



A 'WIN' FOR LOWER BALONNE WATER USERS

Munya Lake Decision Handed Down



March | 2010

A much anticipated decision about the validity of the terms of the draft water Resource Operations Plan for the Lower Balonne Catchment was handed down by the Supreme Court on 3 March 2010, meaning the deferred Resource Operations Plan may soon be finalised.

Background

The State Government has had water management and allocation in the Condamine-Balonne River systems under consideration since at least June 2000 with its release of a much criticised draft Water Allocation Management Plan.

After extensive consultation, in 2004 the State Government released the *Water Resource (Condamine and Balonne) Plan (WRP)* and proceeded to prepare a Resource Operations Plan (**ROP**) to give effect to the WRP in terms of water allocations, entitlements and licences.

In April 2007, the draft ROP for the Condamine and Balonne was released.

The Munya Lake Entities (including members of the Graham family) took issue with the water allocations in the draft ROP granted to their Kia Ora property holdings around St George and commenced proceedings for a statutory order of review against the Chief Executive of the (then) Department of Natural Resources and Water in November 2007.

Essentially the Munya Lake Entities considered the volumetric storage limits and overland flow rate allocated to the Kia Ora aggregation in the draft ROP were less than they should have been if the decisions of the Chief Executive were properly made.

Munya Lakes' action effectively derailed the ROP process, at least as it related to the Lower Balonne catchment area. While the Government finalised the ROP for the rest of the Condamine catchment in December 2008, the provisions relating to the Lower Balonne were deferred pending resolution of the Munya Lakes' proceedings.

The Decision

On 3 March 2010 Justice White of the Supreme Court delivered her decision in the action.

The Judge found that despite the Munya Lake Entities not agreeing with some of the decisions the Department made in drafting the ROP, they were unable to identify any failure to take into account any relevant material or information which may have changed the decision. Further, other technical challenges to the decisions involved in drafting and preparing the ROP (such as jurisdiction and the lack of personal involvement of the Chief Executive) were also dismissed.

Implications of the Decision

The Lower Balonne is the only major catchment in the Murray Darling Basin that does not have secure tradable water rights. Subject to the decision not being appealed, the ROP for the Lower Balonne can now be finalised with the result that landowners in the region will be able to participate in the Commonwealth Government's water buyback program.

The decision is also important for the scheduled release by the Commonwealth Government of the draft plan for the whole Murray-Darling Basin in mid 2010.

MacDonnells Law Agribusiness and your Water Rights

MacDonnells Law has been closely following the Munya Lake case since it first commenced, and maintains an interest in matters affecting water rights, management and allocations and how they can affect you and your business.

If you have any further questions on this decision or its implications, you can contact Brian Healey at MacDonnells Law on the details below.

Contact Details



Brian Healey
Partner - Brisbane
P 07 3031 9745
E bhealey@macdonnells.com.au



Danyelle Kelson
Senior Associate - Brisbane
P 07 3031 9718
E dkelson@macdonnells.com.au



Jade Gesell
Law Graduate - Brisbane
P 07 3031 9823
E jgesell@macdonnells.com.au

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BRISBANE

Level 14 BOQ Centre 259 Queen Street Brisbane QLD 4000 | GPO Box 79 Brisbane QLD 4001

P 07 3031 9700 | F 07 3031 9799 | E email@macdonnells.com.au

CAIRNS

Cnr Shields and Grafton Streets Cairns QLD 4870 | PO Box 5046 Cairns QLD 4870

P 07 4030 0600 | F 07 4030 0699 | E email@macdonnells.com.au

TOWNSVILLE

Level One 131 Denham Street Townsville QLD 4810 | PO Box 1015 Townsville QLD 4810

P 07 4722 0220 | F 07 4772 5635 | E email@macdonnells.com.au

www.macdonnells.com.au