

INQUIRY INTO STATUS OF WATER TRADING IN NEW SOUTH WALES

Organisation: Southern Riverina Irrigators

Date Received: 9 September 2022

Delivery entitlements issue

On 16 August 2022, Joy Boucher appeared before the Select Committee Inquiry into the Status on Water Trading in NSW.

Ms Boucher made several statements regarding the conduct of Murray Irrigation Limited (**MIL**) and its directors in 2009, including an allegation on insider trading and lack of transparency with respect to the process by MIL to change its policy (and remove delivery entitlements) from its shareholders.

The decision by MIL with respect to delivery entitlements (**DE's**) had several permutations which adversely impacted some shareholders, including Ms Boucher and Mr Park. Ms Boucher also stated that some people appeared to have knowledge of the changes prior to them being implemented and as such, they were able to alter their holdings and benefit from this.

Ms Boucher stated an independent regulator is urgently needed for transparency, accountability, efficiency, compliance, confidence and regular audits of water related activities.

SRI has long advocated for greater transparency and accountability. SRI supports a publicly available Water Register which publicly shows water trades and related activities.

Such infrastructure acts to disincentivise water brokers, irrigation infrastructure operators and other stakeholders from engaging in dubious conduct.

Questions and concerns about DE's, is not just limited to MIL. Another irrigation infrastructure operator, Murrumbidgee Irrigation (**MI**) have been queried by their shareholders about handing out DE's to various customers. For example, MI allowed its irrigation footprint to be expanded to incorporate what was previously a dryland property (Ballandry Station). The owners of the Ballandry Station "contributed" approximately \$6 million to the expansion of the main canal (which is estimated to have cost MI shareholders between \$15 - 20 million) and in exchange the owners of Ballandry Station received:

- A. Their property within the irrigation footprint and therefore up to four times more valuable; and
- B. 45,455 delivery entitlements.

The net benefit to the Ballandry Station was tens of millions of dollars – all subsidised by existing MI shareholders.

Historically, DE's were unattractive because they are a contractual obligation to pay fees to the irrigation infrastructure operator (**IIO**) for ten years. However, they have become quite valuable because they give the owner:

- i. Flow share in peak periods;
- ii. Allocation "enhancements" (i.e. a dividend in the form of water); and
- iii. Can be sold for a profit.

The DE's are so valuable, the Ballandry Station remains unconnected to the irrigation footprint yet still able to generate profits from the DEs by trading the enhancement water in dry periods.

MI do not inform its customers who owns DE's (and where), so other landholders are forced to buy more DE's to "protect" their flow share. When the system is expanded, landholders are required to act to protect their flow share or they are "diluted". There is also no ability to view who is utilising their delivery entitlements and the IIOs restrict the ability for customers to lease or share their delivery entitlements with neighbours.

Flow share is critical during peak periods such as a heat wave in mid-January. At these times most landholders require water at the same time and the system cannot meet these demands. Unlike river operators of the Murray River (who are from Government agencies and departments), the irrigation infrastructure operators will not send water over bank and breach their system constraints simply to meet user demands. This would be highly inefficient and as such, entitlement to flow share is determined by the volume of delivery entitlements the water user holds on the channel (which in turn is impacted by the flowshares of others on the channels further up in the system).

In light of this, as Ms Boucher presented to the Inquiry, a request for a transparent and publicly available register which would benefit all stakeholders. It would increase confidence and accountability for actions taken by Governments and IIO's. It will ensure greater integrity in the delivery of water orders (ie. in line with flow share entitlements etc) and allow landholders to plan better.

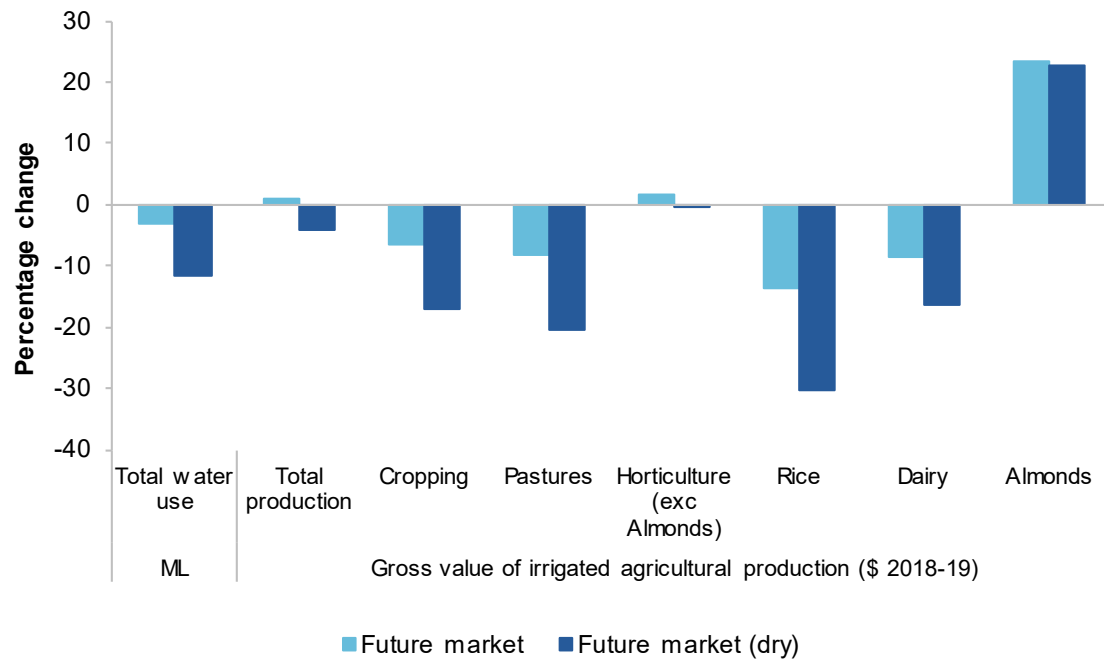
This level of transparency will also allow communities and governments to establish their own concept of "highest value use". The current position which only considers financial value was addressed by SRI in its original submission to the Inquiry where we stated, in summary:

The purpose behind the initiative to create a fully functioning water market was to enable the water to go to the highest value use – which has been interpreted to mean water going to the highest value crop. Currently, the greatest economic returns (at scale) are generally from almonds and cotton.

This Inquiry must recommend a review and reformulation of the concept of "value" to consider, amongst other things:

1. subsequent value adding processes such as processing, refining, packaging and transport;
2. national food security (we cannot survive on nuts and cotton);
3. water consumption (ie. incentivising maximum usage each year as opposed to encouraging carryover); and
4. creation of two speed economies which devastates local communities in regional areas – together with the inability to re-activate these industries and communities easily.

Figure 2.7 Changes in southern MDB production with lower water availability and use^a



^a Results for all scenarios are averages based on the historical climate sequence from 2005-06 to 2018-19 (a relatively dry period). The 'current market' scenario holds all water market drivers fixed at 2018-19 levels. The 'future market' scenario accounts for planned future water recovery measures and an increase in demand. The 'future market (dry)' scenario assumes a further 3 per cent decline in rainfall and 11 per cent decline in allocation volumes (water supply).

Source: Gupta et al. (2020, p. 19).

Correction of statements made by Chair

SRI would like the opportunity to respond to some of the statements made by the Chair of the Inquiry.

Firstly, the Chairman of SRI is Chris Brooks and on 26 July 2022 we wrote to the Inquiry to ask if Mr Brooks could give evidence. The Chair did not invite Mr Brooks and proceeded to make a series of statements which denied Mr Brooks any procedural fairness and an opportunity to respond. The statements carry many negative imputations and we request that the Chair repeat them in public, away from the protections of Parliamentary privilege.

In conduct unbecoming, the Chair reserved his questions for an employee of MIL with just six weeks at the company and no first-hand knowledge of the matters.

Secondly, the comments made by Ms Boucher about the conduct of MIL and its board members in 2007 had no relevance and/or connection to when Mr Brooks was a Board member of MIL a decade later.

Statement 1:

Between 2016 and 2017, a former director of Murray Irrigation breached his responsibilities as a director 28 times by leaking commercial or other sensitive company records in order to pursue personal vendettas or in attempts to profit from insider information.

This is false.

An allegation was raised to MIL which related to a director using the company email to send private emails on 28 occasions over a 24-month period. None of these emails:

- a. constituted a breach of director's responsibilities; and/or
- b. involved commercially sensitive information.

The MIL Board were the only recipients of the Deloitte report and we understand they agreed, for various reasons such as inaccurate information, responses from those involved and untruths contained therein, this information was invalid and not for public release. The person who provided the report to the Chair has likely breached their director's responsibilities to MIL and the Chair must table their copy of the report and advise how they procured this document. A failure to do so by the Chair without proper cause, means he endorses breaches of directors' duties and nefarious behaviour.

In other words, it is quite hypocritical for the Chair to feign concern about a directors' duty breach whilst he is an active party to publicly facilitating a breach of director's duty.

The Chair must not allow a faceless individual to cause the Chair to publicly besmirch the good character and standing of Chris Brooks by making false and defamatory allegations in a Public Inquiry. The Chair must reveal the identity of the source of these allegations to him.

Statement 2:

In a report to Murray Irrigation, Deloitte flagged with Murray Irrigation on 29 August 2016 that Chris Brooks sent an email to Graeme Pyle saying, "I really think we can screw this market to our advantage and take all the profits while bringing heaps of cheap water to the region." Are directors still in a position to crash the Murray Irrigation internal trading market?

Chris Brooks and Graeme Pyle deny the existence of any email to this effect. The email from the MIL email of Chris Brooks to Graeme Pyle on 31 May 2016 is attached in Annexure A.

One of the major focuses of SRI is to ensure the long-term sustainability of irrigation in the Murray Irrigation footprint. In 2016, Chris Brooks was a board member of MIL and Graeme Pyle was the chairman of SRI. It was a very wet year, and the stakeholders were exploring ways to hold onto excess water for the benefit of all SRI members and MIL shareholders.

Basic economic principles dictate more available water results in a reduction in price. It was also envisioned that this would increase usage in the footprint – which would benefit MIL shareholders and producers alike. Unless this Inquiry is of the view that artificially inflated prices for water is a good thing, the actions in attempting to secure a commercial arrangement with Snowy Hydro Limited for the benefit of the MIL bulk WAL did not involve “crashing” the market.

Furthermore, the NSW Department of Planning and Environment is currently conducting a feasibility study into the potential for stakeholders to access this reverse-borrow. Therefore, contrary to the misrepresentation of the Chair of the Inquiry, the foresight and ingenuity of Chris Brooks is to be commended and applauded as it may lead to better outcomes for the Murray Valley.

Statement 3:

At a 2017 board meeting of Murray Irrigation, a paper entitled "Snowy Hydro: Carryover product" was tabled for discussion. This paper stated that Chris Brooks and another director were attempting to personally profit from the use of commercially sensitive internal board information. This was done by falsely presenting these requests as coming from the board.

Chris Brooks approached Snowy Hydro on behalf of MIL. This was agreed to by the CEO of MIL who was in full knowledge of the engagement.

We call for the paper referred to by the Chair to be tabled. At the very least, the Chair should explain why he will not table this document.

All MIL shareholders hold their water on the MIL bulk WAL. The carryover proposal with Snowy Hydro involved the use of the bulk WAL and not individual licences. It is not possible for individuals to personally profit from the transactions. All benefits and profits are shared equally between shareholders of MIL.

Statement 4:

It's of great concern to us that we are still getting, even after—these investigations by Deloitte were instituted in 2016-17, and yet we are still getting questions and complaints from irrigators here this morning in relation to the behaviour and patterns of Murray Irrigation Ltd. Does that worry you in any way—five years later, people are still complaining? Has anything changed?

Ms Boucher and Mr Park made complaints about events which occurred 13 years prior in 2009. It is highly misleading for the Chair to represent that they referred to 2016/17 or thereafter. Although there is a united view that a publicly transparent water register will ensure confidence and integrity in the system, there has been no criticism about MIL's conduct and practices in recent years.

Attached at Annexure B is a letter from Ms Boucher confirming this point and highlighting her fear that the unwarranted personal attack of the Chair against Mr Brooks does not take away from the serious issues that she sought to bring attention to in her evidence to the Inquiry.

Statement 5:

The CHAIR: You are aware? Okay. So how can SRI be taken seriously when it does appear that you haven't lodged an annual return since 2018? Are you a representative body?

DARCY HARE: I can provide the evidence that we have lodged it since 2018.

The CHAIR: Well, it's not on the public register.

We have checked with the Department of Fair Trading and this is incorrect. We call on the Chair to explain the:

- a. basis of this misleading statement; and
- b. relevance to the Inquiry of the Status of Water Trading in NSW.

We confirm that all required documentation by Fair Trading for SRI has been submitted and is up to date.

Request for opportunity to give evidence to the Inquiry

In light of the statements made by the Inquiry Chair about Chris Brooks which unilaterally defamed his character in the absence of any procedural fairness, SRI requests an opportunity for Chris Brooks to appear before the Committee.

In the circumstances, Mr Brooks should be given the opportunity to respond to the allegations which have been made against him. We expect that this should not require more than thirty minutes.

We will await your prompt response.

ANNEXURE A

Email dated 31 May 2016 from

to

----- Forwarded message -----

From: **Chris Brooks**
Date: Tue, May 31, 2016 at 9:35 PM
Subject: Re: Visions!!
To: Graeme Pyle
Cc:

There are plenty of almond, cotton and corn growers turning over \$10 million each annually in the mil at present Graham.

As I said today, by my calcs, just the snowy borrow, of 200,000 megs, can gross the region up to \$1.4 Billion and we what we need to do is complete a realistic economic survey to do a massive analysis on the entire dollar value earning capacity of the MIL footprint including all the flow-on capacity for storage cartage and wages food packaging etc If IF we only had a permanent and full allocation?

It could be multiple \$billions and needs to be put to politicians with some confidence that it would be at least 1 percentage point of total GDP, (which I think is \$14 billion / 1%)

For eg,

AG total contribution to GDP is presently \$8.8 billion in total.

A simple pipe dream of mine is a very achievable full allocation of 100% water allocation to MIL growers.

This would mean 750,000 ha of fully irrigated production.

I know the minimum gross would be \$1000/ ha, which we are presently doing with just cereal crops, but plenty doing \$2000 / ha and inc some almond farms that yield \$60k/ ha and fruit at \$100k/ ha, it is not inconceivable to have better developed farms averaging at least \$2000/ ha. This would be a total gross income direct from farms of \$1.5 Billion annually which is 20% increase in annual National AG GDP increase!

If we could apply a multiple figure to justify flow on community income of say 7x for eg - then we are at \$10.5 Billion and knocking on the door of 1% GDP increase which really attracts the attention of politicians when the entire country is struggling to make 2%???

Sorry to bore you to death with no,s - but this sort of economic date must be produced by grad students or equivalent to use in future lobby work. MIL will have to fund this survey.

Chris Brooks

> On 31 May 2016, at 2:07 PM, Graeme Pyle

wrote:

>
> Hello,
> Recently I met a bloke with an orchard from Shep. He bought clover seed off me.
>
> He said he grew pome fruit and exported it all over the world and particularly Canada .
>
> He employs a minimum of 120 staff and during harvest ,goes up to 300. He's not happy about the backpacker tax!!!
>
> He runs about 400 acres of orchards. 1 hectare can produce 80 tonnes of fruit valued at \$1250 per tonne, gross.(\$100k/h) It takes 7 megs of irrigation water to do this.
>
> This is a massive productive unit! I asked him if anybody else does this sort of thing and he reckoned about 15 families have a similar crack, around Shep.
>
> Rennies potato farm near Toc ,produces 22,000 tonnes of produce for Korea.
>
> Very few people know anything about all this production, they just shut up and get on with it...
>
> Now, in your vision thing, just imagine what would happen if we encouraged people to come to our districts and grow produce like this.
>
> We have a few issues to sort and we know how to sort them!.
>
> We need the premier and treasurer to know about these visions....
>
> here's to splendid visions!
> Graeme Pyle
>
>
>

ANNEXURE B

Email dated 29 August 2022 from Joy Boucher to Chris Brooks

Begin forwarded message:

From: Neville
Date: 29 August 2022 at 11:56:59 am AEST
To:
Cc:
Subject:

TO CHRIS

As you have requested, I have enclosed copy of email sent to the inquiry and separately to all committee members, so as to clarify that your name was not mentioned in my evidence or our submissions Part A and Part B.

Albeit I do not think it was warranted as you seem to be the only person who has connected me with the comments made by Mr Borsak about you. By submitting this letter I hope that what ever issues between you and Mr Borsak does not harm or have adverse effect on our the issues.

Regards

Joy Boucher

SELECT COMMITTEE ON STATUS OF WATER TRADING IN NEW SOUTH WALES

To the Chair , Deputy Chair and all Committee Members

I am writing to correct a statement I made when giving evidence on Tuesday 16 August 2022.

I said that 1 in 10 farmers commit suicide but I meant to say that 1 farmer every 10 days commits suicide. [Study at the Australian Rural and Remote Mental Health Symposium November 2021]

I apologise for the mistake.

Also for clarity sake and so there is no misunderstanding or confusion, the name of Chris Brooks was not mentioned in my evidence on 16 August 2022 or in our submissions Part A or Part B on 3 July 2022.

When referring to Murray Irrigation Limited Directors, he was not a director at time of issues referred to.

Regards

Joy Boucher