

Achieving Sustainable Groundwater Entitlements (ASGE)

The Achieving Sustainable Groundwater Entitlements (ASGE) program was announced in June 2005. The program was set out to help ground water users in the Upper and Lower Namoi, Lower Macquarie, Lower Lachlan, Lower Murray, Lower Gwydir and Lower Murrumbidgee groundwater sources manage the reduction in their entitlements.

The ASGE program was jointly funded by the Commonwealth and NSW Governments. The program aimed to reduce the use of groundwater in each aquifer to a sustainable level. Initially, there was to be no compensation. After approaches from NSWIC and others, the Commonwealth and NSW Governments invested equal amounts totalling \$120m. A further \$9m was set aside for Community Development Funding (CDF).

Each aquifer in these areas was studied to determine its sustainable yield¹. Each showed that there needed to be a reduction. The question, then, was how the reduction would be achieved and on what basis compensation would be distributed.

There were two options to reduce licenses – an across the board cut to all licenses or a cut based on history of use. We understand that the then NSW Minister for Water was in Northern NSW observing two farms. One of those farms was actively using their license whilst the other was not. The Ministers response, allegedly, was that he wanted to ensure the farmer using the water, rather than the farmer who had a “sleeper” license, was supported.

The reductions were therefore made on the basis of history of use. The less you used of your license, the more it was cut.

This however did not suit everyone and has been the basis for several legal challenges. In particular, irrigators in the Murray valley with groundwater licenses were unhappy (and remain so). These irrigators state that many of them spent hundreds of thousands of dollars installing groundwater extraction and reticulation systems as *drought backup*. That is, they relied on surface water as their primary source but installed groundwater in the event that they couldn't access their primary source. History of use, therefore, treated them badly as they hadn't used very much prior to the commencement of the current drought.

With the reductions made, formulae that differed between valleys were determined to share the compensation funds within the valley. A previous determination had been made as to how much

¹ The proportion of the recharge which can be extracted each year having considered the socio-economic, environmental factors and the long-term sustainability of the resource is the sustainable yield.

funding would be directed to each valley – this determination was on how it would be shared within the valley.

Challenges that are underway at the moment go to the value of the compensation paid. There is no dispute that the compensation paid was well below market value. The challenge, then, is that a property right was taken away without the *just terms* compensation that the Constitution requires. Of interest here is how the reduction was achieved – it wasn't simply a drop in yield (e.g. you now only get 50% of your license), it was in fact a reduction in license (e.g. you had 100 megs and now you only have a license for 70). Had it been the former, the High Court would most likely have said that no property was compulsorily acquired.

Further debate has ensued in respect of the Community Development Funding, or CDF. A panel was formed to consider applications from across NSW. That panel recommended a range of projects to a total commitment of \$9m. The NSW Government, who were to provide 50% of the funding, announced the approval of those projects. An election occurred at a Commonwealth level with a change in Government. The incoming Government reassessed all projects and determined that only those that fit the criteria under the Water for the Future program would be funded. This excluded a number of CDF projects, as a new element of a requirement for water savings was effectively injected.

Once those projects that were still eligible had been funded, some \$2.6m was left over - \$1.3m each from the Commonwealth and NSW Governments. The Commonwealth has claimed that their \$1.3m has been diverted to a groundwater study in the Namoi Valley and has encouraged NSW to do the same.

NSWIC does not deny the usefulness of the study, but denies that it fits the criteria of Community Development Funding. The NSW Government has not, to date, committed either way.