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**KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA  
I TE TIRITI O WAITANGI**

**BEFORE THE WAITANGI TRIBUNAL**

**WAI 2180**

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**IN THE MATTER OF**                    **the Treaty of Waitangi Act 1975**

**AND**

**IN THE MATTER OF**                    **THE TAIHAPE: RANGITĪKEI KI  
RANGIPŌ DISTRICT INQUIRY**

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**BRIEF OF EVIDENCE OF WILLIAM ECCLES FLEURY**

**18 February 2019**

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**Barrister instructed:**  
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## INTRODUCTION

1. My full name is William Eccles Fleury. I go by Bill. I provide this brief of evidence on behalf of the Department of Conservation / Te Papa Atawhai (the Department or DOC).<sup>1</sup>
2. I acknowledge Ngāti Hauti, Ngāti Tamakōpiri, Ngāti Whitikaupeka, Ngāti Hinemanu me Ngāti Paki and other peoples of the region. In line with the Tribunal's approach I have adopted the term "Taihape Māori" throughout this brief to refer to Māori of the Inquiry District.

### Background and experience

3. I am currently employed as a biodiversity planner in Lower North Island Region (LNI) of DOC. I advise and support the LNI operational teams on the translation of national priorities into local actions and support the LNI Director to monitor the performance of his operational teams.
4. I have worked for DOC since its creation in 1987 in a number of roles:
  - 4.1 Initially my role was as a Senior Conservation Officer advising on pest management in the Wellington Region which incorporated the lower third of the North Island including Taranaki, Hawkes Bay, Whanganui, Manawatū, Wairarapa and Wellington.
  - 4.2 Following a Departmental restructure and the abandonment of Regions, I held a similar role for the Whanganui Conservancy as a Technical Support Officer, later becoming the Manager of the Technical Support team in Whanganui.
  - 4.3 Further restructurings and Conservancy amalgamations saw me appointed to the role of Conservation Analyst for the combined Tongariro Whanganui Taranaki Conservancy.
5. Throughout my time with DOC I have been closely associated with large scale pest control programmes (animal pests and weeds) and the management of the Kaimanawa horses. I am currently part of the

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<sup>1</sup> Throughout this evidence I will refer to "DOC" as a shorthand term to cover the Minister of Conservation (Minister), the Director-General of Conservation and the Department of Conservation.

Department's national planning team for its "Battle for our Birds" programme.

6. Prior to joining DOC I worked for the NZ Forest Service as an Environmental Ranger/Technician in the Wellington Conservancy and was engaged in the monitoring of pest animal populations and vegetation condition in the Forest Parks and National Parks in this Conservancy.
  - 6.1 I first worked in the Inquiry district during a field survey of the North Eastern section of the Ruahine range in 1973/74 and the following summer in Kāweka Forest Park. I established monitoring plots in the southern section of Kaimanawa Forest Park in 1981/82 which were later used to assess the impact of horses on the tussock grasslands of this area.
  - 6.2 I first visited the Ruahine Forest Park section of the Inquiry district about 1970 on several tramps from the Makaroro river to Kokopunui (Lake Colenso).
7. I hold a Bachelors degree in analytical chemistry.

#### **STRUCTURE OF THIS EVIDENCE**

8. This evidence addresses the following issues that have been raised in the Wai 2180 inquiry:
  - 8.1 Kaimanawa horses
  - 8.2 Pests and controls
  - 8.3 Landlocked land
  - 8.4 Freshwater fisheries.

#### **ISSUES**

##### **Kaimanawa Horses**

9. Feral horses are present on land held by New Zealand Defence Force, DOC, and private owners. For much of the first half of the 20<sup>th</sup> century they had been widespread throughout the central North Island from approximately Waiōuru to Rotorua.

10. By the late 1970's feral horses had been eliminated from most of their previous range with a small remnant remaining, mostly on Ōruamātua blocks 1U, 1V 1W, 1T and 1X2. Mr Tony Batley (owner of 1W2), who was chair of the Kaimanawa Forest Park Advisory Committee at the time, led a small group of interested locals who lobbied successfully for the protection of this remnant herd.
11. The case for protection was informed by a field survey undertaken by a student field party in 1979. At that time the horse population was estimated at 174. Seven reasons were suggested as justification for protection of the remnant herd. The reasons were largely speculative. Analysis of those reasons formed the basis of later consideration of management options and, to a large extent, were rejected.
12. The Crown provided official protection to the Kaimanawa wild horses in 1981, by amendment to Schedule 5 of the Wildlife Act 1953. This notice used the description for the horses as "known as Kaimanawa horses" and gave protection to horses within a defined area of the Southern Kaimanawa mountains. As a consequence of the protection, Crown agencies (particularly NZ Defence) began to actively discourage hunting or capture of the horses. The herd numbers swelled.
13. After the amendment to the Wildlife Act in 1981 the horses became the responsibility of the Wildlife Service of Internal Affairs as, effectively, they had been awarded the same level of protection as kiwi and kakapo.
14. It is notable that elsewhere the increase in numbers of feral horses following legal protection also occurred. In the USA the implementation of the Wild and Free-Roaming Horses and Burros Act of 1971 resulted in burgeoning horse numbers.
15. Responsibility for Kaimanawa horses came to DOC in 1987 as it absorbed most of the functions and responsibilities of the Wildlife Service. DOC brought together the mandates of both wildlife protection and protected land management.

*Removing protection and developing a Plan*

16. In 1989 Dr Geoff Rogers (Forest Research Institute) was commissioned to appraise the impact of horses on the Kaimanawa landscape. His report to DOC titled "*Appraisal of the Place of Wild Horses in the Kaimanawa Mountains*" identified developing urgency for intervention to protect the natural values of the area.<sup>2</sup>
17. In 1991 DOC published a draft management strategy for the Kaimanawa Wild Horse Herd, prepared under section 41(1)(e) of the Wildlife Act, which gives the Minister the authority to prepare and issue plans and publications "for the advancement, conservation management, and control of wildlife and the eradication of harmful species of wildlife". Approximately 186 submissions were received through which at least 543 individual people commented. **BF1**
18. A submission was received from Mr Graeme Gummer of behalf of the owners of Ōruamatua-Kaimanawa 1U & 1 V blocks. In the submission he stated that he felt that the owners of the blocks would concur with the conservation ethic. **BF1** In a follow up letter to that submission he noted that had discussed the culling of horses with Mr Tama Wipaki and noted that Tama "concurs with culling". **BF2**
19. A final strategy was not implemented at that time as the public reaction to the draft management strategy indicated wide differences of views concerning aspects of management, particularly concerning methods of population control.
20. Between 1991 and 1994 DOC researched topics that had been identified in the draft strategy as information needs and undertook some interim management. The interim management incorporated trials of mustering for sale/live disposal as this management method had been a theme supported by a large number of submissions to the 1991 draft plan. The suggested strong demand for mustered horses did not eventuate at that time.
21. During this period The Department had several meetings or discussions with representatives of the owners of the Ōruamatua Kaimanawa block 1U

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<sup>2</sup> Dr Rogers' report was later published in the NZ Journal of Ecology (1991).

and 1V (Ngāi Whiti). **BF3** In particular, the Department discussed its plans with Mr Tama Wipaki and Mr Graeme Gummer. Mr Wipaki also attended a number of the trial musters as an observer.

22. At a meeting in Taihape (20 October 1992) a subcommittee of the Rangitikei/Hawkes Bay Conservation Board met with a number of owners of the land within the wild horse range to discuss modifications of the protected status of the herd. Mr Wipaki and several members of his whānau attended this meeting, these people confirmed that Mr Wipaki spoke on their behalf. Mr Wipaki spoke in support of the proposal to reduce the protection areas and identified it as being important to protect conservation values of the current protection area, including the Māori Land. **BF3**
23. In October 1994 the Department convened a working party of interest groups and DOC staff to progress a management strategy or plan. At this time membership was limited to those groups representing national perspectives. Representatives of interest groups who had commented on the 1991 Draft Management Strategy and who reflected a range of views in the community were invited to participate. The Department's aims in establishing a working party approach were to:
- 23.1 Facilitate the development of an appropriate and effective plan for the management of Kaimanawa wild horses.
  - 23.2 Increase the degree and effectiveness of public participation in the planning process.
  - 23.3 Increase the understanding of the issues by the interest groups who represent and inform the wider public.
24. I recall that the key underlying purpose in bringing these groups together was to attempt to establish a consensus amongst those who expressed strong views through the submission process and provide a forum for compromise between those advocate groups. Landowners were not participants at this point.

25. On 2 November 1994 DOC convened a seminar for invited parties including landowners, in Palmerston North, to present results of research carried out between 1991 and 1994 and to discuss the future management of the Kaimanawa Horses. Mr Wipaki attended this seminar. **BF3**
26. Following the seminar and a series of meetings/workshops the working party agreed on a draft plan that was released for public comment in May 1995. Approximately 4,800 people responded to the invitation to comment via 3 petitions and 5 varieties of form letter, 142 individual submissions and 27 organisation submissions. Original submissions were not able to be located by me but I note that the "Analysis of Public Submissions dated 10<sup>th</sup> August 1995" listed the names of submitters, none of whom identified that they were iwi representatives or whom I recognised as tangata whenua who had previously expressed an opinion on the horses.
27. Between the preparation of the draft plan, published May 1995, and the finalisation of the plan in December 1995, Dave Lumley (Area Manager, Turangi) and I met with Tama Wipaki as an owner of Ōruamatua 1 U & 1V to discuss the draft plan. **BF4** This meeting, on 23<sup>rd</sup> August 1995, was at the house of Tony Batley (Moawhango) who participated as owner of 1W. At that meeting Mr Wipaki asked that the 1U and 1V blocks be excluded from proposals to remove all horses from the area described as the Motumatai zone. Mr Batley advised that he did not wish to act contrary to the wishes of his neighbours and asked that 1W be similarly excluded. These areas were consequently excluded from the plan. **BF5**
28. Both Mr Batley and Mr Wipaki concurred that some horse removal was needed as the current lack of management was causing damage to land and ecology. Both owners acknowledged that a lack of fencing between their lands and the Army land was a problem but neither wanted fencing on that boundary. **BF4**
29. The views of Tūwharetoa and Ngāti Rangi were sought. Tūwharetoa advised Tongariro Taupō Conservator Paul Green and the Conservation Board of that Conservancy that they no concerns about the Department's plans. **BF3** Mr Mark Gray, a representative of Ngāti Rangi, met with DOC staff at Waiōuru and advised that the iwi considered the horses to be pests.

(I note that now, Ngāti Rangi is actively participating in the management and re-homing of Kaimanawa horses suggesting that their views have changed.)

30. After review and analysis of public comment, the working party helped develop a final plan that was recommended to the Minister of Conservation in December 1995. The Minister of Conservation (Hon. Denis Marshall) signed the plan in May 1996, pursuant to section 41(1)(e) of the Wildlife Act.<sup>3</sup>
31. The 1996 Plan was the result of extensive consultation, involving a wide variety of public interest and other groups, with submissions and petitions received in response to the draft plan from people all around New Zealand and a number from off-shore (estimated 5000 people). The submissions made earlier in response to the 1991 draft strategy also contributed to the final plan. While no attempt has been made to compare names across the two submission processes I estimate that more than 5000 people made their views known.

*Concerns arising out of decision to shoot horses*

32. Before the 1996 plan was finalised the Department undertook musters in 1993, 1994 and 1995. The musters were undertaken for dual purposes: firstly, to address risks posed by horses to traffic on State highway 1 and to people in Waiōuru camp and secondly to assess the practicality of mustering for sale and the degree of interest in any such horses offered for sale. (At that time, DOC understood that the areas that these musters occurred in were entirely within the rohe of Ngāti Rangi or Tūwharetoa.)
33. While the musters were successful in reducing risk and demonstrating that mustering was practicable, the public demand for horses was poor. Because of the poor market response and consequent likelihood of mustered horses having to be disposed of to an abattoir, the Department recommended to the Minister that the management actions described in the plan for initiation in 1996 be implemented by way of shooting horses.

<sup>3</sup> The plan is titled "Kaimanawa Wild Horses Plan December 1995" however the Minister of Conservation did not sign the front piece until May 1996. I recall this was largely because the Department and Minister were dealing with the Cave Creek disaster as an overwhelming priority. We call it the 1996 Plan notwithstanding its title.



34. The decision to shoot horses led to significant protest and political involvement. Mr Hunter's urgency application to the Waitangi Tribunal was partly motivated by this. To my knowledge this was the first time Mr Hunter became involved. As the Tribunal is aware, that application was declined by the Tribunal.
35. Until the submission of the claim to the Waitangi Tribunal concerning the horses (Wai 588 in July 1996), there had been no indication of interest in the horses except for those proposals which affected horses roaming over properties. **BF3** It is fair to say that until that time we viewed the interests purely as landowner interests and did not understand the range of views held amongst some Taihape Māori concerning wider customary relationships with the horses.
36. In response to a letter from Mr Hunter, the Minister for Conservation acknowledged in reply that public involvement had been actively encouraged and submissions sought (in 1991 and 1996), but there been no direct approach made to Ngāti Tama Whiti.<sup>4</sup>
37. The Minister's letter gives the appearance of the Crown having had no interaction with Māori with interests in the area which was not entirely correct. It is correct that the meetings in October 1992 and other interactions with owners of Ōruamatua 1U and 1V were as landowners of the blocks horses roamed on rather than as iwi representatives.<sup>5</sup> I note that Mr Rangipo Metekingi, as DOC's local Kaupapa Atawhai Manager was concerned at the time that, in his view, there was not a properly mandated authority at iwi level. His view was consistent with Mr Wipaki's view at that time.<sup>6</sup>
38. That said, 1995 meeting notes record that Mr Wipaki requested that a meeting with iwi be held before the plan was implemented. **BF4** I note that this request is described in a 1997 summary of engagement with iwi from DOC to OTS as "A hui at Moawhango upon completion of the plan was

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<sup>4</sup> Wai 2180, #A38, Alexander at 647.

<sup>5</sup> Wai 2180, #A49, Armstrong at 210.

<sup>6</sup> Wai 2180, #A49, Armstrong at 201-202 "commented that the absence of any form of effective tribal organisation in this period made it difficult to put forward a Mōkai Pātea Māori view."

proposed by DOC staff. Mr Wipaki concurred that that would be best.”

**BF3** I am not certain how this difference arose and neither am I certain about the degree of coherence between the owners of OK 1U and 1V and the Wai 588 claimants.

39. I can confirm that the Department met with Ngāti Tama Whiti after the Plan was completed on at least one occasion.<sup>7</sup> Conservator Bill Carlin, Mr Metekingi and I (as a DOC advisor) attended a hui at Whitikaupeka (Moawhango) on 17<sup>th</sup> August 1996. I recall that Mr Carlin and Mr Metekingi attended a second hui at Winiata (Taihape) about this time as well. A briefing for Ngāti Tama Whiti, prepared by me and dated 26 July 1996 was, I believe, tabled at that hui. **BF6** Mr Hunter declined to meet with directly with DOC to discuss the concerns he had raised.<sup>8</sup>

*Kaimanawa Wild Horse Advisory Group*

40. The 1996 Plan recommended the creation of a group to provide advice to DOC.<sup>9</sup> The Minister agreed to the creation of the Kaimanawa Wild Horse Advisory Group (KWHAG). The Group was established from the membership of the working party and was extended to include land owner representatives including for the Ōruamatua Kaimanawa Trust. Two representatives of that Trust, Mr Tama Wipaki and Mr John Greenhead have routinely attended meetings of the KWHAG.
41. I note Mr Armstrong attributes the inclusion of OK 1U and 1V owners on the Kaimanawa Wild Horse Advisory Group to the Wai 588 claim.<sup>10</sup> That is not correct. DOC had been talking with these owners for years prior to that claim and – as above – amended some of its proposals as a result of their concerns. An invitation was also extended to the Wai 588 claimants to participate in the KWHAG but that invitation was declined.
42. The activity and work of KWHAG (including the OK 1U and 1V representatives) includes:

<sup>7</sup> See also affidavit of Rangipō Mete Kingi filed by the Crown in response to the 1996 urgency application - Wai 588, 2.5(c).

<sup>8</sup> Affidavit of Rangipō Mete Kingi filed by the Crown in response to the 1996 urgency application - Wai 588, 2.5(c).

<sup>9</sup> It was also intended that the group would manage any herds not on Defence land however as a second herd was not subsequently established that intention was not fulfilled.

<sup>10</sup> Wai 2180, #A49, Armstrong at 209.

- 42.1 Deliberation about muster plans, population counts and reviews of musters.
- 42.2 Attendance at musters over the last 20 years (in recent years Mr Wipaki and Mr Greenhead have delegated their attendance at the muster to photographer Mr Hugh Best);
- 42.3 A 2004 review of progress in implementing the 1996 Plan and created an “Operational Plan for Implementation of the Kaimanawa Wild Horses Plan” to guide management of the wild horses through to 2009. The Operational Plan incorporated the formalisation of KWHAG, its membership and “terms of reference”.
- 42.4 counts of the herd on 1U and 1V when approval has been given by the owners for those counts;
- 42.5 Today KWHAG focusses largely on the conduct of routine musters, horse re-homing initiatives, sharing of information and identification of options for problem resolution.

*Further ‘horse’ matters*

43. Fred Hoet has expressed concerns (also shared by others) that horses would be sent to abattoir and there was little time to find suitable homes.<sup>11</sup> The Department adheres to the criteria for humane treatment of Kaimanawa Horses.<sup>12</sup> The application of these criteria has resulted in horses that could not be safely re-homed being either destroyed *in situ* or sent to an abattoir to minimise trauma for the individual horse. In recent years DOC has been supported by two voluntary groups who have worked assiduously to rehome as many horses as possible. No sound horses have gone to an abattoir over the last three musters but this outcome is solely a consequence of the efforts of the voluntary groups.
44. Mr Alexander is critical of the time it took for the government to begin to manage the impacts of horses. The ecological impacts were first identified

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<sup>11</sup> Wai 2180, #j17, Hoet.

<sup>12</sup> Kaimanawa Wild Horses Plan at 91.

in 1989. From that time, and from a purely ecological or land management perspective, I agree that taking action soon after the Roger's report would have been good but note that DOC operates in in a legislative, social and political context. Taking the time to develop a degree of community agreement for dealing with the Kaimanawa Horses' issues between 1991 – 1996 has formed an efficient and effective foundation for the operations since. I note that the current management approach has been acknowledged as a model by agencies in USA and Australia who are grappling with similar conflicts between ecological imperatives and public opinion.

### **Pests and controls**

#### *Pest plants*

45. In the south of the district remnant natural areas are under threat from species such as Old Man's Beard and White Bryony. To the north and east, tussock grasslands are threatened by wilding conifers, broom, gorse, lupin and heather. DOC has made and is continuing to make significant contributions to control and/or minimisation of spread. There are also other key players.
  - 45.1 MPI is national lead for biosecurity and funds eradication of White Bryony and leads the Wilding Conifer National Strategy;
  - 45.2 Horizons Regional Council is regional lead for biosecurity, has prepared Regional Pest Management Strategies and Plans, funded control programmes for Old Man's Beard and *Pinus contorta* and contributes to development of biological control tools.
  - 45.3 NZ Defence funds significant plant pest control programmes in the Waiōuru Military Training Area and has almost eliminated wilding conifers from that area.
  - 45.4 DOC have significant control programmes for wilding conifers in the Ruahine Range, Old Man's Beard in the Rangitūkei, manages the eradication programme for White Bryony and invests in biocontrol research including leading work to find a control agent for Heather.

- 45.5 DOC has been involved in the past with Tama Wipaki and Tony Batley in wilding pine control on the Kaimanawa 1V block and the adjoining Batley's block.
- 45.6 Ngā Whenua Rāhui assistance to landowners for plant and animal pest control is addressed in separate evidence.
46. Old Man's Beard has been a major focus for DOC, its parent agencies, and the Rangitūkei District/County Council in this area (and others) since the early 1960's. The history of its establishment and early control strategies set out by Mr Alexander is largely accurate. Rangitūkei Borough Council applied for grant funds to undertake control in the Taihape Scenic Reserve in 1969. The Lands and Survey Department convened a national workshop on the threat posed by this plant in November 1982.
47. By the 1980's large forest species in the Taihape Scenic Reserve and the Mangawharariki Stream margins were already being affected and vines were reaching sizes needing a chainsaw for control work. By the time the Department of Conservation was established in 1987, the Lands and Survey control teams continued their work as part of DOC but the plant was already rampant around the wider Taihape area, growing in the margins of reserve land, scrubland and river banks where the light levels favoured rapid growth. DOC teams were travelling from Te Arakura near Feilding each day to hand cut the vines, with travelling taking up a lot of the working day. As a result, a Field Centre was set up in Mangaweka with the bulk of the work focussing on Old Man's Beard control on Public Conservation land between Hunterville and Taihape and east to the Ruahine Range.
48. A major national awareness campaign was launched with Dr David Bellamy as the face of "Old Mans' Beard Must Go" and work was carried out with volunteer days and school visits promoting identification of the plant and reduction of the infestations.
49. Early control strategies were prepared for the Department outlining priority areas, methods and estimated funding necessary to achieve control. Control was carried out in most reserves in the general area by ground and aerial methods. A jet boat was utilized to reach infestations along the Rangitūkei

River. At this stage an impact was being made within the control area but the weed was still spreading onto marginal farmland, unoccupied Crown Land and the Railway corridor creating a huge seed source. This seed source and reducing DOC resources resulted in DOC control efforts not keeping ahead of the natural spread of the weed.

50. In recent years priorities have focussed on a coordinated approach with Horizons Regional Council to protect the Ruahine Forest Park and some reserves. The Department also contributes to a national programme of research to identify and establish biological control agents for this species. Four species of possible agent have been assessed and trialled. The search goes on.
51. In 2018 DOC (and MPI) were successful in having Hawke's Bay Regional Council recognise the threat Old Man's Beard poses to Ruahine Forest Park from the East. That Council now intends to include the area west of State Highway 50 into its Old Man's Beard Regional Pest Management Plan.
52. New Zealand has seen the establishment of a very large number of exotic plants. It has been estimated that exotic plants now outnumber native species (c.2600 to c.2100) and new establishments are occurring at about 30 species per year. Fortunately few of these plants have the impact of Old Man's Beard and the NZ Biosecurity group is resourced to attempt to stem the flow of new species at the border.

***1080 as a control agent***

53. An overview of the purpose, efficacy and regulation of 1080 as a control agent is provided in an **Appendix A** to this brief.
54. In the Taihape Inquiry district, DOC is working to identify how to use current resources and partnerships to contribute more effectively to improve forest health outcomes through increased predator control. This work has identified that the use of cyclic aerial 1080 pest control operations will be key to enable DOC to increase predator control across more forests, particularly given the terrain, and have the most positive outcome for the forest health.

55. Aerial control operations using 1080 baits in the Taihape district were first undertaken in Hihitahi Forest Sanctuary in 1993 and in Tītirangi Scenic Reserve, Paengaroa Scenic Reserve and Ngaurukehu Scenic Reserve at about the same time. A 3050 hectare area near “Ruahine Corner” in Ruahine Forest Park was treated with aerial 1080 baits in 1994. Regular re-treatment of the Hihitahi and Ruahine Corner sites, on a 5 – 7 cycle has been maintained although the Hihitahi operation was subsumed into the Bovine Tb pest control programme. Other sites treated as part of the Bovine Tb control programme include the Waiōuru Military Training Area and some parts of Ruahine Forest Park in the Tāruarau catchment. These early operations largely focussed on reducing possum damage to forest canopy species. In 2017 DOC included the northern Ruahine Range in the “Battle for our Birds” programme (now known as Tiakina Ngā Manu). This operation incorporated part of the “Hinemanu o Awarua” trust lands with the consent of the Trustees. The original 3050 hectares treated in 1994 was expanded to 32,800 hectares to include most of the known whio and kiwi habitat in this part of the range. The operation was in response to expected elevated predator levels following the 2016/2017 beech mast event.
56. Initial indications are that the whio population had a successful fledging year as a consequence. Hui with Mōkai Pātea people to discuss the proposed operation were held at Winiata Marae, Moawhango (because Opaea was too cold!) and at Omabu in Hawkes Bay. Trustees and/or their representatives participated in parts of the operation. They also generously agreed to host manuhiri from Russell iwi groups who wished to observe a 1080 operation. The monitoring of outcomes undertaken to date following this operation is attached as exhibit BF7. Three species have been monitored – rats, whio and powelliphanta snails. The target outcome has been achieved for controlling rats and reducing possum predation on snails. The whio monitoring will take place over five years until at least 2022 but initial indications are described as “encouraging”.
57. On a recent visit (February 2019) to the western portion of the treatment area DOC facilities inspector Dean Richards reported being astounded by the birdlife in the area. Mr Richards has visited many parts of New Zealand

during previous work as a biodiversity monitoring officer and commented that he has not encountered another area with such prolific birdlife. He describes species that could be expected to have benefited from the 2017 treatment programme as being abundant. He noted in particular, rifleman/titipounamu, whitehead/popokatea, robin/toutouwai and miromiro/tomtit.

58. DOC is very aware of the range of views amongst Māori in relation to the use of 1080 and continues to work closely with groups to understand interests and concerns and to develop control programmes that take those concerns into account. This range of views has been evident for some time. For example, in 2005 DOC and the Animal Health Board jointly applied for a reassessment of 1080 to enable the continued use of the poison. As part of that process, DOC held 22 hui throughout New Zealand. DOC heard that Māori had concerns with the use of toxins in the environment, but also had concerns about the adverse impacts of possums. Some support from Māori was received for 1080 as a control method necessary to reduce possum and rat numbers to protect taonga species. Recently 1080 operations were undertaken near Russell with support of the trustees of the land (an injunction was sought, unsuccessfully, by a sole beneficiary).
59. In conclusion, while DOC continues to research new methods of pest control such as self-setting traps and genetic techniques, aerial 1080 remains the most effective technique for large scale and/or rapid response pest control. The benefits of using 1080 outweigh the risks and costs. The current controls DOC has through standard operating procedures provide adequate safeguards against potential adverse effects. New Zealand is seeing successful ecological restoration that would not have been possible using any other method of control currently available.

#### **Landlocked Lands**

60. DOC recognises the significance of the issue of landlocked land to Taihape Māori and the desire for access to those lands for both cultural and economic reasons.
61. Richard Steedman acknowledges that DOC has tried in recent years to improve their relationship with Iwi and communities but states his view that



“there is an in-grained prejudice that constantly blocks the aspirations of Iwi and communities”.<sup>13</sup> He suggests that DOC has not acted to improve the situation for Māori.

62. Much of the land managed by DOC is surrounded by privately owned land (including Māori land) and there are very few roads (formed or unformed) accessing the lands. In some cases DOC is also effectively “land-locked”. In many, if not all, cases the lands which prevent access are privately owned ie access solutions are not within DOC’s control.
63. DOC is forced to navigate a difficult path with respect to negotiated access across private lands because it is limited by previous agreements and DOC has no authority or power to force access across privately owned land.<sup>14</sup> DOC must ensure it does not compromise its ability to deliver the functions it is required to under legislation by placing management access it has negotiated in jeopardy by alienating private landowners where access remains dependent on goodwill. DOC must also not compromise on its efforts to give effect to the principles of the Treaty and has advised that it is willing to support iwi to negotiate with private land owners where that would be advantageous.
64. Māori landowners in the Inquiry District made it known to the Department in the 1990s that the lack of access to their lands, and public trespass over their lands, are major issues for them.
- 64.1 With regards to access, DOC and landowners have kept communications open (eg by attending Trustee meetings and hui’s, letters and phone calls) but no definitive progress has been made although efforts continue (discussed below).
- 64.2 Some actions including better mapping, signage and information being provided to members of the public have been taken to reduce the risks of trespassing however DOC acknowledges that – given the topography, lack of fencing and lack of on-the-ground enforcement, this remains an issue for Iwi.

<sup>13</sup> Wai 2180, #G13, Steedman.

<sup>14</sup> I’ll leave the legal issues of applications to the courts for access to the lawyers.

65. DOC accepts the view of the Trust by letter 1997 “communications in the past on this matter, while being based on partnership type arrangement have resulted in no real change.”
66. I’ll now address some of the specific access issues. I have not been directly involved in many of these situations but have some knowledge of them gleaned through being in the area a while.

*Big Hill Station - Land exchange and public access - Ruahine Forest*

67. The land exchange was initiated by the landowner, Mr Glazebrook, to freehold existing Crown Land grazing licences. NZFS wanted access through the Big Hill Station to Ruahine Forest Park. An exchange agreement was signed in 1980 with the Crown acquiring approximately 400ha along with right of way access through Big Hill Station; in return Big Hill Station acquired approximately 150ha. The access way is over private land and not over paper road and so can only be accessed in accordance with the agreement.
68. The agreement provides for access by the Crown, along with controlled public access. My understanding is that the access agreement is not a standard agreement with the “agents and invitees” phrase. The agreement provides for only two hunting parties and one recreation party per week to access Ruahine Forest Park. Those opportunities are balloted.
69. Access to Māori owned lands (Te Koau A, Awarua Block and Aorangi Block) on the western side of the Ruahine Range is not recorded on the file as an issue when the arrangement was negotiated. Nor is there any note of iwi consultation. I note that at the time the access was negotiated the accepted boundaries of Awarua o Hinemanu lands were significantly different than they are today.
70. In September 2018 the local Manawatū Office of DOC undertook to discuss with the landowner, whether he would accept DOC assigning of the balloted opportunities directly to the owners of the Māori land blocks adjoining Ruahine Forest Park and effectively accessed via the Big Hill Road. I understand that the owner (Mr Glazebrook) has agreed to meet

with representatives of the owners and that DOC is attempting to facilitate that meeting.

*Access to Awarua o Hinemann Block - Pt Awarua 1DB2 - Aorangi Block - Te Koau A - Customary Māori Land*

71. Prior to the establishment of DOC, these blocks were managed as part of the Ruahine State Forest and contained publicly accessed Forest Service huts. In the early 1990's the Māori landowners made it known to DOC that:
- 71.1 they were not happy with the public trespassing on their land to gain access to these huts (the public gained access through Big Hill Station by DOC permit); and
  - 71.2 they did not feel they should have to gain access to their land by permit through Big Hill Station.
72. DOC staff attended hui to discuss these issues; there is a limited record of these discussions.
- 72.1 DOC responded to the landowners concerns in part by providing maps noting the current land tenure and boundaries and attaching these to hunting and access permits, gave maps to helicopter operators to pass onto hunters and placed maps in the huts along with signs erected on common boundaries noting private land.<sup>15</sup>
  - 72.2 A 2010 letter from the Area Manager to the Trust Chairperson acknowledged iwi grievances regarding access issues. He wished the Trust well working with the local council to resolve the paper road issues to enable access across private land and noted DOC's position on this was neutral, presumably because the access was over private land and involved a local authority. The letter went on to clarify the Big Hill Station access arrangement (discussed above) and that DOC had no jurisdiction over private land where access is concerned.

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<sup>15</sup> See for example Wai 2180, #G013(d), Steedman.

73. DOC has updated maps, signage and website information to inform people that the Te Koau A and Awarua o Hinemanu Blocks and the associated huts are privately owned.

*Te Kōau Ltd and Patea Farms Ltd - Timāhanga Accessway and Te Kōau Block being Lots 1 & 2 DP 4425 - Land Exchange and Public Access – Ruabine Forest*

74. Land acquisition and exchange discussions, along with public access, occurred between Mr J Roberts (on behalf of the farm companies), NZFS and Lands and Survey Department in the 1970's to 1980's.
75. Fundamental to the exchange was the Crown transferring the access way to the adjoining landowner. The decision of the Commissioner of Crown Land and Land Settlement Board was that the access way was to remain with the Crown as non-vehicular public access, therefore allowing access to Tāruarau River and to the neighbouring Māori land. As a result of that decision, the land exchange discussions ceased at that time.
76. Statutory actions recording the exchange were completed in 1995 with the exchange gazette being signed by the DOC Acting Regional Conservator. At the time of filing this evidence, I have been unable to locate the Timihanga file to understand how the discussion was advanced to this stage.

*Ngamatea Station – Ōwhāoko Pt D7B for Ōwhāoko D6 No2 – Land Exchange and Public Access to Kaimanawa Forest.*

77. A 1980s complaint to the Ombudsman, lodged by Mr H W Steedman, regarding the Crown decision to approve the exchange of Crown Land, Ōwhāoko D6 No2, for freehold land (Ōwhāoko Pt D7B) as being unreasonable was not sustained.
78. In the late 1980's the exchange was completed. Ōwhāoko Pt D7B was set apart as State Forest land by NZFS and consequently allocated to DOC.
79. The assessment of the ecological value of wetlands on this land was not available to the Department at the time the exchange was undertaken. I understand that the exchange was finalised in the 1980s. Dr Rogers' Survey report for the Protected Natural Areas Programme (Moawhango Ecological District) was published in 1993. I can only assume that if such an exchange

was being discussed today the ecological information would affect the consideration made by DOC.

*DOC Processes*

80. Some key points about DOC and landlocked lands in this area:
- 80.1 From the Kāwekas to the Manawatū Gorge there are very few access points into public conservation lands. Within the claim area I estimate that there are only about eight access points where lands managed by the Department are connected to the road network.
  - 80.2 Access to each of the Māori owned landlocked blocks for which DOC is a neighbour is restricted through either intervening private land or topography – there are no simple solutions DOC can utilise to unlock the landlocked lands.
  - 80.3 DOC's access for conservation management is often via helicopter or through agreements with private parties (which have not been easily achieved and have limited flexibility).
  - 80.4 Recreational use of the area is hindered by the lack of access although resolving this has not previously been a high priority for the Department. The recently released CMS document covering the Ruahine Range has a specific milestone with respect to investigating and improving access to Ruahine Forest Park. I anticipate that the new Hawkes Bay/East Coast CMS (covering Kāweka) will contain a similar requirement.
  - 80.5 DOC has the power to acquire land and enter into access arrangements for conservation purposes under its legislation but it cannot compel a landowner to enter into such arrangements, nor can it act outside its legislative purposes and powers.
81. The historic actions in relation to land acquisition or exchanges by DOC in the inquiry district show that there was little or no consultation with tangata whenua at the relevant times.

82. Those actions were largely taken in a different legislative climate. If DOC was considering the exchange of land now and/or entering into access arrangements it is required to ensure it has accurate information and to consider whether active steps are needed to protect Māori interests. As above, the Department is making some efforts currently to facilitate better relationships between iwi and private land owners and to improve access situations.

*Access more generally*

83. In 2008 the government established and resourced the Walking Access Commission with a mandate to improve public access. That Commission has the responsibility for leading and supporting negotiation, establishment, maintenance and improvement of walking access over public and private land.
84. Land managed by the Department within the claim area is open to all people at all times except when a management imperative may require an area to be closed for a period. (I do not recall any such closures.) However most of that access is by foot.
85. I accept that tangata whenua are not “public” and that “foot access” is not “reasonable access” in terms of unlocking landlocked lands.

**Freshwater fisheries**

86. Freshwater fisheries are managed by DOC, the Ministry for Primary Industries (MPI) and Fish and Game Councils (for sports fish). One of the functions of DOC is to preserve so far as is practicable all indigenous freshwater fisheries, and protect recreational freshwater fisheries and freshwater fish habitats.<sup>16</sup> Management of freshwater fish habitat and water quality and quantity management, however, is undertaken by regional councils under the Resource Management Act and associated legislation.
87. DOC has undertaken little specific fisheries management in the middle and upper Rangitikei, upper Ōroua, upper Ngaruroro and other nearby catchments in this District.

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<sup>16</sup> Conservation Act 1987, s 6(ab).

88. Fish and Game applied for and was subsequently granted in 1993 a Water Conservation Order for the upper Rangitūkei River above the Mangarere Bridge, to recognise and protect the outstanding fisheries, wildlife habitats and wild and scenic values of the River and several major tributaries.
89. In 2015 a group of 6 applicants (the New Zealand Fish and Game Council, Hawkes Bay Fish and Game Council, Royal Forest and Bird Protection Society of New Zealand, Jet Boating New Zealand, Whitewater NZ Incorporated and Ngāti Hori ki Kohupatiki) applied for a Water Conservation Order in the Ngaruroro River catchment. This is presently under consideration by a Special Tribunal convened by the Minister for the Environment. I note that, although the Fish and Game Councils are established under the Conservation Act, the Councils are not a vehicle of DOC, but are independent bodies. I further note that various trusts representing the owners of Ōawhāko A East & A1B, Ōawhāko B & D and Ōawhāko C have made submissions to the proposal.
90. DOC is part of a national biosecurity programme to prevent the establishment of the invasive algae, *Didymo*. The rivers of this district are critical priorities with respect to the goal of this programme to keep the North Island free of this pest.
91. In 2018, Government allocated additional funding to the Department comprising \$79 Million over 4 years. Part of that funding will support reduction in pest fish risk, improved outcomes for tuna, restoration of a small suite of rivers and the establishment of a national monitoring system for freshwater ecosystems and species. By year 4 of the initiative about \$8.4 Million will be being applied to this new work. It is not yet possible to identify what impact this funding may have within the inquiry area.

#### *Eels - Tuna*

92. I acknowledge the importance of eels/Tuna to the river peoples of the inquiry district. General overview information regarding eels is in **Appendix B**.
93. A report about longfin eel was released on 17 April 2013 by the Parliamentary Commissioner for the Environment. The report raises

biodiversity, commercial fishing and conservation questions about the long-term well-being of longfin eel.

94. The report lists three specific recommendations to Parliament. These are:
- 94.1 That the Minister for Primary Industries suspends the commercial catch of longfin eels until longfin eel stocks are shown to have recovered;
- 94.2 That the Minister of Conservation directs DOC officials to use the policy mechanisms available to them to increase the protection for longfin eels and other threatened migratory fish; and
- 94.3 That the Minister of Primary Industries directs his officials to establish a fully-independent expert peer review panel to assess the full range of information available on the status of the longfin eel population.
95. Both Ministers have committed to “...ensuring its long-term survival” and agreed to “...implementing the Commissioner’s recommendation to establish an independent, international peer review panel to reassess the data on longfin eels”. DOC is looking at the options to increase the protection of the long fin eel, other migratory fish and their habitats.
96. The commercial eel fishery is regulated by the Ministry for Primary Industries under the Quota Management System.
97. Commercial fishing is not carried out in reserves (dependent upon the classification and any relevant management plan provisions) but can be undertaken on other land/water administered by DOC if a concession is granted. I have checked the concessions database and am not aware of any concessions or permissions for commercial eeling granted by DOC within the Inquiry area currently.

*Patiki*

98. I understand that patiki (black flounder) are a taonga and of particular importance to Taihape Māori and historically were an important food source. There are no records of patiki in the national freshwater native fish



database on the western side of the enquiry area but there are recent (2013) records from the mid reaches of the Ngaruroro river. It is unclear whether the paucity of records reflects a lack of fish or a lack of searching. As I noted earlier, although DOC has responsibilities for indigenous freshwater species, it is the regional council which has responsibility for the water habitat. The importance of such habitats is being recognised but we have very limited knowledge on the steps that might have to be taken to encourage reintroduction of patiki to the Taihape district, particularly into upper reaches of the Rangitikei. It is likely to be difficult and need a broadscale approach including all habitat, including estuarine areas, used by patiki, throughout their lifecycle.

*DOC involvement in the ONE Plan*

99. Claim #1.2.18 raises concern about the level of Māori input into a 2007 report on recreational fishing and fish spawning prepared by Regional Council Staff, and externally reviewed by DOC for external review.
100. I understand that this claim refers to one of the 40 technical reports prepared as background for the development of the Horizons Regional Council “ONE Plan”.<sup>17</sup> Those reports were not authored by DOC but were made available to all parties who wished to contribute to development of the ONE Plan.
101. DOC actively engaged in the ONE Plan development process including appealing the proposed plan to the Environment Court. DOC sought robust and resilient protection for freshwater values and biodiversity.

*Conservation (Indigenous Freshwater Fish) Amendment Bill*

102. The Minister of Conservation on 9 August 2018 introduced the Conservation (Indigenous Freshwater Fish) Amendment Bill, which has its first reading on 11 September 2018 and was sent to a Select Committee.
103. The objectives of the Bill are to:
- 103.1 improve the workability of fisheries management tools, including regulation making powers;

<sup>17</sup> Refer <http://www.horizons.govt.nz/publications-feedback/one-plan-documents/technical-reports>.

- 103.2 provide protection for indigenous freshwater fish in conservation areas; and
- 103.3 manage the relationship between Treaty settlement legislation and Māori fishing rights under the Fisheries Act so that they prevail over fisheries regulations made under the Conservation Act.

**Further matters**

*Protected Natural Areas Programme*

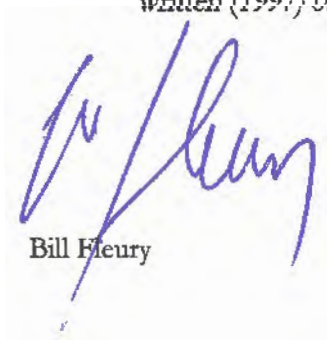
- 104. In reference to the panel's discussion of DOC's report on the Moawhango Ecological Region. The Department commissioned a series of reports on the Ecological Regions and Districts of New Zealand as part of a programme known as the "Protected Natural Areas Programme". The programme sought to identify recommended areas for protection as a means of focussing the Department's advocacy or acquisition attempts on the areas that would provide the greatest improvement to the country's protected area network recognising that public conservation land does not contain the full range of ecosystems.
- 105. DOC has always sought to share its information and analysis with landowners and almost without exception that information has been well received especially the added contextual information such as the importance of a particular site in a national context. This response was evident in the relationship Dr Rogers (Moawhango PNAP report author) developed with the trustees of Aorangi Awarua and was similar to the response received by the Department from those Trustees when it shared its 1987 "Resource Report" with them. It should be noted that site assessments and inclusion of areas in reports have only been included with the permission of land owners.
- 106. The recognised recommended areas for protection that were identified in these reports may have become part of one or more protection efforts by the Department over the years. The range of protection styles have included purchase, covenant (Conservation or Kawenata), advocacy via other agencies e.g. QE2 Trust, working agreements, advocacy via RMA processes. Not all recommended areas have been protected.

*Access to land holdings information*

107. Alexander is critical of the specificity of land information on the DOC website. I am advised that DOCs spatial data is being made increasingly discoverable from data.govt.nz (external site) which in time will become our spatial data's home. While we're managing this transition, the two platforms (Geoportal and FTP) will remain functional but may have a reduced catalogue. The key references with respect DOC land that are readily available are the "Volume 2" sections of DOC CMS'. These documents, in some cases, may be available on the DOC website but are more readily accessible in hard copy

*Discussion of particular Reserve land in the Taihape inquiry district*

108. We have been advised that the claimants sought information about land administered by DOC at Ūtiku. The Department of Conservation administers a small parcel of land at Ūtiku adjacent to State Highway 1. The area of 0.6755 Ha is shown in the Whanganui Conservancy CMS document as Tokaanu Conservation Area, Conservation Unit 70381 with iwi/hapū affiliations being to Ngāti Hauiti. At the time the CMS was written (1997) 0.1796 Ha were covered by a grazing licence.



Bill Fleury

**Index of Exhibits:**

- BF1 Excerpt of Analysis of Submissions 1991
- BF2 Gummer to Fleury 1992
- BF3 DOC to OTS summary of engagement with iwi
- BF4 Fleury meeting notes 23 August 1995
- BF5 Horse Management Areas Map
- BF6 Fleury briefing for Ngāti Tama Whiti

## APPENDIX: 1080 PEST CONTROL AGENT

1. A significant threat to many of New Zealand's native plants and animals on land managed for conservation purposes comes from introduced predators and herbivores such as possums, rats, stoats, goats, pigs and deer. Sodium mono-fluoroacetate (1080) is a vertebrate toxin that is very effective in controlling the smaller of those pests. It is considered well suited to New Zealand conditions. 1080 is the most researched vertebrate toxin in New Zealand. Research topics range from direct environmental fate of 1080 in soil and water, to population studies of species that benefit from its use including birds and invertebrates. 1080 is ideally suited for use in New Zealand because, while introduced mammals are extremely vulnerable to the poison, monitoring shows most native species are not at significant risk from 1080 operations.
2. The research background information has been reviewed in recent years and two benchmark studies published. In 2007 the Environmental Risk Management Authority (now Environmental Protection Agency) concluded a review of all of the information supporting or opposing the registration of 1080. Registration for products containing the toxin for pest control was reconfirmed. <https://www.epa.govt.nz/database-search/hsno-application-register/view/HRE05002>
3. In 2011 the Parliamentary Commissioner for the Environment published a review of 1080 for pest control concluding that:

Although there are other methods that are effective in particular situations, the only practical and cost-effective option that is available for controlling possums, rats and stoats in large and inaccessible areas is an aerial delivered poison. And there is no alternative poison available now or in the near future that could be used aurally and would be preferable to 1080.

The PCE also stated:

not only should the use of 1080 continue (including in aerial operations) to protect our forests, but that we should use more of it.

4. Key research findings are that 1080 does not bio-accumulate. It naturally breaks down in the environment and does not leave permanent residues in water, soil, plants or animals. It can be safely applied by air.

5. Until the last decade, the majority of 1080 used on public conservation land has been for the control of possums with aerial 1080 providing a 3 – 4 fold efficiency gain over other control methods in difficult terrain. Much of this work has been done to maintain forest canopy species vulnerable to possum browse or to control possums to control or eradicate bovine Tb. Over the last 10 – 15 years air drops of 1080 laced baits have been increasingly targeted at rats (and, as a consequence, stoats) to prevent extinction of vulnerable bird or invertebrate species. For this purpose aerial 1080 provides a significant efficiency gain over other control methods in difficult terrain. Some estimates based on DOC best practice approaches suggest that that gain can be up to 100 fold over the course of a 1080 treatment cycle.
6. A fast knockdown of possums, rats and stoats is often needed in the spring to protect birds during the nesting season. This is especially important in ‘mast years’ when some native trees (especially beech) produce huge numbers of seeds. This abundance of food can lead to a plague of mice and/or rats, which in turn leads to an increase in stoats – all of which eat vulnerable native birds, insects and lizards. Without aerial 1080 baiting extinction of mohua and orange-fronted parakeet in the South Island would be likely, as would local extinctions of kaka and kōkako, and continued decline of kiwi and other species such as kereru, whio and piwakawaka.
7. All 1080 operations are strictly controlled by health and environmental regulations to ensure safe use of the toxin. DOC publishes pesticide summaries on its website, which are regularly updated lists of animal pest operations using vertebrate pesticides that occur on lands managed or administered by DOC. They advise people where pesticides are being used in the region.
8. In December 2013 the EPA released a review of aerial 1080 operations over the previous five years which found that management controls were working well and there was no evidence of adverse impacts on water quality.<sup>18</sup> 1080 is readily soluble and dilutes quickly in water to low

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<sup>18</sup> Environmental Protection Agency: *Annual Report on the Aerial Use of 1080*, for the year ending 31 December 2011, at p4.

concentrations. Natural processes will break 1080 down in water to non-toxic by-products. 1080 residues have never been recorded in public drinking water supplies.

9. The risks 1080 operations pose to aquatic species is considered very low. Fish are very tolerant to 1080. Additionally, 1080 contamination of water is rarely found during 1080 operations and is at an extremely low level when it has occurred. No mortality of longfin eels, kōaro or upland bullies was observed during experiments where high densities of cereal 1080 pellets were placed in water just upstream of them. Eels and koura have survived experimental feeding of cereal 1080 pellets, and eels have survived feeding on possum tissue containing 1080. There have also been no detectable effects on aquatic invertebrate communities in field studies when 1080 baits were placed at high densities in streams.

**APPENDIX B: TUNA EELS**

1. There are two common species of freshwater eels found in New Zealand; the shortfin and the longfin.
2. The shortfin eel is classified as 'Not Threatened' in the New Zealand Threat Classification System and is found in New Zealand, Australia and some Pacific Islands. Longfin eels are wide spread throughout New Zealand but are in decline. They are not a protected species and under the 2013 New Zealand threat classification system are listed as being 'At Risk – declining.'
3. The longfin eel is the largest freshwater eel in the world and is found only in New Zealand. Eels take many years to mature, and it could be decades before they migrate to the Pacific Ocean to breed and die.
4. Longfin eels are less able to cope with changes to their environment than short-finned eels. They are heavily affected by human activities, such as pollution, the building of dams, loss of vegetation near their habitat, and fishing has had a significant impact on the species.



## INDEX TO EXHIBITS

### BRIEF OF EVIDENCE OF WILLIAM ECCLES FLEURY 19 February 2019

<b>Exhibit</b>	<b>Description</b>	<b>Pages</b>
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BF2	Gummer to Fleury	3
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