



NSW IRRIGATORS' COUNCIL

MEDIA RELEASE

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Irrigators Wary of High Court Decision

The NSW Irrigators Council has responded warily to a decision handed down today by the High Court which makes comment on water as a property right.

Commenting on the decision in *ICM Agriculture v The Commonwealth* (full decision available at <http://www.austlii.edu.au/au/cases/cth/HCA/2009/51.html>). Council Chief Executive Andrew Gregson noted that the concept of water entitlements as a property right underpinned the industry of irrigated agriculture.

“Whilst irrigators recognise the necessity for change toward a sustainable future, it is important that the fundamental basis of our industry – water as a property right – is recognised and protected.

“Water licenses form a very large part of the asset base of an irrigation business. Water as a property right is the foundation on which the business is based. They are critical to the existence and survival of that business.

Mr Gregson noted that the High Court had determined that cancellation of a water entitlement does not, in the absence of benefit to the State that cancelled that entitlement, trigger compensation under the Constitution. He further noted that the property right has been clarified as statutory and hence subject to changes in that statute.

“This decision calls into stark focus the process of Risk Assignment should reductions be required under the Basin Plan. Risk Assignment was first recognised in the National Water Initiative and enshrined in the *Water Act*, but there is still no clear understanding of how it will be rolled out. The Commonwealth needs to ensure that this process is clarified – in conjunction with stakeholders – as a matter of urgency.

“The decision should also focus the minds of State Governments, including NSW, to ensure that they do not affect the property right of irrigators by tinkering at the edges of the statutes (the *Water Management Act* in NSW) that underpin the property right.”

ENDS

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