

STATEMENT OF DECISION AND REASONS CONCERNING THE APPLICATION FOR DECLARATION OF WATER STORAGE AND WATER TRANSPORT SERVICES PROVIDED BY SNOWY HYDRO LTD AND STATE WATER

DECISION

In October 2004, Lakes R Us made an application to the National Competition Council (Council) under Part IIIA of the *Trades Practices Act 1974* (the Act) for a declaration of water storage and transport services provided by Snowy Hydro Ltd and State Water.

Lakes R Us is a venture company established specifically to manage what it classifies as unused water allocation in the Snowy Scheme. It proposes to do this by using the excess storage capacity of several Snowy Hydro facilities, to store up to 800 000 megalitres of water sourced from savings made by downstream entitlement holders. Lakes R Us seeks to store the unused water in the Snowy Hydro facilities by swapping it with water that would otherwise be released.

I note in the Council's final recommendation that it considered 'water transport service' as a 'water release service', as the water in the Snowy System mostly moves by gravity along natural watercourses.

On 10 November 2005, as the designated Minister for the purpose of decision making under Part IIIA of the Act, I received the final recommendation from the Council. As prescribed by the Act I have considered whether it would be economical for anyone to develop a facility for part of the service (s.44H(2)), assessed the application against the declaration criteria in the Act (s.44H(4)), as well as the principles in the Competition Principles Agreement (s.44H(5)).

Following consideration of the Lakes R Us proposal and the Council's report, I consider that access to the water storage and release service of Snowy Hydro Ltd and access to the water storage and release service of State Water should not be declared.

REASONS

I agree with the Council's recommendation that the application does not satisfy the criteria for declaration in that declaration would not promote competition in a dependent market and would be contrary to the public interest.

The promotion of competition test

I believe there is little opportunity for, and significant constraints to Snowy Hydro Ltd and State Water exercising market power in dependent markets as their ability to lend and sell water is highly constrained by the regulatory environment in which they operate. There are many regulatory instruments that control and manage the rights to water, including *Water Management Act 2000*, *Snowy Hydro Corporatisation Act 1997*, *State Water Corporatisation Act 2004*, Murray-Darling Basin Agreement, Blowering Airspace Agreement and at least three water sharing plans.

In order to provide Lakes R Us with access to the services, the Council considers that New South Wales would need to fundamentally change the nature and scope of property rights relating to water and would need to renegotiate intergovernmental agreements to clarify the water sharing arrangements for the Murray River.

These amendments would involve a fundamental recasting of the manner in which Australian jurisdictions have developed water management and access arrangements over the past decade under nationally agreed water reforms and, most recently, under the National Water Initiative.

The Council concluded that these changes would appear to go beyond those required to remove impediments to competition. I agree with the Council's recommendation regarding this criterion and that a declaration would not promote competition in at least one market.

The public interest test

To implement the Lakes R Us proposal would result in a number of parties being affected, in particular governments, water users and the environment.

As mentioned previously, the Lakes R Us proposal would involve a myriad of water related agreements to be amended. The feasibility of removing regulatory and other barriers to access need to be carefully considered. While accurate estimates are not available, I have a concern that there would be significant establishment costs associated with the extensive amendments that would be required to be made to the NSW legislation and the multitude of intergovernmental agreements that prevail over the Snowy Scheme. These costs would not only be borne by the NSW Government, but also the other governments involved in the arrangements.

As noted by State Water in the Council's report, "the water sharing plans, which result from the reform process in New South Wales, 'are the product and expression of an exhaustive and extensive consultative and collaborative process which engaged the various parts of the community.'" The current agreements represent the interests of the community and the stakeholders and are viewed as the best possible outcome for those involved. The costs of renegotiating these agreements would extend beyond governments to the community and other stakeholders.

The Council, and several submissions made to it, noted the impact on water users who choose not to take part in the Lakes R Us proposal. I agree with the Council's conclusions that these water users could be made worse off. One way this could occur is that the Lakes R Us proposal could reduce NSW's requirement for carryover water which, due to the current accounting rules of the Murray-Darling Basin Agreement, could reduce the water available to Victoria and its water users.

Several submissions asserted that a negative impact on the environment as a third party would be unavoidable. The paper prepared for the National Water Commission by Marsden Jacobs Associates stated that the proposal to increase private ownership of unused water allocations would increase the regulation of the river and move the flows further away from its natural pattern. The reduction in spills would reduce flows into red gum forests, wetlands and billabongs. This confounds the intent of governments as expressed in the National Water Initiative, Living Murray and Water for Rivers to improve the environmental condition and sustainability of the river system. The Murray-Darling Basin Commission and partner governments are working hard and investing significant resources to ensure that the Murray-Darling Basin receives the water it requires to be sustainable. To enter into a proposal that could compromise these arrangements is not a feasible option.

To grant Lakes R Us access to the services of Snowy Hydro and State Water would require broad scale reform to water management arrangements. The Council's report and the majority of submissions have illustrated that there may be a

disproportionate impact on the different parties involved in water management, including the NSW Government, other state governments, water users and the environment. Therefore it would be contrary to the public interest to declare the services.

These reasons also serve to overshadow the question of whether it would be economical for anyone to develop another facility that could provide part of the service.

A handwritten signature in black ink, appearing to read "John Watkins". The signature is written in a cursive, flowing style.

John Watkins MP
Acting Premier