

Growing opportunity - water and beyond.

7 June 2013

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Manager  
Capital Markets Unit  
Corporations and Capital Markets Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Sir or Madam

**Submission on Exposure Draft of Corporations Amendment (Water Trading Exemptions) Regulation 2013 (Cth) (Regulation)**

We refer to the Exposure Draft of the Regulation and make the following submissions. We agree with the intention of the Regulation, as expressed in the Explanatory Memorandum, to cover "*all tradeable water rights and derivative contracts*", and our submissions are directed to clarifying the drafting to ensure that it covers arrangements which are intended to be covered.

**1 Distinction between primary issue and secondary market for irrigation rights**

An irrigation right is a contractual right held by a person against an irrigation infrastructure operator. It is a chose in action against the operator. In that sense, the holder of an irrigation right is analogous to a shareholder in a company: a share is a chose in action against the company.

A person may obtain shares by subscribing for them directly from the company, or by buying them on the secondary market.

Similarly with shares, a person may obtain irrigation rights either by:

- (1) being issued them by an irrigation infrastructure operator; or
- (2) buying them from another person.

For example, a person who holds a water access right, who wishes to commence farming operations in an irrigation infrastructure operator's area of operations, could consider doing the following:

- (1) transferring their water access right to the irrigation infrastructure operator; and then
- (2) being issued a corresponding irrigation right by the irrigation infrastructure operator.

**2 Clarification of terminology in the draft Regulation**

7 June 2013

Sub-paragraph (8)(a)(i) of the draft Regulation applies to an obligation to “sell” tradeable water rights. This will apply to a sale of irrigation rights on the secondary market, but may not necessarily be interpreted to apply to a primary issue of irrigation rights.

Sub-paragraph (8)(a)(ii), in the context of transformation arrangements, applies to water access entitlement that is “*granted, issued or authorised*”. In our view, similar terminology should be used in sub-paragraph (8)(a)(i), so that it captures primary issues of irrigation rights, as well as the sale of irrigation rights on the secondary market. As a corollary, the first line of sub-paragraph (8)(a)(ii) should also be expressed to cover primary issues of irrigation rights, as well as an obligation to “buy” irrigation rights on the secondary market.

### 3 Recommended amendments

Our recommended amendments to sub-paragraphs (8)(b)(i) and (ii) of the draft Regulation are shown marked-up in the Schedule to this letter.

### 4 Reference to “the rules”

Sub-paragraph (8)(b)(iv) seems to assume that the arrangement in question will be governed by the rules of a licensed market or a licensed CS facility. Many transactions affecting tradeable water rights are not conducted on a licensed market or a licensed CS facility. Therefore, the words “*if applicable*” should be included after the reference to “*the rules*”.

We look forward to the publication of a revised draft Regulation.

Yours faithfully



Raveen Jaduram  
Chief Executive Officer  
Murrumbidgee Irrigation Limited

## Schedule - recommended amendments to sub-regulation (8)(b)

- (b) an arrangement in relation to which:
  - (i) a party has, or may have, an obligation to sell, grant, issue or authorise tradeable water rights on a future date; and
  - (ii) another party has, or may have, an obligation to buy, or a right to be granted, issued or authorised, the tradeable water rights, or a water access entitlement that is granted, issued or authorised as a result of transformation arrangements described in subsection 97(1) of the *Water Act 2007*, on a future date; and