director of BPPL (Annexure A to the first affidavit of Kaye Sato dated 19 September 2011);

c. he made decisions about watering (paragraph 18 of the affidavit of Matthew Walsh);

d. he decided to water the wheat and directed the watering of the wheat (paragraph 52 of the affidavit of Matthew Walsh);

e. he operated the pump and did most of the work for the watering (paragraphs 55 and 56 of the affidavit of Matthew Walsh);

f. he was responsible for ordering water (paragraphs 75 and 76 of the affidavit of Matthew Walsh); and

g. he made relevant admissions in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011).

The third charge - against s 341(1)(a) - May 2008 (canola) (50858/11)

27. The third charge against the defendant [LEC No 50857/2011] is an allegation that BPPL committed an offence under s341(1)(a) in that, in or around mid-May 2008, BPPL took water from a water source under the WM Act otherwise than in accordance with its access licence, and that, by reason of s363(1), the defendant committed that offence because he was at the time a director of BPPL and he knowingly authorised or permitted the act or omission that constituted the offence.

28. The breach by BPPL occurred because, it is alleged, BPPL took water without placing a water supply order with State Water and without a water supply order being approved and accepted by State Water, as required under condition 5(B) of BPPL's water access licence WAL 2302.

29. The evidence that BPPL took water from the Lachlan River is:

a. the evidence as to the pre-watering of a canola crop in mid-May 2008 (paragraphs 58 to 66 of the affidavit of Matthew Walsh);

b. the evidence of the canola crop from Baring Park for the 2008/09 season purchased by Cargill (paragraph 2 and Annexure A to the affidavit of Gavin Joyce and paragraph 28 and Annexure H to the second affidavit of Mark Smith dated 6 December 2011);

c. the expert opinion as to the irrigation needed to grow the canola crop (paragraphs 4.3.3 and 4.5.1 of the expert report of Richard Ivey); and

d. the defendant made relevant admissions in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011 and paragraphs 16 and 17 of the affidavit of Edward Hamilton).

30. The evidence that BPPL did not place a water supply order with State Water, and that State Water did not approve or accept any water supply order, is:

a. paragraph 15 of the certificate under s367 of the WM Act certifying under s367(2)(s) that nil water was ordered in relation to WAL 2302 during the period January 2008 to December 2008;

b. evidence that neither the NSW Office of Water's Licensing Administration System nor its paper files has any record of any water being ordered or any water order being accepted or approved (paragraph 32 of the affidavit of Kathleen Bray); and

c. evidence that State Water's Water Accounting System has no record of any water being ordered or any water order being accepted or approved (paragraph 5 and Annexure C to the second affidavit of Kaye Sato dated 20 September 2011).

31. An offence under s 341(1) is an offence of strict liability.

32. The evidence that the defendant knowingly authorised or permitted BPPL to commit the offence is primarily the evidence that:

a. he supervised the running of the farm and made all significant decisions about the running of the farm (paragraphs 14 to 21 of the affidavit of Matthew Walsh);

b. has been the sole director of BPPL (Annexure A to the first affidavit of Kaye Sato dated 19 September 2011);

c. he made decisions about watering (paragraph 18 of the affidavit of Matthew Walsh);

d. he decided to pre-water the canola and directed the pre-watering of the canola (paragraph 58 of the affidavit of Matthew Walsh);

e. he operated the pump and worked on the watering (paragraphs 59 to 61 of the affidavit of Matthew Walsh);

f. he was responsible for ordering water (paragraphs 75 and 76 of the affidavit of Matthew Walsh); and

g. he made relevant admissions in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011 and paragraphs 16 and 17 of the affidavit of Edward Hamilton).

The fourth charge - against s 343(1)(a1)(i) - May 2008 (canola) (50859/11)

33. The fourth charge against the defendant [LEC No 50859/2011] is an allegation that BPPL committed an offence under s343(1)(a1)(i) in that, over several days in or around mid-May 2008, BPPL used a water supply work to take water from a water source under the WM Act otherwise than in accordance with a water supply work approval that authorised the use of that work, and that, by reason of s 363(1), the defendant committed that offence because he was at the time a director of BPPL and he knowingly authorised or permitted the act or omission that constituted the offence.

34. The breach by BPPL occurred because, it is alleged, BPPL took water using an approved water supply work without lodging a water supply order with the nominated State Water customer service officer not less than 10 days prior to when the water was taken, as required under condition 7 of BPPL's water supply works approval 70CA603217.

35. The evidence that BPPL took water from the Lachlan River using the water supply work number w03 is:

a. the evidence as to the pre-watering of a canola crop in mid-May 2008 using water supply work number w03 ("Pump 1") (paragraphs 58 to 66 of the affidavit of Matthew Walsh);

b. the evidence of the canola crop from Baring Park for the 2008/09 season purchased by Cargill (paragraph 2 and Annexure A to the affidavit of Gavin Joyce and paragraph 28 and Annexure H to the second affidavit of Mark Smith dated 6 December 2011);

c. the expert opinion as to the irrigation needed to grow the canola crop (paragraphs 4.3.3 and 4.5.1 of the expert report of Richard Ivey); and

d. the defendant made relevant admissions in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011 and paragraphs 16 and 17 of the affidavit of Edward Hamilton).

36. The evidence that BPPL did not lodge a water supply order with State Water, whether at least 10 days prior to when the water was taken or at all, is:

a. paragraph 15 of the certificate under s367 of the WM Act certifying under s367(2)(s) that nil water was ordered in relation to WAL 2302 during the period January 2008 to December 2008;

b. evidence that neither the NSW Office of Water's Licensing Administration System nor its paper files has any record of any water being ordered or any water order being accepted or approved (paragraph 32 of the affidavit of Kathleen Bray); and

c. evidence that State Water's Water Accounting System has no record of any water being ordered or any water order being accepted or approved (paragraph 5 and Annexure C to the second affidavit of Kaye Sato dated 20 September 2011).

37. An offence under s 343(1) is an offence of strict liability.

38. The evidence that the defendant knowingly authorised or permitted BPPL to commit the offence is primarily the evidence that:

a. he supervised the running of the farm and made all significant decisions about the running of the farm (paragraphs 14 to 21 of the affidavit of Matthew Walsh);

b. has been the sole director of BPPL (Annexure A to the first affidavit of Kaye Sato dated 19 September 2011);

c. he made decisions about watering (paragraph 18 of the affidavit of Matthew Walsh);

d. he decided to pre-water the canola and directed the pre-watering of the canola (paragraph 58 of the affidavit of Matthew Walsh);

e. he operated the pump and worked on the watering (paragraphs 59 to 61 of the affidavit of Matthew Walsh);

f. he was responsible for ordering water (paragraphs 75 and 76 of the affidavit of Matthew Walsh); and

g. he made relevant admissions in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011 and paragraphs 16 and 17 of the affidavit of Edward Hamilton).

The fifth charge - against s 343(1)(a1)(i) - May 2008 (canola) (50860/11)

39. The fifth charge against the defendant [LEC No 50860/2011] is an allegation that BPPL committed an offence under s343(1)(a1)(i) in that, in or around mid-May 2008, BPPL used a water supply work to take water from a water source under the WM Act otherwise than in accordance with a water supply work approval that authorised the use

of that work, and that, by reason of s 363(1), the defendant committed that offence because he was at the time a director of BPPL and he knowingly authorised or permitted the act or omission that constituted the offence.

40. The breach by BPPL occurred because, it is alleged, BPPL took water using an approved water supply work on which the device for measuring the volume of water taken from the approved work had ceased to record water usage accurately, without informing the Department of Water and Energy within seven days and without notifying the Department of the necessary details, as required under condition 5 of BPPL's water supply works approval 70CA603217.

41. The evidence that BPPL took water from the Lachlan River using the water supply work number w03 is:

- a. the evidence as to the pre-watering of a canola crop in mid-May 2008 using water supply work number w03 ("Pump 1") (paragraphs 58 to 66 of the affidavit of Matthew Walsh);
- b. the evidence of the canola crop from Baring Park for the 2008/09 season purchased by Cargill (paragraph 2 and Annexure A to the affidavit of Gavin Joyce and paragraph 28 and Annexure H to the second affidavit of Mark Smith dated 6 December 2011);
- c. the expert opinion as to the irrigation needed to grow the canola crop (paragraphs 4.3.3 and 4.5.1 of the expert report of Richard Ivey); and
- d. the defendant made relevant admissions in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011 and paragraphs 16 and 17 of the affidavit of Edward Hamilton).

42. The evidence that the meter on water supply work number w03 had ceased to record water usage accurately is:

- a. the evidence that the meter on the pump did not work (paragraphs 25 and 26 of the affidavit of Matthew Walsh);
- b. the evidence that the defendant estimated the water used (paragraph 65 of the affidavit of Matthew Walsh);
- c. the evidence that the meter had recorded only about 1.8 megalitres of water being taken between 12 December 2007 and 11 September 2008 (paragraph 38 of the first affidavit of John Lennox dated 14 September 2011); and
- d. relevant admissions by the defendant in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011 and paragraphs 20 to 22 of the affidavit of Edward Hamilton).

43. The evidence that BPPL did not inform the Department within seven days (or at all) that the meter had ceased to record water usage accurately or notify the Department of the necessary details, is:

- a. evidence that neither the NSW Office of Water's Licensing Administration System nor its paper files has any record of any such information having been received (paragraph 29 of the affidavit of Kathleen Bray); and
- b. relevant admissions by the defendant in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011 and paragraphs 20 to 22 of the affidavit of Edward Hamilton).

44. An offence under s 343(1) is an offence of strict liability.

45. The evidence that the defendant knowingly authorised or permitted BPPL to commit the offence is primarily the evidence that:

- a. he supervised the running of the farm and made all significant decisions about the running of the farm (paragraphs 14 to 21 of the affidavit of Matthew Walsh);
- b. has been the sole director of BPPL (Annexure A to the first affidavit of Kaye Sato dated 19 September 2011);
- c. he made decisions about watering (paragraph 18 of the affidavit of Matthew Walsh);
- d. he decided to pre-water the canola and directed the pre-watering of the canola (paragraph 58 of the affidavit of Matthew Walsh);
- e. he operated the pump and worked on the watering (paragraphs 59 to 61 of the affidavit of Matthew Walsh); and
- f. he made relevant admissions in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011 and paragraphs 16 and 17 and 20 to 22 of the affidavit of Edward Hamilton).

The sixth charge - against s 341(1)(a) - July/August 2008 (wheat) (50861/11)

46. The sixth charge against the defendant [LEC No 50861/2011] is an allegation that BPPL committed an offence under s341(1)(a) in that, in late July or early August 2008, BPPL took water from a water source under the WM Act otherwise than in accordance with its access licence, and that, by reason of s 363(1), the defendant committed that offence because he was at the time a director of BPPL and he knowingly authorised or permitted the act or omission that constituted the offence.

47. The breach by BPPL occurred because, it is alleged, BPPL took water without placing a water supply order with State Water and without a water supply order being approved and accepted by State Water, as required under condition 5(B) of BPPL's water access licence WAL 2302.

48. The evidence that BPPL took water from the Lachlan River is:

- a. the evidence as to the watering of the wheat crop in late July or early August 2008 (paragraphs 67 to 70 of the affidavit of Matthew Walsh);
- b. the evidence of the wheat crop from Baring Park for the 2008/09 season purchased by Graincorp (paragraph 6 and Annexures A and B to the affidavit of Julian Sefton); and
- c. the expert opinion as to the irrigation needed to grow the wheat crop (paragraphs 4.4.3 and 4.5.2 of the expert report of Richard Ivey).

49. The evidence that BPPL did not place a water supply order with State Water, and that State Water did not approve or accept any water supply order, is:

- a. paragraph 15 of the certificate under s367 of the WM Act certifying under s367(2)(s) that nil water was ordered in relation to WAL 2302 during the period January 2008 to December 2008;
- b. evidence that neither the NSW Office of Water's Licensing Administration System nor its paper files has

any record of any water being ordered or any water order being accepted or approved (paragraph 32 of the affidavit of Kathleen Bray); and

c. evidence that State Water's Water Accounting System has no record of any water being ordered or any water order being accepted or approved (paragraph 5 and Annexure C to the second affidavit of Kaye Sato dated 20 September 2011).

50. An offence under s 341(1) is an offence of strict liability.

51. The evidence that the defendant knowingly authorised or permitted BPPL to commit the offence is primarily the evidence that:

a. he supervised the running of the farm and made all significant decisions about the running of the farm (paragraphs 14 to 21 of the affidavit of Matthew Walsh);

b. has been the sole director of BPPL (Annexure A to the first affidavit of Kaye Sato dated 19 September 2011);

c. he made decisions about watering (paragraph 18 of the affidavit of Matthew Walsh);

d. he operated the pump and worked on the watering (paragraphs 68 to 70 of the affidavit of Matthew Walsh);

e. he was responsible for ordering water (paragraphs 75 and 76 of the affidavit of Matthew Walsh); and

f. he made relevant admissions in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011).

The seventh charge - against s 343(1)(a1)(i) - July/August 2008 (wheat) (50862/11)

52. The seventh charge against the defendant [LEC No 50862/2011] is an allegation that BPPL committed an offence under s343(1)(a1)(i) in that, in late July or early August 2008, BPPL used a water supply work to take water from a water source under the WM Act otherwise than in accordance with a water supply work approval that authorised the use of that work, and that, by reason of s 363(1), the defendant committed that offence because he was at the time a director of BPPL and he knowingly authorised or permitted the act or omission that constituted the offence.

53. The breach by BPPL occurred because, it is alleged, BPPL took water using an approved water supply work without lodging a water supply order with the nominated State Water customer service officer not less than 10 days prior to when the water was taken, as required under condition 7 of BPPL's water supply works approval 70CA603217.

54. The evidence that BPPL took water from the Lachlan River using the water supply work number w04 is:

a. the evidence as to the watering of the wheat crop in late July or early August 2008 using water supply work number w04 ("Pump 2") (paragraphs 67 to 70 of the affidavit of Matthew Walsh);

b. the evidence of the wheat crop from Baring Park for the 2008/09 season purchased by Graincorp (paragraph 6 and Annexures A and B to the affidavit of Julian Sefton); and

c. the expert opinion as to the irrigation needed to grow the wheat crop (paragraphs 4.4.3 and 4.5.2 of the expert report of Richard Ivey).

55. The evidence that BPPL did not lodge a water supply order with State Water, whether at least 10 days prior to when the water was taken or at all, is:

a. paragraph 15 of the certificate under s367 of the WM Act certifying under s367(2)(s) that nil water was ordered in relation to WAL 2302 during the period January 2008 to December 2008;

b. evidence that neither the NSW Office of Water's Licensing Administration System nor its paper files has any record of any water being ordered or any water order being accepted or approved (paragraph 32 of the affidavit of Kathleen Bray); and

c. evidence that State Water's Water Accounting System has no record of any water being ordered or any water order being accepted or approved (paragraph 5 and Annexure C to the second affidavit of Kaye Sato dated 20 September 2011).

56. An offence under s 343(1) is an offence of strict liability.

57. The evidence that the defendant knowingly authorised or permitted BPPL to commit the offence is primarily the evidence that:

a. he supervised the running of the farm and made all significant decisions about the running of the farm (paragraphs 14 to 21 of the affidavit of Matthew Walsh);

b. has been the sole director of BPPL (Annexure A to the first affidavit of Kaye Sato dated 19 September 2011);

c. he made decisions about watering (paragraph 18 of the affidavit of Matthew Walsh);

d. he operated the pump and worked on the watering (paragraphs 68 to 70 of the affidavit of Matthew Walsh);

e. he was responsible for ordering water (paragraphs 75 and 76 of the affidavit of Matthew Walsh); and

f. he made relevant admissions in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011).

The eighth charge - against s 341(1)(a) - August/September 2008 (canola) (50863/11)

58. The eighth charge against the defendant [LEC No 50863/2011] is an allegation that BPPL committed an offence under s341(1)(a) in that, in late August or early September 2008, BPPL took water from a water source under the WM Act otherwise than in accordance with its access licence, and that, by reason of s363(1), the defendant committed that offence because he was at the time a director of BPPL and he knowingly authorised or permitted the act or omission that constituted the offence.

59. The breach by BPPL occurred because, it is alleged, BPPL took water without placing a water supply order with State Water and without a water supply order being approved and accepted by State Water, as required under condition 5(B) of BPPL's water access licence WAL 2302.

60. The evidence that BPPL took water from the Lachlan River is:

a. the evidence as to the watering of the canola crop in late August or early September 2008 (paragraphs 71 to 74 of the affidavit of Matthew Walsh);

b. the evidence of the canola crop from Baring Park for the 2008/09 season purchased by Cargill (paragraph

2 and Annexure A to the affidavit of Gavin Joyce and paragraph 28 and Annexure H to the second affidavit of Mark Smith dated 6 December 2011);

c. the expert opinion as to the irrigation needed to grow the canola crop (paragraphs 4.3.4 and 4.5.1 of the expert report of Richard Ivey); and

d. the defendant made relevant admissions in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011 and paragraphs 16 and 17 of the affidavit of Edward Hamilton).

61. The evidence that BPPL did not place a water supply order with State Water, and that State Water did not approve or accept any water supply order, is:

a. paragraph 15 of the certificate under s367 of the WM Act certifying under s367(2)(s) that nil water was ordered in relation to WAL 2302 during the period January 2008 to December 2008;

b. evidence that neither the NSW Office of Water's Licensing Administration System nor its paper files has any record of any water being ordered or any water order being accepted or approved (paragraph 32 of the affidavit of Kathleen Bray); and

c. evidence that State Water's Water Accounting System has no record of any water being ordered or any water order being accepted or approved (Annexure C to the second affidavit of Kaye Sato dated 20 September 2011).

62. An offence under s 341(1) is an offence of strict liability.

63. The evidence that the defendant knowingly authorised or permitted BPPL to commit the offence is primarily the evidence that:

a. he supervised the running of the farm and made all significant decisions about the running of the farm (paragraphs 14 to 21 of the affidavit of Matthew Walsh);

b. has was the sole director of BPPL (Annexure A to the first affidavit of Kaye Sato dated 19 September 2011);

c. he made decisions about watering (paragraph 18 of the affidavit of Matthew Walsh);

d. he decided to water the canola (paragraph 71 of the affidavit of Matthew Walsh);

e. he directed Matthew Walsh to carry out the watering (paragraphs 71 and 72 of the affidavit of Matthew Walsh);

f. he was responsible for ordering water (paragraphs 75 and 76 of the affidavit of Matthew Walsh); and

g. he made relevant admissions in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011 and paragraphs 16 and 17 of the affidavit of Edward Hamilton).

The ninth charge - against s 343(1)(a1)(i) - August/September 2008 (canola) (50864/11)

64. The ninth charge against the defendant [LEC No 50864/2011] is an allegation that BPPL committed an offence under s343(1)(a1)(i) in that, over several days in late August or early September 2008, BPPL used a water supply work to take water from a water source under the WM Act otherwise than in accordance with a water supply work approval that authorised the use of that work, and that, by reason of s 363(1), the defendant committed that offence because he was at the time a director of BPPL and he knowingly authorised or permitted the act or omission that constituted the offence.

65. The breach by BPPL occurred because, it is alleged, BPPL took water using an approved water supply work without lodging a water supply order with the nominated State Water customer service officer not less than 10 days prior to when the water was taken, as required under condition 7 of BPPL's water supply works approval 70CA603217.

66. The evidence that BPPL took water from the Lachlan River using the water supply work number w03 is:

a. the evidence as to the watering of the canola crop in late August or early September 2008 using water supply work number w03 ("Pump 1") (paragraphs 71 to 74 of the affidavit of Matthew Walsh);

b. the evidence of the canola crop from Baring Park for the 2008/09 season purchased by Cargill (paragraph 2 and Annexure A to the affidavit of Gavin Joyce and paragraph 28 and Annexure H to the second affidavit of Mark Smith dated 6 December 2011);

c. the expert opinion as to the irrigation needed to grow the canola crop (paragraphs 4.3.4 and 4.5.1 of the expert report of Richard Ivey); and

d. the defendant made relevant admissions in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011 and paragraphs 16 and 17 of the affidavit of Edward Hamilton).

67. The evidence that BPPL did not lodge a water supply order with State Water, whether at least 10 days prior to when the water was taken or at all, is:

a. paragraph 15 of the certificate under s367 of the WM Act certifying under s367(2)(s) that nil water was ordered in relation to WAL 2302 during the period January 2008 to December 2008;

b. evidence that neither the NSW Office of Water's Licensing Administration System nor its paper files has any record of any water being ordered or any water order being accepted or approved (paragraph 32 of the affidavit of Kathleen Bray); and

c. evidence that State Water's Water Accounting System has no record of any water being ordered or any water order being accepted or approved (Annexure C to the second affidavit of Kaye Sato dated 20 September 2011).

68. An offence under s 343(1) is an offence of strict liability.

69. The evidence that the defendant knowingly authorised or permitted BPPL to commit the offence is primarily the evidence that:

a. he supervised the running of the farm and made all significant decisions about the running of the farm (paragraphs 14 to 21 of the affidavit of Matthew Walsh);

b. has was the sole director of BPPL (Annexure A to the first affidavit of Kaye Sato dated 19 September 2011);

c. he made decisions about watering (paragraph 18 of the affidavit of Matthew Walsh);

d. he decided to water the canola (paragraph 71 of the affidavit of Matthew Walsh);

- e. he directed Matthew Walsh to carry out the watering (paragraphs 71 and 72 of the affidavit of Matthew Walsh);
- f. he was responsible for ordering water (paragraphs 75 and 76 of the affidavit of Matthew Walsh); and
- g. he made relevant admissions in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011 and paragraphs 16 and 17 of the affidavit of Edward Hamilton).

The tenth charge - against s 343(1)(a1)(i) - August/September 2008 (canola) (50865/11)

70. The tenth charge against the defendant [LEC No 50865/2011] is an allegation that BPPL committed an offence under s343(1)(a1)(i) in that, in late August or early September 2008, BPPL used a water supply work to take water from a water source under the WM Act otherwise than in accordance with a water supply work approval that authorised the use of that work, and that, by reason of s 363(1), the defendant committed that offence because he was at the time a director of BPPL and he knowingly authorised or permitted the act or omission that constituted the offence.

71. The breach by BPPL occurred because, it is alleged, BPPL took water using an approved water supply work on which the device for measuring the volume of water taken from the approved work had ceased to record water usage accurately, without informing the Department of Water and Energy within seven days and without notifying the Department of the necessary details, as required under condition 5 of BPPL's water supply works approval 70CA603217.

72. The evidence that BPPL took water from the Lachlan River using the water supply work number w03 is:

- a. the evidence as to the watering of the canola crop in late August or early September 2008 using water supply work number w03 ("Pump 1") (paragraphs 71 to 74 of the affidavit of Matthew Walsh);
- b. the evidence of the canola crop from Baring Park for the 2008/09 season purchased by Cargill (paragraph 2 and Annexure A to the affidavit of Gavin Joyce and paragraph 28 and Annexure H to the second affidavit of Mark Smith dated 6 December 2011);
- c. the expert opinion as to the irrigation needed to grow the canola crop (paragraphs 4.3.4 and 4.5.1 of the expert report of Richard Ivey); and
- d. the defendant made relevant admissions in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011 and paragraphs 16 and 17 of the affidavit of Edward Hamilton).

73. The evidence that the meter on water supply work number w03 had ceased to record water usage accurately is:

- a. the evidence that the meter on the pump did not work (paragraphs 25 and 26 of the affidavit of Matthew Walsh);
- b. the evidence that the meter had recorded only about 1.8 megalitres of water being taken between 12 December 2007 and 11 September 2008 (paragraph 38 of the first affidavit of James Lennox dated 14 September 2011); and
- c. relevant admissions by the defendant in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011 and paragraphs 16 and 17 and 20 to 22 of the affidavit of Edward Hamilton).

74. The evidence that BPPL did not inform the Department within seven days (or at all) that the meter had ceased to record water usage accurately or notify the Department of the necessary details, is:

- a. evidence that neither the NSW Office of Water's Licensing Administration System nor its paper files has any record of any such information having been received (paragraph 29 of the affidavit of Kathleen Bray); and
- b. relevant admissions by the defendant in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox dated 14 September 2011 and paragraphs 20 to 22 of the affidavit of Edward Hamilton).

75. An offence under s 343(1) is an offence of strict liability.

76. The evidence that the defendant knowingly authorised or permitted BPPL to commit the offence is primarily the evidence that:

- a. he supervised the running of the farm and made all significant decisions about the running of the farm (paragraphs 14 to 21 of the affidavit of Matthew Walsh);
- b. has was the sole director of BPPL (Annexure A to the first affidavit of Kaye Sato dated 19 September 2011);
- c. he made decisions about watering (paragraph 18 of the affidavit of Matthew Walsh);
- d. he decided to water the canola (paragraph 71 of the affidavit of Matthew Walsh);
- e. he directed Matthew Walsh to carry out the watering (paragraphs 71 and 72 of the affidavit of Matthew Walsh); and
- f. he made relevant admissions in conversation with State Water officers (paragraph 44 of the first affidavit of James Lennox)

Conclusion

- 31 The Prosecutor has established on the evidence the elements of each of the ten offences (50856 - 50865 of 2011) beyond reasonable doubt. In particular he has established that water was taken from the Lachlan River on the four occasions the subject of the various offences as particularised in the evidence in relation to each of the charges in the SOF set out above. The Defendant's role in knowingly authorising and permitting the use of water on the four occasions has also been proved in relation to each of the charges. For eight of the offences (all except the two failure to report meter not functioning offences Nos 50860 of 2011 and 50865 of 2011) the Prosecutor has established that no water was ordered as required by the WM Act in relation to each of these offences. In relation to the two charges of failing to report a meter not functioning the Prosecutor has established that the meters in question were not working and that the failure was not notified to the appropriate authority, as particularised in the evidence referred to in the SOF for each of those charges.

32 The Court is satisfied beyond reasonable doubt that the Defendant is guilty of each of the ten offences as particularised in the summonses (50856 - 50865 of 2011) filed on 20 September 2011.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.