Submission No 15

INQUIRY INTO STATUS OF WATER TRADING IN NEW SOUTH WALES

Name: Joy Boucher, Narelle Pratt, Jamie Park

Date Received: 3 July 2022

Water Trading in NSW Inquiry -

Submission Part A

All the present system has done has created confusion, escalating delivery costs, escalating water prices, causing costs out of the reach of a lot of irrigators. The costs of delivering of water at times outweighs profit. Causing not only financial loss to the irrigators but also to their communities.

Very little has been said about the most important real cost and there are no reports that have addressed the very real issue, the emotional stress, the suicides and the marriage breakdowns, family breakdowns caused by this current system and these should all be taken into consideration in your findings.

Improvement in the trade process and market transparency should be made as soon as practically possible, for far too long there has been no accountability , no transparency and no harmonisation across the Basin.

There needs to be clear and comprehensive regulations and information to trading participants to achieve a consistent and comprehensive trade process, market reporting and market transparency.

In March 1995 NSW was the first state to separate water from land title creating a water licence as a separate business asset and creating perpetual water licences for commercial purposes that no longer had to be renewed. This separation, albeit unintentional, has contributed to the debacle of water trading faced today. So it is appropriate that NSW be the first state to start action to rectify water trading that has caused significant effects to the economy, communities, irrigators, misconduct of Irrigation Infrastructure Operators(IIO) and agriculture practices.

The NSW government privatized the Murray Irrigation area and Murray Irrigation Limited and other irrigation companies were formed.

We were allocated shares in MIL and our previous water allocation converted to Water Entitlements (WEs).

Water access and trade – licensing and trading under the Water Management ACT 2000

- *Provide a clearly defined **right to access water, separate from land ownership***
- *Are issued with a certificate of title [which had our name on it not MIL]*
- *Can be **independently traded, mortgaged and leased**.*
- *Are granted in perpetuity meaning they do not have to be renewed*
- *Entitled the holder to extract a share of the available water*
- *Are **issued separately from the approvals to construct water supply works and the approvals to use the water [eg Delivery Entitlements(DEs)***
- *Are listed on the Water Access Licence Register administered by Department of Lands*
- *Are **tied to the rules in a water sharing plan**.*[including *Murray Darling Basin Agreement]*

Understanding your water rights fact sheets informs us;-

*Water Entitlements- **your valuable asset*** [our asset not MIL's]

Protect your asset – As with all assets, you are responsible for its ongoing management and maintenance By following some basic steps you can protect the value of your water entitlement;

- *Ensure that you keep your Water Access Licence Certificate in a **safe place.***
- *Remember it has **similar legal standing to title for land and may be held by a mortgagee. It is a valuable document.***
- ***Seek legal advice** regarding the inclusion of your entitlement in important documents, **such as a will**.*

*Engage in practices that make the most of **your valuable asset** such as-*

- *participating in **efficiency programs***
- *reviewing your trading options, either temporary or permanent, to **maximize your commercial opportunities**[* Water Management Act 2000 Fact sheet]

Further to being informed by the NSW Government that WEs were **our valuable asset**, MIL in both our Constitution December 2007 and our Water Entitlements Contract (WEC) informed us that we were the **absolute owners** unless ordered by a Court of competent jurisdiction of the water entitlements and the delivery entitlements :- WEC cl 2.2.6 & cl 3A 2.2 and in Constitution cl 2.9 and then putting restrictions on something we own even according to the *Water Management Act* and when a farm was purchased or sold the contract included amount of MIL Shares, WEs and DEs.

We appreciate at last something may be getting done to rectify / improve water trading, as for far too long and after numerous inquiries water trading and misconduct of Irrigation Infrastructure Operators (IIO) has failed miserably.

Originally water trading was between irrigators, one irrigator who had too much water would trade to an irrigator who needed water for his crops. That is water trading should still be for not multiple big investors.

To achieve greater consistency across the basin, increase transparency, integrity and regain trust in the system, there needs to be an extensive investigation, audit or Royal Commission of all participants in water trading, including Water Brokers, all non landholder investors, including Government members, who hold Water Entitlements(WEs), and most importantly conduct of IIOs and in particular, in our case, Murray Irrigation Limited(MIL), but as Murrumbidgee Irrigation and all other IIOs a must, which up to now have not been accountable to any regulatory body.

For too many years there has been ineffective legislation, regulation, no accountability, enforcement or compliance activity of water trading or IIOs thus leading to abuse.

Current legislation and regulation is and has been ineffective as they are not always abided by and no one regulates this abuse.

Main issues

Independent Regulator and Regulations.

The findings of this inquiry should at the very least, find in favour of an independent NSW regulator or government body that all participants in water trading are required to answer to and a NSW independent body to regulate change and hold IIOs accountable for the misconduct that has been happening in these companies.

One umbrella. One set of regulations for all participants in trading, to suit all. Each IIO has own trading rules, these can be changed without notice to some members.

There needs to be transparency and integrity, a statutory regulator would provide that.

Public accessible Water Entitlement and Delivery Entitlement Registers

For complete transparency and integrity the introduction of an easy and accessible public water entitlement register and delivery entitlement register, (the recent NSW Bill failed, MIL, MIA, Coleambly, wrote submissions against such a register and it appears none of the IIOs even consulted their members.)

One reason it failed was the privacy of farmers had to be protected, but IIOs Share Registers which have names and addresses is freely available to the public, so not a valid reason. [one company who put in a submission already has WEs on the Share Register] If there has been no impropriety then why would IIOs or government members vote against a public register. What did these objectors have to hide? Was the fear that it would expose just how much water is owned by government members, private or overseas investors and not irrigators that the water is for.

Register is needed so as to avoid those in position ability to abuse the system.

As water and delivery entitlements are tradeable commodities, and as Share Registers are freely available so should the WEs and DEs registers.

A single common digital register with both water entitlements and delivery entitlements would provide water market information in a speedy manner and would provide complete transparency.

If introducing digital technology, consideration should be given to the fact not every irrigator is techno savvy, so it should be simple and easy to navigate so all members can benefit.

Return Water to Land

The government needs to buy back the water from investors and reallocate to irrigators, NSW Governments had no qualms about voluntary contribution in 2002 for the environment so this should not be a problem.

Put the water back where it belongs. Investors have caused distortion in the market escalating the price regardless of the detriment to irrigators, water is essential for the financial survival of their livelihood.

Returning water to the land thus,eliminating investors, would help eliminate a lot of the misconduct, abuse, impropriety, inequity, greed, lack of transparency, accountability, market manipulation and insider trading. [Some may say how can the water be brought back but shares in Ricegrowers and Murray Goulburn and both brought back the shares whether you wanted to sell or not]. Water trading should only be between irrigators. In hindsight separating water from land was a mistake but this can be rectified.

2002 Voluntary Contribution

Investigate and rectify the 2002 'voluntary contribution'(VC) to NSW government for environment, that is still being taken today and irrigators have been and are still paying annual government fees and delivery entitlement(DEs) annual access fee on this VC water they are not getting.
Irrigators reluctantly agreed to this VC across the Murray and Murrumbidgee Valleys to a percentage [Murray Valley 10% of General Security and 3% of High Security and from the Murrumbidgee 15% of General and 5% of High Security] their entitlements, for review in one year and then a further 5 year review, and has no review. Where is the transparency and accountability.

These WEs have been confiscated with no compensation contrary to *WATER MANAGEMENT ACT 2000* Sect 79 and *Water Act 2007 Section 254*, irrigators are entitled to compensation.

2009 MIL 17% confiscation of Water Entitlements and other IIO who confiscated Water Entitlements

Investigate the legality and rectify compulsory acquisition by MIL on 1 July 2009 MIL [and other IIOs] of 17% of members WEs and DEs [our valuable assets.] On the 30 June 2009 an irrigator could have 1000 WEs mortgaged to the bank then on 1 July 2009 only had 830 WEs mortgaged to the bank, contrary to the *Water Management Act* that informs irrigators are the legal owners of WEs and can mortgage , lease or sell and to treat like a title of land. Acres, WEs, DEs and Shares are included in all contracts of sale when a farm is purchased or sold. How can MIL just take 17%? These WEs have been confiscated with no compensation Contrary to *WATER ACT* 2007 Sect 255. The Act does not authorise compulsory acquisition.
MIL confiscated equal number of WEs and DEs.
Taking 17% caused devaluing of his assets with the bank over night without any option.

Not only devaluing assets, but a huge financial loss of not being able to use this water on his property for stock or crops, unable to trade, sell, lease or mortgage these WEs.

A total of 27% of irrigators WEs which were allocated, by the NSW Government, in 1995 have been confiscated against their will. We ask you to investigate the legality of this compulsory acquisition of irrigators WEs. Findings should be back dated and all WEs and DEs and/or financial restitution made

MIL in April 2008, for a 15 month period, forced some irrigators to compulsory surrender their DEs [given for nothing June 2007] and to pay $332.65 per DEs when selling their WEs to the governments. This forced compulsory surrender policy denied some irrigators financially the right to access efficiency water and trading the DEs

Investigation into annual carryover water and parking practices.

Carry over and parking policies- why can't all water be carried over to the next season why is it cut by 50%. What happens to this confiscated water by MIL?

Members who are in the know and with the financial ability, can 'park' their carry over till the next season, for a fee and then return to their landholding at the start of the season and have lost nothing . These members have a jump start on those irrigators that have be penalised at the end of season if he has not used all the allocation then MIL take 50% of the balance. This creates unfair competition and inequity. Benefitting some members over others.

Improvement in the trade process and market transparency should be made as soon as practically possible, for far too long there has been no accountability , no transparency and no harmonisation across the Basin.

Current legislation and regulation is and has been ineffective as they are not always abided by and no one regulates this abuse.

Irrigation Infrastructure Operators

We ask that under TOR (e) other related matters that Irrigation Infrastructure Operators conduct be investigated, to make them accountable, to bring them into line with what they are actually there for and prevent them for riding roughshod over their family irrigation members. There are so many differing issues that need to be addressed [these issues referring to MIL have been provide in our Part B submission]

Fully investigate and audit IIOs and all irrigators who have suffered, restitution paid and members should be returned to the same position so all members are on a level playing field and those who suffered adverse financially, unfair trading, inequity, abuse of power, denied fair competition and discriminated against over the years of IIOs lack of accountability, of ignoring any relevant industry codes and not having to answer to anyone, and just making up the rules as they go along regardless of being contrary to their Constitution, Water Contracts, the rules of the *Water Management Act 2000, Water Act 2007*, the *Competition and Consumer Act 2010* (previously the *Trade Practices Act 1974*), *NWI* or the *Murray Darling Basin Agreement*, of which IIOs are required to abide

Alternative do away with IIOs altogether, due to their conduct and lack of accountability over the years , inadequate and selective communication to the irrigators, discrimination and not benefitting and treating all their members the same. Anything but the present system as it is not working, not transparent and not fair to all members.

IIOs do not own our Water Entitlements (WEs) yet policies they have brought in, they act as if they do. IIos have a monopoly over trading and members have had no option to follow the policies otherwise IIOs

prevent them from selling their WEs and would not transfer their sales.

All IIOs Boards should consist of 50% members and 50% non-members, this would assist to eliminate conflict of interest, impropriety , insider trading and directors voting on policies that are in their interest. Directors should only be allowed to sit for two terms of office.

IIO should not be water brokers or allowed to trade water, or have water, their governance is to deliver the water and they should deal with improving delivery. Any water IIOs have should be returned to the members. No accountability or transparency to what water IIos have and what they do with them.

Due to IIOs conduct, take trade totally away from IIOs this would eliminate, and prevent any market manipulation, conflict of interest, impropriety, insider trading, oppressive behavior, discrimination, and lack of transparency.

An independent regulator and regulations would prevent IIOs from introducing policies that benefit some members and not others.

IIOs should be required to provide to public access to registers for temporary and permanent trades, within, out and into their networks. There should also for complete transparency be a Delivery Entitlements (DEs) register, as trading occurs on DEs and they are a valuable asset what with the water efficiency allocation.

This is Submission Part A and Part B will follow

Joy Boucher, Narelle Pratt and Jamie Park

1 July 2022