

**From:** Jeremy Morton

**Sent:** Tuesday, 29 December 2009 3:33 PM

**To:** Water

**Subject:** 'Public submission on proposed amendments to the Water Market Rules 2009 and Water Charge (Termination Fees) Rules 2009 on 29/12/2009'.

I provide background to my assertion that Murray Irrigation Limited (MIL) has unreasonably reduced the entitlements of its customers with the justification that it has done so to comply with the water market rules.

Prior to privatisation (formation of Murray Irrigation Limited) the landholders in the NSW Murray Valley irrigation areas and districts held statutory rights to water. The reason for privatising was the belief that a privately operated irrigation supply system would be more efficient than the state run system. This was both in terms of cost and water delivery efficiency.

Privatisation occurred in the run up to the 1995 NSW State election. A number of less than ideal decisions were made in the context of that election given that the opposition Labour Party (whom was elected) had stated that they would not allow privatisation to occur.

The original intent was for the ownership of the statutory water rights held by landholders to remain. With the NSW election bearing down the decision to issue a bulk licence to MIL was taken. Obviously issuing one licence was going to take far less time than issuing thousands.

As part of the privatisation negotiations, consideration in the form of approximately 20% extra water was issued to MIL. This extra water was issued in recognition of the water required to meet losses within the supply system and water that was being delivered on farm but not metered or incorrectly metered. This recognised the historical use and ownership by the landowners.

In 2004 a separate 'conveyance licence' was issued to MIL which includes the proportion which represents the historical use by landowners. This is the proportion which MIL has no reasonable right to deny a transforming irrigator and by reducing entitlements which represent that proportion MIL has acted beyond what is required to comply with the water market rules.

*The act says, No claim, action or demand may be made, asserted or taken against an irrigation infrastructure operator for anything done by the operator solely for the purpose of complying with water market rules.*

MIL should have no concern that they are not protected if they acted 'solely for the purpose of complying with water market rules'. The act should not serve to provide protection from legal challenge for the purposes of, as Mr. Couroupis states, *the Company's financial and human resources are not at risk of being consumed by a legal challenge as a result of the Company both adapting to and complying with the Rules.* Surely it is for a court to decide whether or not MIL has acted legally and no court would entertain frivolous or mischievous actions. No person or entity should be above the law and granted exemption from challenge.

Mr. Couroupis is correct when he says, *Murray Irrigation argues the Water Entitlements owned by members are a contractual right, Murray Irrigation owns the Water Access Licences. It is incorrect to assert that the conveyance water was "owned" by customers.* What Mr. Couroupis fails to state is that the original certificates issued to landholders were **share & water entitlement certificates**, these original documents imply ownership and it is the subsequent separation of

water entitlements from shares that has allowed MIL to arbitrarily reduce the number of water entitlements. This separation has been required as part of water reform and the consequence is only now apparent. I suppose the rights of the individual that were seeded to MIL at privatisation are only now beginning to be understood, the water entitlements contract which can be changed by the company at any time means that the integrity of the water entitlements held by MIL customers is severely diminished.

The discussions I have with MIL customers indicate that most have absolutely no understanding of the reforms taking place regarding water and have blind faith in MIL & its Directors to do the right thing by them. Apathy is the norm.

I present this unlikely scenario to indicate the inequity of the actions of MIL. If I were the only remaining MIL customer with 1000 water entitlements I would have access to MIL's 300,000 megalitre conveyance licence. MIL's assertion that the reduction in customer water entitlements *avoided unfair and unworkable impacts on the Company* does seem a little hard to substantiate.

All of this should be considered in the context of the unprecedented hardship being felt by MIL customers, many of whom are desperate sellers evacuating irrigation and to whom water reform is an irrelevant side issue which they see as being of little consequence as they seek to survive.

Regards,

Jeremy Morton