



## NSW IRRIGATORS' COUNCIL

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## **Gwydir Valley Irrigators Association Inc.**

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458 Frome St, PO Box 1451, Moree NSW 2400

# Gwydir Valley Irrigators Association Inc In conjunction with the NSW Irrigators' Council

Submission to the  
Senate Standing Committee on Economics  
inquiry into the

Provisions of the Tax Laws Amendment  
(2007 Measures No.5) Bill 2007

## August 2007

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**Member Organisations of NSW Irrigators' Council:** Bega Cooperative Limited, Border Rivers Food & Fibre, Coleambally Irrigation Co-Op Ltd, Cotton Australia, Gwydir Valley Irrigators' Association Inc., Hunter Valley Water Users' Association, Lachlan Valley Water, Macquarie River Food & Fibre, Murray Irrigation Limited, Mungindi-Menindee Advisory Council; Murray Valley Water Diverters' Association, Murrumbidgee Groundwater Preservation Association, Murrumbidgee Horticultural Council Inc., Murrumbidgee Irrigation Ltd, Murrumbidgee Private Irrigators' Inc., Namoi Water, NSW Farmers' Dairy Committee, NSW Farmers' Association, Ricegrowers' Association of Australia, Richmond Wilson Combined Water Users Association, Riverina Citrus, Southern Riverina Irrigators, South Western Water Users', West Corugan Private Irrigation District, Wine Grapes Marketing Board.

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Gwydir Valley Irrigators Association Inc  
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# Gwydir Valley Irrigators Association Inc.

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458 Frome St, PO Box 1451, Moree NSW 2400

24-8-2007

The Secretary,  
Senate Standing Committee on Economics,  
PO Box 6100,  
Parliament House,  
Canberra, ACT, 2600

Dear Sir/Madam,

The NSW Irrigators Council and the Gwydir Valley Irrigators Association (GVIA) welcomes the opportunity to contribute to the Senate Standing Committee on Economics inquiry into the "*Provisions of the Tax Laws Amendment (2007 Measures No.5) Bill 2007*". GVIA has a particular interest in Schedule 7 dealing with the provisions concerning the partial capital gains tax roll-over for statutory licences.

GVIA is a voluntary organisation representing the interests of irrigation licence holders in the Gwydir Valley of North-West NSW. The organisation's members hold irrigation entitlements from a range of sources including regulated and unregulated rivers and groundwater. GVIA is a member of the peak NSW industry body; NSW Irrigators Council. Membership of NSW Irrigators Council is shown in [Attachment A](#).

**Background:** NSW has been in the process of replacing water licences granted under the 1912 Water Act, with Water Access Licences (WALs), Water Works Approvals and Use Approvals under the Water Management Act 2000.

The issuing of the first Water Access Licences followed the commencement of a number of Water Sharing Plans across NSW on July 1, 2004. These water access licences related to surface water sources. On extinguishing the 1912 Water Act licences and issuing the Water Management Act 2000 Water Access Licences and approval full rollover for Capital Gains Tax purposes was granted under Subdivision 124-140 of the ITAA. In these circumstances the old licence was replaced with a new licence or licences, and there was no payment involved of any kind.

With groundwater, the extinguishment of the Water Act 1912 licences and replacement with Water Management Act WALs has occurred within the framework of the Achieving Sustainable Groundwater Entitlements (ASGE) programme.

Under this programme the amount of groundwater entitlement issued in the six major NSW irrigation groundwater aquifer sources was substantially reduced, so that the total entitlement issued under the Water Management Act 2000 equalled the aquifers' sustainable yield.

An entitlement holder's new and reduced entitlement was calculated using a formula that provided a weighting based on the previous entitlement size and a weighting based on the entitlement holder's history of use. The weighting used varied valley-to-valley.

An integral part of the programme was a state-wide funding package of a \$110 million (plus a nominal 1/3 contribution by entitlement holders). The \$110 million was contributed equally by the

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State and Federal government, with \$100 million earmarked to make ex-gratia payments to entitlement holders in recognition of the reduction of their entitlement, \$9 million to fund community development projects and \$ 1 million for programme administration.

On June 8 this year the Federal government announced it would contribute an additional \$25 million, bring the total available for payment to entitlement holders to \$125 million.

Entitlement holders' eligibility to funding was also calculated using a formula based on market value of their old licence, the market value of their new licence, and the amount of actively used water they would no longer have access to. Therefore there was no single value used for each megalitre of lost entitlement.

The programme recognised that groundwater values varied significantly from groundwater source to groundwater source, and to provide a consistent framework the programme undertook a state wide valuation exercise. The values determined by this process are the 2002 values referred to in the bill.

The implementation of Groundwater Water Sharing Plans for the six aquifers commenced on October 1, 2006, with the Lower Gwydir and Lower Macquarie plans, these were followed with plans for the Namoi, Lower Murrumbidgee and Lower Murray commencing on November 1. The plan for the Lower Lachlan was implemented only recently.

However, as of August 24, 2007, no payments had been made to eligible entitlement holders.

The position of the NSW irrigation industry has been that the payments should be treated as capital in nature, because they were being made in recognition of the reduction in a capital asset (the water licence).

The capital nature was confirmed in a draft Australian Tax Office class ruling requested by the NSW Department of Natural Resources, which confirmed the payments would not be income according to ordinary concepts or a bounty or subsidy.

However, in general terms the ruling also showed that:

1. the roll-over provisions granted under Subdivision 124-140, only applied if the old 1912 Water Act was replaced with, and only with a WMA 2000 WAL.
2. If an ex-gratia payment was also being made, not only would roll-over relief not apply, but a C2 event would occur under Section 104-25.

It was estimated by work conducted by the NSW Department of Natural Resources that the application of Section 104-25 would have resulted in a total capital gains tax liability, after tacking into account pre-September 1985 exemption, and utilisation of various CGT discounts, of approximately \$130 million, triggered by programme payments totalling just \$110 million.

In some cases individual capital gains tax liability would have exceeded many times the ex-gratia payment received.

**Action Taken:** Following the draft ruling, NSW Irrigators Council commissioned its own legal and financial advice and commenced lobbying of the Federal Government to encourage it to amend the taxation legislation so as to allow partial roll-over where ex-gratia payments were also received when statutory licences are replaced.

Following the Federal Government's June 8 announcement of additional funding, and a preparedness to amend the taxation legislation to allow partial roll-over, NSW Irrigators Council engaged leading accounting firm KPMG to assist in drafting suitable legislative amendments.

These suggested amendments were presented to the Federal Treasury.

Following the preparation of government's amendments, NSW Irrigators Council, GVIA, and KPMG were officially invited to participate in community consultation on the amendments.

Neither NSW Irrigators Council nor GVIA have taxation law expertise, but following advice from KPMG, both bodies are satisfied that the amendments as presented will result in an equitable taxation treatment of licences and ex-gratia payments made under the ASGE program.

It should be remembered:

1. participation in the ASGE program by entitlement holders was never voluntary.
2. the value of the ex-gratia payments did not reflect full market value for the entitlements lost to government.

**Outstanding Issue:** Advice to date suggests the C2 Capital Gains Tax event occurred on the day the old licences were extinguished and the new licences issued. This has occurred variously on the 1-10-2007, the 1-11-2007 and in the Lower Lachlan more recently.

Despite this, no Letters of Offer have been issued, or payments under the ASGE programme have been made. The NSW irrigation industry strongly argues that the C2 transaction date should be the day the Letter of Offer is accepted by the entitlement holder, in affect finalising an agreement with the NSW government.

While there is an obvious relationship between the ex gratia payments and the extinguishment and replacement of licences, it is also a two-stage process, and it appears unjust that the C2 event is deemed to occur when only the first stage of the process has occurred.

NSWIC and GVIA call on the senate to further amend the legislation in a manner that would deem the C2 event occurring when the Letter of Offer is received.

Without this you will see an inequity in the ASGE programme with entitlement holders in the Lower Lachlan being able to avail themselves of the enhanced CGT Small Business Concessions, while entitlement holders in the other groundwater sources will be denied this opportunity, yet both groups will become entitled to the payments in the same financial year.

Prepared and signed on behalf of the NSW Irrigators Council,



Michael Murray,  
CEO,  
GVIA  
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## ATTACHMENT A

Bega Cooperative Society Limited  
Border Rivers Food and Fibre  
Coleambally Irrigation Co-operative Limited  
Cotton Australia  
Gwydir Valley Irrigators Association Inc.  
Hunter Valley Water Users Association  
Lachlan Valley Water  
Macquarie River Food and Fibre  
Mungindi Menindee Advisory Council  
Murray Irrigation Ltd  
Murray Valley Water Diverters Advisory Association  
Murray Valley Groundwater Users' Association  
Murrumbidgee Groundwater Pumpers' Association  
Murrumbidgee Horticulture Council Inc.  
Murrumbidgee Irrigation Ltd  
Murrumbidgee Private Irrigators' Inc.  
Namoi Water  
NSW Farmers' Association Dairy Section  
NSW Farmers' Association  
Ricegrowers' Association of Australia  
Richmond Wilson Combined Water Users Association  
Riverina Citrus  
Southern Riverina Irrigators  
South Western Water Users  
West Corugan Private Irrigation District  
Wine Grapes Marketing Board