

**From:** Shaun Berg [sberg@berglawyers.com.au]  
**Sent:** Tuesday, 5 May 2009 2:37 PM  
**To:** Water  
**Subject:** Submission - Water Trading Rules

Dear Sir/Madam

I act for the Ngarrindjeri People, traditional owners and Native Title claimants (Federal Court SG 6027/98) of the Lower River Murray, Lakes and Coorong.

I request permission for the following submission received in relation to the Water Trading Rules:

1. The unbundling of water from land and the trading of that water is not economically, socially or culturally appropriate. In relation to the first two categories, the water due to the scarcity and limited nature of it as a resource it will be purchased by persons or companies with the greatest financial capacity, and those persons will hold it pushing the available market water price up. There is no market equilibrium mechanism working in such circumstances. Water should not be a commodity but something owned by the Government for public good. The idea of a trading scheme for water should be immediately scrapped. In relation to the last category by moving water out of the public domain and in the private market Governments are placing themselves in a position where they will not be able to deliver upon their human rights obligations.
2. Leaving aside the prospect of foreign ownership of Australia's water and the implications to deliver water to the general population at a price which does not exclude access for the poor and middle class or that industry purchases the bulk of water to a point whereby human needs are undermined, there are significant implications to the Australian Government's ability to comply with its human rights obligations, particularly as the effect of climate change becomes more apparently.
3. In Mabo (No. 2) the Federal Court acknowledged that native title rights and interests continued to exist in Australia for those Indigenous Groups able to show continuity of those rights and interests from sovereignty until now. Integral to this process is being able to show connection of Indigenous People and their culture to country. This can occur by the features of the landscape as emanating through custom and tradition and the existence within those landscapes of plants, birds, fish and animals. If the context of the landscape changes the existence of the native title rights and interests may be affected. These affects can occur by actions of the Government.
4. In this instance the rights and interests of my clients may be affected if the private market determines the use of water and is able to control the access to water. The Government effectively is handing control of obligations it has, fundamental obligations of human rights, to private interests. In those circumstances the private interests will act for profit motivations and the continuity of the landscape, and hence, native title rights and interests are affected.
5. In such circumstances Australia would be failing to comply with its international human rights obligations. Furthermore, it may be acting in a manner inconsistent with its own restrictions imposed by s100 of the Constitution.

Please ensure these matters are part of the discussions which occur in relation to whether Water Trading should occur.

Kind regards

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