



National Farmers' Federation

Public Submission to the

ACCC Water Trade Rules

Issues Paper

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National Farmers'
FEDERATION

Member Organisations



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The National Farmers' Federation

The National Farmers' Federation (NFF) was established in 1979. It is the peak national body representing farmers, and more broadly agriculture across Australia.

The NFF's membership comprises of all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations collectively form the NFF.

Each of these state farm organisations and commodity council's deal with state-based 'grass roots' issues or commodity specific issues, respectively, while the NFF represents the agreed imperatives of all at the national and international level.

Introduction

The NFF welcomes the opportunity to make a submission to the ACCC Water Trading Issues Paper. This issues paper will result in advice being drafted for the Murray-Darling Basin Authority to incorporate trade rules into the new Murray-Darling Basin Plan. As such, the trade rules need to cover Basin wide trade issues and across all water sources within the Basin.

This task is necessarily complicating due to the complexity of attempting to cover so many areas, and so many water sources. In addition, many of the current trade rules attempt to deal with issues of water hydrology (e.g. channel constraints due to "chokes"). As such, it is not acceptable to use an approach that treats all water use and its trade the same (i.e. one-size fits all approach). NFF would urge the ACCC to consider simple solutions in the first instance that primarily target the facilitating trade as required by the Council of Australian Governments (COAG) water reforms.

The ability to trade water is a fundamental characteristic of a water property right (water access entitlements). As such, this issues paper is the most significant to date with the outcomes purported to be a more efficient water trading regime across the Basin. It must be clearly understood that most trade rules currently in existence, seek to deal with hydraulic issues within each water source. Therefore, a clear understanding of these issues is needed.

NFF would support the development of some basic first principles that would underpin the development of the water trade rules. This should include, but not be limited to:

- A water resource plan must be in place to allow trade to occur, particularly where it proposed to allow trade between regulated, unregulated and groundwater systems;
- The water trade rules must be modelled to ensure that there are no impacts to existing entitlement holders and to third parties;
- The reliability of all existing water products must remain unchanged;
- Third party impacts must be minimised and where shown through modelling to occur, the NWI risk assignment is to apply for a change to Government policy;
- The development of rules under the Basin Plan must not result in activation of currently inactive water uses to avoid exacerbating over allocation and overuse in the Basin; and

- The nature of all entitlements must remain unchanged, i.e. tagged entitlements^{1, 2}.

Of note, is that the development of these rules will occur without the appropriate modelling of the rules. Modelling is a fundamental requirement to understand the impacts on the reliability of entitlements. As a basic first principle, any changes to the current rules or the introduction of the trade rules in the Basin Plan must not affect the reliability of entitlement holders across the Basin. As an example, the proposal to attached different rules to environmental entitlements (such as the “shepherding” of Toorale water from NSW to the Lower Murray, and across difference water resource plans) will change the nature of the entitlement and affect the reliability of other entitlements in both the source and destination water resource plan areas.

NFF will not support such an approach to water trade rules.

To assist the development of the trade rules, NFF suggests that the ACCC become very familiar not just with the interstate rules affecting the Southern Basin, but also water resource plan (WRP) rules relating to trade across the Basin. This must obviously include regulated, unregulated and groundwater. Where WRP do not currently existing, the ACCC must seek discussions with the relevant state authorities involved in the WRP development, along with entitlement holders and organisations (such as irrigator and commodity representatives and IIOs) in those areas.

NFF also notes that the impacts arising from trade rules may well be different based on whether the system is a full development (including over allocated and over used) compared to systems where full development does not exist. The main notion is that system at full development will need to protect reliability of existing entitlements and planned environmental water³. For systems where full development has not yet occurred, the introduction of new rules, or the variation of rules may have little effect the reliability of entitlement or planned environmental water.

National Water Initiative Implementation

The most significant impediment to trade across the Basin is the lack of systems that will allow real time electronic permanent and temporary (allocation) trades. According to the National Water Commission (NWC), the area of water resource accounting is the least developed. A 2008 NWC assessment⁴ of jurisdictions compliance with the National Water Initiative (NWI) to the Council of Australian Governments (COAG) shows significant lack of implementation. As can be seen on Table 1 below, most of the relevant NWI clauses were to have been implemented by 2007 – yet progress is far from satisfactory.

Only in the area of benchmarking, have all jurisdictions complied. There has been partial implementation (with the exception of WA, Tasmania & Northern Territory) on consolidated water accounts and partial implementation in NSW and Victoria for environmental water accounting.

The importance of water accounting is that this is a fundamental precursor to undertake water trading, i.e. there must be a system(s) to ensure that the water for sale is actually held in the sellers account.

¹ The NFF definition of tagged entitlements differs from the ACCC understanding. See 2004 McLeod & Warne, Tagged Entitlements – a mechanism to encourage and improve permanent water trade, Murray Irrigation.

² Water Act 2007 notes “Where tagged trade occurs, a transferee in the State of destination holds an entitlement which continues to exist in the State of origin.” (Cl. 9(3) Note B)

³ Such water may include specific rules regarding environmental water or rules such as end-of-system flows.

⁴ 2008 National Water Commission, *Update of progress in water reform: Input into the Water Sub Group (WSG) stocktake report*

Table 1 2008 Report to COAG Water Resource Accounting Implementation^{5 6}

Area	NWI cl.	Due	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	CLTH
Benchmarking water accounting systems	81	2005	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓
Consolidated water accounts	82-83	2006	✓	✓	✓	✓	✗	✗	✗	✓	✓
Environmental water accounting	85	2006	✓	✓	✗	✗	✗	✗	✗	✗	✗
Sharing of information	86	Ongoing	✗	✗	✗	✗	✗	✗	✗	✗	✗
Consistent metering & measurement	88	2007	✗	✗	✗	✗	✗	✗	✗	✗	✗

In terms of water markets itself, NWI implementation is slightly better as can be seen in Table 2 below. Again, implementation lags behind the respective due dates, with all to have been implemented by 2007 – and one year later than this date, a report to COAG noted that implementation remained incomplete. Notably the areas incomplete relate to accessible compatible registers and arrangements to facilitate trade.

NFF notes that the ACCC have acknowledged, as have governments, that effective trade will lead to the most efficient use of water. NFF generally agrees with this position. However, Governments have implemented a range of measures that contravene competitive neutrality, which has seen water markets fail operationally and fail to deliver the benefits of trade.

Table 2 2008 Report to COAG Water Markets Implementation^{7 8}

Area	NWI cl.	Due	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	CLTH
Accessible compatible entitlement & trading registers	59	2006	✓	✓	✓	✓	✗	✓	✗	✓	N/A
Institutional & regulatory arrangements to facilitate trade	60	2007	✓	✓	✓	✓	✗	✓	✗	✓	✓
Complete water trading studies	61	2005	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓
Facilitate trade in Southern MDB	63	2005	✓✓	✓✓	N/A	✓✓	N/A	N/A	N/A	N/A	N/A

Terminology and key concepts

NFF notes that the terminology in the issues paper is confusing for stakeholders who understand water well, let alone those who do not. While the concepts and definitions are contained in the *Water Act 2007* (C’lth), a lack of clarity arises. For example, water access rights include water access entitlements but also other rights to use water. Likewise delivery rights and irrigation rights are again very confusing concepts. As an example, the ACCC paper discusses delivery and irrigation rights. It also notes irrigation rights within IIO that have delivery rights;

⁵ Ibid. Attachment A p. 31-36

⁶ This table is an NFF summary of Attachment A of the NWC report to COAG, p. 31-36. Two ticks indicate implementation is “complete”, one tick indicates “substantial completion”, one cross means implementation has “started” and two crosses that implementation has “not started”

⁷ 2008 National Water Commission, *Update of progress in water reform: Input into the Water Sub Group (WSG) stocktake report*, Attachment A, p. 12-15

⁸ This table is an NFF summary of Attachment A of the NWC report to COAG, p. 31-36. Two ticks indicate implementation is “complete”, one tick indicates “substantial completion”, one cross means implementation has “started” and two crosses that implementation has “not started”

however, there are delivery rights within IIOs. Even for very experienced water policy stakeholders, the issues paper appeared confusing.

NFF also notes that the ACCC itself appears to be confused in the issues paper and this has not assisted the reader in attempting to construct an informed response. Perhaps this has been an issue relating to the framework of the issues paper itself.

In an attempt to clarify the concepts, NFF turned to the NWC Dictionary publication. However, this does not include the *Water Act 2007* (or Commonwealth as a jurisdiction). Consequently, NFF suggests that there is a need to update this publication as a matter of urgency.

As a result of the above, NFF recommends that steps be taken to ensure that the ACCC, entitlement holders and organisations affected by this important paper understand exactly what each concept is and its definition.

For the NFF submission, NFF has taken the approach that chapters 5- 6 (of the ACCC Issues Paper) deal primarily with tradeable water entitlements (water access entitlements), whereas the chapter 7 deals with the right to have water delivered such as for stock and domestic supply as well as miscellaneous matters for tradeable water entitlements.

The concepts of water delivery rights and irrigation rights are also confusing to stakeholders. In this instance, the NFF has interpreted water delivery rights (Chapter 8, ACCC Issues Paper) to be those formal delivery rights assigned by the private IIO, usually related to the introduction of termination fees. An irrigation rights (Chapter 9, ACCC Issues Paper) has been interpreted to be the right to have water delivered, either by a private IIO or by a bulk water provider. These are usually informal and in many cases do not have an associated delivery contract.

Should the ACCC have a different interpretation of the above, NFF would seek further clarification and the right to re-submit an alternative position to the following section.

Water Access Rights – rules relating to ownership

Question 5-A Are there situations where a requirement for co-holder approval for a subdivision of a water access right should not apply?

This issue is complex. NFF has identified three separate situations to which this issue might be of substantive consequence. These are whether the water access right is held by:

- Partners of an irrigation farm business;
- An Irrigation Infrastructure Operator (IIO); or
- Two or three irrigators hold one water access right and jointly operate the delivery infrastructure.

For individual water access rights owned by the one irrigation business (including any of its related partners), NFF submits that the sale of water must have co-holder approval as the decision to sell may not be agreed – or even known – by the other co-holders. There must be protection of the interests of all the owners. There have been some cases where one party has sold water access rights without the knowledge and consent of the remaining owner(s). There is also the risk that any funds received may not be distributed to or for the benefit of all owners resulting in loss of asset to those remaining owners. This may extend to third party registered interests.

Where the Irrigation Infrastructure Operator holds the water access right, NFF notes that the water market rules will deal with issues relating to the right for a member to transform and or trade water access right.

This leaves the final situation, where a small number of irrigators have a joint licence and joint supply infrastructure (a small number of irrigators, say three, that own a licence and infrastructure jointly). In this particular situation, the ability to trade and transform may be limited by the other irrigators, even if the water held by those irrigators is minimal. The water market rules submitted to the Federal Water Minister deal with small irrigation infrastructure operators.

Yet it is unclear whether these rules will apply to the situation where a small number of irrigators co-own the water access right and co-own and operate the supply works. NFF recommends that the ACCC consider an appropriate process for individual irrigators in these situations to allow them the right to trade and transform, without the need to obtain the approval of co-holders.

A recent situation that has come to the attention of the NFF that arises from the joint licences discussed in the preceding two paragraphs. This situation has arisen from the request to an individual member whose financiers wish to hold security over the entire joint entitlement, not just that portion relating to their share of the joint-entitlement. Such an approach will affect the remaining members, who might wish their part of the licence to be unencumbered or whose own financiers wish to hold security over their part of the licence. State Water has also refused to hold the title.

Question 5-B Should the ownership of water access rights be restricted for any particular individuals? If so, on what basis?

NFF supports the open, effective and efficient operation of the water market. This includes supporting that all market participants can operate on an equal footing in that market and with competitive neutrality. At present, many jurisdictions have policies in place that contravene the competitive neutrality principle. This includes the inconsistent application of the 4% permanent trade cap, governments buying water for irrigators (to underpin permanent planting survival water), governments providing relief from water charges and government failing to ensure that water charges reflect lower bound pricing for both water delivery and water planning and management (as required by the National Water Initiative).

NFF does not support restrictions on who can acquire water access entitlements. In particular, NFF has publicly supported the right for Governments to acquire water providing this be from willing sellers (even if these are distressed sellers). In fact, many irrigators wish to sell their water to the Government (as the major participant) in order to bring into currency their lending arrangements.

Water access rights—rules relating to location

Storage and delivery issues

Question 6-A What improvements (if any) could be made to the way in which:
(a) physical constraints
(b) environmental limits
are incorporated into water trading rules?

NFF supports the need to include rules in water sharing plans will deal with issues arising from physical system constraints, i.e. prevent trade between areas where it is not possible to deliver water (e.g. the river systems are unconnected). To allow trade to occur where there is no connectivity, will result in third party negative impacts (by way of reduced reliability) to other water access rights holders in the receiving valley. Conversely, there will be positive third party impacts on the leaving valley (improved reliability).

NFF recommends that there is regular review of physical constraints to ensure that these are still relevant to the application of trade rules. For example, is the physical constraint still in place, or is the physical constraint less or more than previously assessed hydraulically. This recommendation should apply to allocation trades only as it is not possible to “undo” an entitlement trade in the future.

NFF urges caution when developing Basin wide trade rules for the first time – one size fits all will not suit each system across the Basin. In some instances, well-intentioned changes may devalue water access entitlements with flow on impacts to asset equity levels, particularly where used as collateral. This will inevitably occur if well intentioned but misguided initiatives such as the “traffic light” approach to trading are implemented across the Basin.

More importantly in a regulatory environment where water entitlements are separated from land, there is an argument that the “use” right component should be the mechanism by which environmental issues are addressed. For example, Murray Irrigation Ltd has a maximum hydraulic loading of 4 ML/ha and 6 ML/ha for those farms with full irrigation development (including recirculation and on farm storages). The application of such “use” right provisions may be a better option for areas of high salinity impact rather than permanent and allocation trading restrictions that are currently in place.

Trading rules must not be used as the basis for determining what crops can be grown where. This is rightly a decision for the farmer, giving the inputs (including water), commodity prices, soil, weather, capital and other factors required for a management decision.

Question 6–B On what basis are water trading zones defined? Are there examples of where trading zones have been set too narrowly? Too broadly?

At an interstate level, the trading zones in the Murray are set up around physical constraints, i.e. water can be traded up but not downstream of the Barmah-Millewa Choke. This is primarily to reduce the impacts to the States during peak irrigation times and to avoid losses at the Choke due to overbank flow with resulting unseasonal inundation of the forest and wetlands. Such rules have been relaxed during the drought due to the smaller volume of water being delivered along the river. The latter should not be considered normal operating rules if sufficient resources are available to consumptive users.

Victoria has substantial trading zones and both Victoria & South Australia have implemented restrictions due to environmental considerations, i.e. support trade away from high impact salinity zones along the Murray River. The risk to the river is increased salinity as the irrigation development is largely “ribbon” development along the Murray, and with very light loamy soils, irrigation water applied will quickly end up back in the river as saline water intrusion.

Question 6–C What scope is there to introduce trading zones where there are none already in place?

NFF does not support the use of trading zones where there is simply no underlying requirement (e.g. physical constraints) to support their use. In most cases, these issues can be addressed in existing rules. The exception to this may be the implementation of trading in new areas such as unregulated systems and groundwater aquifers.

Question 6–D What restrictions (if any) relating to carryover should apply to the trade/transfer of water access rights?

The representation in the issues paper regarding carry over is incorrect. Carry over has been introduced where none have historically been provided as a response to drought and to allow both irrigators and towns to better manage their water requirements during times of critical human needs. For irrigators, use of carryover has not guaranteed delivery of the water in the following irrigation season if there is no conveyance water for its delivery. Governments have also been keen to obtain this water in recent years to supply critical human needs. In reality, carry over water should be the most secure and highest property right. The reason for this is that this water is unused from the previous year, is already physically in storage, has been accounted for and rolled into the next irrigation season. Unfortunately, Governments are yet to treat carry over as part of the property right and protect it as such.

For Victoria, the Government has a carryover mechanism as the state level (i.e. not at an individual licence level). The effect of this mechanism has been to ensure the very high reliability of the Victoria water product over time. Victoria has indicated individual carry over will continue post drought. However, in comparison to NSW since continuous accounting was introduced, despite NSW and Victoria sharing the Murray water equally (with the exception of most tributary inflows), Victoria's cap is around 200 GL less than NSW.

Queensland favours a capacity share model with an attached carryover model. South Australia, until the Water Amendment Bill 2008 was passed in December 2008 did not provide for carryover for its water entitlements. The *Water Act 2007* now provides for South Australian carryover however, this must not impact the upper states (i.e. there must be dam space however there are a number of outstanding issues yet to be resolved, such as what water "spills" first).

The establishment of new carry over arrangements as a permanent right should not be at the cost of other irrigators within that state, or from other states. Consequently, the rules around storage of water become critical to ensuring there are no third party impacts.

Not all NSW high security entitlements (irrigation, basic landholder, towns, industrial etc) have traditionally been provided with a carryover right. The reason being that these licences have high reliability and the commencement of carryover will adversely impact the reliability of the NSW general security entitlement. The same comment could be applied to the use of carryover by the other states, however benchmarking and modelling would be required to ascertain this impact.

Furthermore, the permanent use of carryover for high security water products will now change the market value for this water, resulting in third party impacts on the market value of general security water products. As a result, those irrigators who were not attracted to high security water may now be purely because of the introduction of carry over for high security water.

Historically, only NSW general security entitlements have been allowed carry over. The policy was originally introduced as a MDB cap management tool – and remains a policy tool for Governments as it is a major demand suppressant. Carry over is not included in the *Water Management Act 2000*, and only referred to in valley water sharing plans as a maximum allowable average valley limit. In addition, water access rights holders could not have access (i.e. this does

not refer to actual use) to more than 100% allocation in any one year. In reality, there is a formula:

Allocation + carry over + allocation sales = 100% + supplementary water + allocation purchases

The carry over provisions introduced in response to the drought do not recognise the above (as there is insufficient allocation anyway). However, if inflows provide sufficient resources where more than 100% allocation can be used, then jurisdictions and irrigators will see over use being a significant issue (also will result in valley caps being exceeded).

Carry over was only provided to general security water access rights holders as high security water access rights holders had traditionally received 100% of their allocation in 98% of years. There was no additional benefit to high security irrigators of access to carry over.

In reality, the effect of carryover is to suppress use. To make use of the tool requires the owner to forego access in the current year with deferral used in a subsequent year. There is a cost, in foregone income, to the irrigator to do this. General security irrigators in NSW have generally used the carry over policy as a management tool (and “sold” to irrigators as an “insurance” policy) to underpin early season irrigation allocations. This is particularly important for dairy farmers (seeking to increase their reliability) and annual cropping (underpins planting). However, the irrigator is reliant on season inflows to complete pasture growth and finish a crop. Plantings more than end of season allocations and carry over will result in a management decision to reduce the area of pasture and or crop or to enter the allocation market to acquire the necessary water.

NFF urges the ACCC to consider the above discussion. The provision of carry over to NSW, Victorian and South Australian high security irrigators will have flow on third party impact to general security entitlement holders in NSW and Victoria. In particular, care should be taken to avoid contravening cap or the new sustainable diversion limit.

The ACCC ought to review the provisions in the *Water Act 2007* regarding carry over to ensure there are no third party impacts arising from the implementation of these new provisions.

NFF recommends that any rules incorporating carryover should consider the above formulae to ensure cap/sustainable diversion limit compliance and to prevent unintended consequences.

Question 6–E What are the advantages and disadvantages of imposing an adjustment for conveyance losses on the trade / transfer of a water access right?

How should the adjustment be calculated?

NFF understands that the previous MDBC Pilot Interstate Water Trading Project (see http://www.mdbc.gov.au/nrm/water_issues/water_trade/pilot_interstate_water_trading_project) did not recommend the adoption of exchange rates because there was very little difference in the delivery of a megalitre along the Murray to the SA border. Increased losses tend to occur when there is a high river, with over bank flow from regulated or unregulated inflows, or when the river is in drought conditions (no base flow or flow out of a river to a tributary that previously ran into the river). The issue is not significant in the former situation but may cause significant concern in the latter situation with there is insufficient water to deliver and meet the critical needs of the river, towns and farmers.

A further concern is that the two-year review of the MDBC Interstate Pilot Project indicated that exchange rates were not well understood by buyers and sellers in the water market.

Calculation of conveyance losses varies considerably with the volume of water in the river, the geology and topography, and the length of rivers makes it difficult to determine such losses (many of the Basin's rivers are extremely long). Moreover, there can be no one guaranteed way to determine where unregulated flows from rainfall events will assist offsetting conveyance losses.

The current trade rules are based on particular assumptions regarding the hydrology of the river system. It is prudent that these assumptions are re-validated from time to time to ensure their relevance and accuracy. The most notable example is the assumption that one megalitre delivered at one point in a particular surface water source (say Hume Dam) has the equivalent conveyance losses (evaporation and seepage) when used at another site in the same or a connected system (say Morgan, in South Australia). This results in the application of a "postage stamp" loss policy across entire water sources.

If a different approach to conveyance losses are introduced for trades, there may be unintended consequences such as irrigation occurring nearer to the catchment dams (or for unregulated systems, nearer to the upper catchment) and away from the downstream reaches of the Basin's tributaries. The flow on effect for environmental flows will support the purchase of entitlements within a water sources for use in the same water source, i.e. not transferred to other water source areas.

On the other hand, some water sharing plans provide the capacity for conversion from one water product to another product using a conversion rate that supposedly recognises the third party impacts on other water entitlements within this system for the change in reliability. NFF does not believe that such conversions have a neutral equity impact over time. As a result, NFF does not support conversion of water products.

Trade/transfer between Basin states

The ACCC observation of the meaning of tagging is incorrect. In fact, the entitlements are tagged as being or remaining with the current characteristics, i.e. the characteristics will not be changed. The tagging does **not** refer to the use of the allocation in another area. NFF can provide a paper describing tagged entitlements if this would be helpful.

Under a tagged scenario, the water can be ordered for use providing the water transfer rules allow this (e.g. connected systems, system constraints etc) in any system. For example, a Murrumbidgee High Security Entitlement will be tagged as such but can be ordered for use anywhere in the Murrumbidgee and Murray systems that trading rules allow. This includes for environmental, town or other consumptive uses.

As stated above, the NFF does not support an exchange rate approach due to the inherent risks of negative third party impacts.

The advantage of tagging is that an irrigator will be able (as occurs now) to diversify his portfolio of water products to minimise risk. An irrigator, depending on his production systems and commodities, will acquire water products to meet these needs. Irrigators will be able to manage their own risks, including drought risks. This is also an alternative approach to a one water product across the Basin, governments entering the market to buy water for their irrigators or attempts by Governments to change the rules around water products (such as the introduction of permanent carry over across all water products) to help ensure a more stable and reliable water product.

Question 6–F Are there any concerns with the arrangements for the trade/transfer of water allocations (‘temporary’ trade) between Basin states?

The major issue with allocation trade is the length of time and processes for trading. This should be nearly an instantaneous electronic transaction. In some situations, it may be easier for the brokers to get in a car and drive between the source and destination to finalise the trade. This is because approval systems require hardcopy forms, appropriately completed and signed. This is most bizarre in an age whereby share market permanent trades are completed electronically! NFF understands that this situation may be improving with ability for the irrigator to lodge (fax) transfers with the destination or source.

One thing that would facilitate allocation trade would be the introduction of telemetry on water meters. There would be several benefits. The IIO (i.e. bulk water supplier) would have reduced costs due to the current requirement in some areas to be physically present to read the meter before approving a trade. Accounting systems would be updated as water is used and the approval should be an automatic approval. Additionally, there might be a reduction in the conveyance water required in a system (because some of the water that is lost is actually extracted illegally).

Question 6–G How could tagging arrangements for ‘permanent’ trade be improved?

It is not tagging per se that is the issue, but the approval processes required around the permanent sale of water. In some cases, environmental assessments are required, due diligence is needed to ensure that the person selling the entitlement has this right and so on.

It may facilitate both allocation and permanent trade if there were an agreement between parties (such as IIOs) to facilitate the operational use of tagged water.

Electronic trading is also non-existent.

Question 6–H Are there areas where the opportunity to trade/transfer water access rights between Basin states could be expanded? What measures would be necessary for this to occur?

There are significant opportunities for improvement as this is currently the most antiquated system. The biggest opportunity is outlined above, i.e. where water trading (entitlement and allocation trades) become an electronic process, with minimal interference by red tape and the use of “use” entitlement provisions to deal with environmental issues connected with the use of water not trade.

A further example of improving permanent trades is the significant improvements to the contracts, particularly for the acquisition of water by Governments. As an example, NFF understands that an individual 130 megalitre trade to the MDBC required an 18 page contracts along with 12 pages of attachments.

Trade/transfer between water systems

Question 6–I Are there any concerns with the arrangements for the trade/transfer of water allocations (‘temporary’ trade) between regulated water systems within Basin states?

See earlier comments regarding electronic trades, environmental provisions included in the use licence not the water entitlement and telemetry with appropriate meters. It is a fundamental premise that the regulated systems must be physically connected.

Question 6–J Should trades/transfers between unregulated systems be permitted?

If so, what measures could be taken to ensure that water reaches its intended recipient?

Unregulated extraction is about pump size, timing and flow rates in the river system. NFF accepts that there are perhaps more rules that could be applied to such trade. Modelling may be needed to ascertain impacts within a water source and between water sources. Telemetry and metering will be a necessary component to ensure that as water moves down an unregulated system, unauthorised use does not occur.

Whilst the ACCC have noted that there is an argument for trade upstream, the NFF views that trade downstream is more likely to occur. This is because extraction of water usually occurs in relation to a “fresh” or inflow event. As water physically moves down the system, the triggers for extraction will occur (such triggers usually relate to the water level in the river or creek system). Trade up would mean that the fresh has passed and the opportunity to trade missed. Whereas those users downstream of the "fresh" may be able to take advantage and acquire the water.

NFF assumes that the trade must occur within the connected system where the inflow event has occurred. This is the first principle of trade within and between regulated systems. To do otherwise, particularly where the receiving system is at or near full development, will negatively affect existing entitlement holders, the environment, and base flows in the river.

Question 6–K What are the advantages and disadvantages of permitting the trade/transfer of a water allocation:

(a) from a regulated system to a (connected) unregulated system?

(b) from an unregulated system to a (connected) regulated system?

Do these factors differ depending on which system is upstream?

What arrangements would be necessary to facilitate these trades/transfers?

NFF does not generally support trade between unregulated and regulated systems.

A key issue is that the activation of water that is currently inactive (or unactivated)⁹ must be avoided at all costs to ensure that the current issues surrounding over allocation and overuse are not exacerbated in both the unregulated and regulated systems. Such a situation may occur if sleeper or dozer unregulated water was traded to a regulated system and fully utilised in the receiving destination. Not only would over allocation and over use issues be exacerbated, but there may a real impact and decline in the reliability of all entitlements.

It may be useful to explore options regarding trade within unregulated systems before making a decision to permit trade between unregulated and regulated systems. As a basic premise, trade between regulated and unregulated systems should not occur until a water resource plan is in place in both systems.

Question 6–L Under what circumstances should a trade/transfer between a ground water system and a surface water system be permitted?

⁹ Otherwise known as sleeper and dozer licenses

NFF does not generally support trade between groundwater and regulated systems.

The fundamental issues are a lack of data and understanding of the relevant impacts, including the effect of time delay on groundwater systems. In such situations, it may be better to err on the side of caution to avoid unintended consequences or perverse outcomes.

NFF supports exploration of trade rules within an individual groundwater aquifer in the first instance, including approaches aligned with trading zones within an aquifer, rather than trade between groundwater and surface water.

Moreover, an irrigator has other options available such as selling existing entitlements and purchasing the preferred entitlements (e.g. sell groundwater and purchase surface water or vice versa).

Trade/transfer within a water system

Question 6–M Are there any issues of concern about changes in the location of water access rights within a regulated system?

See earlier comments regarding telemetry, metering and real time allocation announcements.

In addition, competitive neutrality remains a major issue for water trading. Where irrigators in two different states have differing market situations, this will result in market failure. As an example, one irrigator may have an unfair advantage over another because of a failure of governments to implement full cost recovery (lower bound pricing) for both water delivery and water planning and management. This irrigator may well be able to afford to pay more for allocation or permanent water as a result compared to the irrigator who is paying full cost recovery. Another example is one irrigator in a particular state is assisted by their state government purchasing critical water to underpin allocation when other governments do not undertake the same assistance measures. NFF have made previous representations to the ACCC and COAG on this issue. NFF also recommends investigating the assumption of water losses within and between systems (i.e. exchange rates) and accordingly the flow rate share along state tributaries such as the Murray River and Darling River.

Question 6–N Are current arrangements sufficient to limit potential third party impacts from trades/transfers that change the location of a water access right within an unregulated system?

In most systems, trade in unregulated systems is quite immature, with the water market quite thin. As a result, the identification of potential third party impacts may not arise until trade volumes increase for permanent and allocation trades. In many cases, water resource plan may also not be complete or implemented. Trades undertaken in this environment are unlikely to take into account any issues beyond existing pump trigger rules.

NFF understands that in some cases, there may be a lack of sufficient data and hence the need of increased monitoring of unregulated systems (such as increasing the number of gauging stations) in order to make such an assessment. Such data may also assist entitlement holders, and to manage environmental flows.

Question 6–O Are third party impacts adequately addressed in relation to changes in location within ground water systems?

Third party impacts may not be appropriately addressed. In many situations, trade within an aquifer is only just commencing (if at all). Considerations must include where an entitlement trades from a saline area of the aquifer (little if any use) to an area where there is significant use, the number and volume of entitlements within sub-areas of the aquifer, and the location of bores from neighbouring bores (impact on localised pumping level). These instances can result on bores being significantly damaged due to no water (twisting of the pump and motor) and the requirement to extend the pump within the bore.

There are significant risks to trading between zones within an aquifer (e.g. from a sleeper/dozer entitlement perhaps because of saline water to activation in a fresh water zone). Significant monitoring is required not just of the aquifer but of the zones within the aquifer. Third party impacts need to be clearly understood and over allocation within zones prevented (i.e. from trade of water into a previously sustainable zone).

Question 6–P How could the trade/transfer of groundwater access rights be made more efficient?

See earlier comments regarding data limitations, zone trading etc.

Trade outside the MDB

Question 6–Q Should there be any specific rules imposed relating to the trade/transfer of water access rights to locations outside of the MDB? On what basis should these be imposed?

This is a vexed issue for the Basin community. Much of the water supplying the non-Basin areas of South Australia comes from the Murray (see Figure 1 below) and a new pipeline is being established to provide water for stock and domestic needs to towns and farms around the Lower Lakes. Likewise, Victoria has and continues to construct pipes from the Basin to secure water supplies for Melbourne and major regional centres such as Ballarat. For the most part, recent pipelines are the result of the prolonged drought and critical level of water supplies not just in the Basin but also for urban populations outside the Basin.

Figure 1 Water pipelines and areas served by them in South Australia



(Source: http://www.mdbc.gov.au/nrm/water_issues/water_use)

The MDBC website also shows that historically water has been diverted to and from the Basin as can be seen in Table 3 on the following page.

Irrigators will not win a publicity war over the right to supply water for human drinking water, health and sanitation. This is well acknowledged and uncontested. However, there is tension between the provision of existing needs from the Basin's resources and introducing new critical human needs when the Basin's water resources remain under pressure from ongoing drought conditions. The development of trading rules for the Basin Plan should not affect these public deliberations, but provide for the development of the market where tagged entitlements can be acquired and traded from the Basin for use outside the Basin. NFF does not support any moves to change the reliability and nature of entitlements purchased for such use due to the significant negative third party impacts.

The deliberation on the need for rules will depend on the rules already in place (such as those for the Snowy) and the impacts to users within the Basin. Again, it may be necessary to undertake modelling to determine if there are any adverse consequences. Where these can be shown to be significant, there may need to be a requirement for rules, such as no net transfer out of the Basin from the source catchment/system. This assumes, of course, that there is a connection between the Basin and non-Basin receiving area.

NFF are aware of some concerns regarding the investment in infrastructure efficiencies. Normally, the risk of not achieving the savings identified rests with the "seller" or the delivery infrastructure operator (usually via conveyance licences). These concerns relate to the ability to ensure that the savings being traded out of the Basin are verified and audited to ensure that the Basin source has no unwarranted third party impacts on deliverability of allocation water, or on water product reliability. NFF supports rigorous audit processes to ensure there are no third party impacts.

Table 3 Inter-Basin Transfers of water involving the Murray-Darling Basin (source: AWRC 1987, Volume 1, 30-32)

From River Basin	To River Basin	Est. GL	Remarks
Transfers into the MDB			
Brisbane	Condamine	4	Perseverance Ck diversion for Toowoomba water supply (to be augmented by Cressbrook Creek Dam)
Snowy	Upper Murray	580	Snowy Mountains Scheme (additional water made available through regulation)
Snowy	Murrumbidgee	550	Snowy Mountains scheme (additional water made available through regulation)
Glenelg	Wimmera-Avon	76	Rocklands Dam supplies some of the water for the Wimmera Mallee Stock and Domestic Scheme
Transfers out of the MDB			
Macquarie	Hawkesbury	14	Fish River water supply scheme
Goulburn	Yarra	13	Silver-Wallaby Creek aqueduct for Melbourne water supply
Lower Murray	South Australian Gulf Drainage Division	350	Water pumped from the River Murray for water Division supply to Adelaide and numerous other parts of South Australia

(Source: MDBC website http://www.mdbc.gov.au/nrm/water_issues/water_use)

Water access rights—rules relating to other matters

Question 7–A What are the advantages and disadvantages of allowing a change in the priority class of a water access right?

NFF does not support the conversion of water access rights priorities due to the inherent long-term impacts to the reliability of other entitlements.

The ability for an irrigator to change the class of water access entitlement, within the same system, for example from general to high security, is one option to enable the irrigator to better manage risk. Before the advent of water trading when water was "tied" to land, changing water products was the only option available to entitlement holders to change reliabilities.

The most likely reason for the policy instrument was to allow a better matching of entitlement reliability to a change in commodity being produced on farm (e.g. change from annual cropping to permanent planting). If the entitlement or right was located within an irrigation area (e.g. a corporation), changing entitlement may not be a good decision – purely because the conveyance water may not be guaranteed and the irrigator may not be able to get the higher reliability product delivered. Hence, the change in reliability may not lead to lower risk water management on farm.

It could be argued that with the advent of trading, and particularly trading between water sources and states, the option of changing the reliability of the water access right is no longer needed.

However, changing the reliability may be an option for the individual irrigator as there would be no financial outlay to acquire the different reliability product – however, there will be a change in volume as effectively, an exchange rate is applied. There will be an alteration to the overall asset value of the water product. With the advent of the water market, there is the option to sell the existing entitlement to purchase the new reliability entitlement.

The major advantages are therefore, reduced capital outlay for the farmer and obtaining a reliability better matched to the commodity produced on farm. The disadvantages are the longer term impacts to other water entitlements – and these cannot be allayed.

Although an individual irrigator may be better off, such options come as at the cost of other water access entitlements in the water source, i.e. third party impacts. Such impacts must be avoided at all costs.

As an example, in a conversion from general security to high security, third party impacts could arise because of the need to increase the amount of water held to deliver high security products in the following year.

Ultimately, conversion results in a change of reliability. High security entitlements become more reliable and lower security entitlements will have to wait longer to receive any allocation – this is a third party impact.

The purpose or use of water

Question 7–B Does defining a specific purpose for a water access right create a barrier to trade?

As a general principle, where a water access right is not a tradeable water entitlement, trade should not be permitted.

In most water sources, stock and domestic supplies (or basic landholder rights) are “deemed”, i.e. the amount of water that is used is estimated by authorities and not metered at extraction. This water is needed for the most basic of human and stock use. If such water were made tradeable, there would be third party impacts on the reliability of all tradeable entitlements, basic landholder rights, environmental flows, conveyance or transmission losses and critical human needs.

Question 7–C Should there be any restrictions on the trade/transfer of water to urban areas within the MDB?

Urban water supplies are usually estimated based on population growth estimates. In NSW, urban authorities make a request and are granted additional entitlements as needed i.e. there is no requirement for urban authorities to enter the market to purchase additional or future human needs. This has an obvious impact on the reliability of tradeable entitlements over time. During the drought, some urban centres have entered the market to purchase sufficient supplies to meet their needs and such actions should be endorsed and supported.

If such water was to be made fully tradeable, this automatic right to population growth entitlements must be removed and the market allowed to operate fully and transparently.

The irrigation sector has agreed to the sale of water surplus to urban supplies on the proviso that urban centres have in place drought plans for critical human needs.

NFF understands that in Queensland, trade from urban use is not permitted, but trade from agriculture or other to urban use is permitted.

NFF supports the development of high standards that urban areas must meet prior to being allowed to enter the market for entitlements that underpin agricultural production. Any entry into the market must be via normal commercial arrangements that apply to other entitlement holders (irrigators) and entry should not result in third party impacts.

NFF notes the current public discourse regarding food security and Australia’s role in assisting to feed other countries less fortunate. Therefore, any trade away from production to urban and environmental uses should be closely monitored.

Question 7–D Should it be possible to trade/transfer stock and domestic rights? If so, what conditions should apply?

NFF does not support the trade of stock and domestic water rights. Stock and domestic rights remain attached to land as any introduction of trade will undermine their purpose.

It would be an unfortunate situation where the stock and domestic supplies of a property were traded away, and the current (or future) land manager was left in a situation of having no water to underpin both human and stock needs. This asset must remain bundled with the land.

There are essentially two types of stock and domestic rights – one is the basic landholder right and the other is a stock and domestic licence. The NFF does not support the trade of either type of stock and domestic right.

Furthermore, there is a real issue with the increasing impacts from systems where basic landholder rights have an equal right on the subdivision of land, particularly in stressed catchments (e.g. one 100 ha property using 4 ML is now ten 10 ha properties each using 4 ML – a total of 40 ML compared to 4 ML). Where subdivision occurs, the BLR should remain with one parcel of land, and with the developer required to acquire additional water access rights from a tradeable water supply.

The advent of farm dams has likewise had an impact. NFF does not support the trade of water to and from farm dams for stock and domestic supplies. Furthermore, farm dams seeking to irrigate should be required to acquire and retire an irrigation entitlement in the same catchment, equivalent to the same volume as now used for irrigation from the farm dam.

Question 7–E To what extent, and how, should water trading rules provide for the needs of environmental water-holders?

The premise for the purchase of water for the environment is that this water is tagged so that the characteristics remain unchanged to prevent third party impacts. Water trading rules likewise should not be engineered to provide specifically for environmental water holders differently to other entitlement holders. The same arguments would apply to both types of uses.

For example, the water trading rules in the Murray regarding water trade up and down stream of the Barmah Millewa choke, under normal operating conditions, restrict trade and use downstream. This is to prevent unseasonal inundation of the forests. To allow environmental trade and use downstream will exacerbate this problem as it would for irrigation trade and use downstream. This is why it is important that a good understanding of the water needs of key environmental assets in each water source is required and water recovery (purchase and infrastructure investment) enacted to match these needs. Attempting to use water from one water source for environmental assets in another is bound to result in perverse and unintended consequences for all entitlement holders.

Another example is water purchased in the northern Basin with attempts to transfer this for use in the Lower Murray in South Australia. According to the NSW Murray Lower Darling Water Sharing Plan (and MDB Agreement rules); water coming into Menindee becomes part of the NSW Murray water source when under NSW control. Bypassing this arrangement will have a significant effect on NSW entitlement holders if water for environmental use is treated differently to other tradeable entitlements. When Menindee is under MDB control, the effect would be felt by both NSW and Victoria entitlement holders and to a lesser extent South Australian entitlement holders¹⁰. To this end, modelling of the rules becomes very important. It

¹⁰ This is because NSW and Victoria share the Murray according to the Agreement and from their resources provide for South Australia's entitlements.

is just not sufficient to establish new or change existing rules because it may appear intuitive correct.

NFF does not support specific and different trade rules to provide for the environment – or for the characteristics of the tagged entitlement to be changed due to the changed rules. There are better options such as the purchase of entitlements in the destination rather than the source to provide for environmental assets.

Question 7–F What are the advantages and disadvantages of requiring the possession of a relevant water use approval as a condition of approving a trade/transfer?

In the new era of a fully functioning market where there will be participants who may not physically use the water itself, the possession of a relevant water use approval as a condition is no longer be appropriate.

The use of water at a specific location should be subject to the use approval and as stated previously, this should consider those issues currently tied to water trades, such as salinity trading zones. The use approval may be a more appropriate mechanism to consider these issues, i.e. separately from the actual trade of entitlement and or allocation. It may be useful to gain a better understanding of where such use approvals mechanisms are in place around the Basin without the need to have these tied to entitlement trades.

As stated earlier, the NFF does not support the use of “use approvals” to determine what crops farmers can produce – this is a management decision of farmers and is best left to farmers.

Salinity and other environmental concerns

Question 7–G To what extent, and in what way, should water-trading rules attempt to address:
(a) salinity
(b) other environmental issues arising from changes in the timing and level of river flows (in contrast to the impacts of water use on land)?

Regarding the in-stream impacts from trade, it is likely that these can as part of the river operators management of the system as a whole. As an example, River Murray Water vary the timing and level of flows along the Murray (i.e. pulse water down the river) to ensure better environmental outcomes such as reduced bank slumping and re-vegetation of stream banks. In other situations, weir gates are lowered to a natural flow regime, such as at Stevens Weir west of Deniliquin, to allow the bank to dry out and revegetate. Interestingly, most of the complaints for these good environmental outcomes have come from urban centres seeking to attract tourists during the off irrigation season.

There will be a substantial volume of water entitlements held by Governments for the environment. Any allocation of water to these entitlements should be the mechanism to address issues such as salinity. As an example, water held for the environment could be used to attenuate a blue green algae event.

Salinity in and of itself is a result of irrigation close to the river system (use approvals), groundwater mounds of saline water from dryland clearing and hydraulic pressure in the river from weir pools. In most instances, management of the river flows (conveyance and ordered

water) will be sufficient to address issues. NFF does not support the introduction of specific rules to deal with in stream issues.

Volumetric limits on permanent trade out of an area

Question 7–H Are there other examples (besides the 4 per cent rule) of volumetric limits on the amount of water that can be traded/transferred out of particular areas?

The only other widely known example is Victoria’s 10% non-landholder limit. NFF is aware that in some instances, permanent water trade into a particular system may be limited to net trade (rather than individual trades), i.e. trade in is allowed when trade out occurs. This may be due to system delivery and or capacity constraints or may be required to address third party impacts. Such rules may be developed by the IIO and may be supported by a bulk water operator like State Water.

In the end, despite or in spite of such mechanisms, some irrigator somewhere may resort to litigation to enforce his or her right to permanent trade out of an area. With the drought, and many distressed sellers, the value of water will be restricted to the price within the area (i.e. will not reach its maximum value for the owner). There will be as much pressure from within such areas to free up trade as there is to prevent permanent trade out.

In the end, much can be done in terms of infrastructure investment, and particularly on farm investment that could negate such pressures, provide for maintaining and improving on farm production and allowing for smaller parcels of water to be sold to the environment. This is a win for retaining profitable irrigation farms, regional economic and social viability and the environment.

Question 7–I What are the arguments for and against volumetric limits on the permanent trade of water access rights out of an area?

NFF supports the consistent application of the agreed NWI trade cap across water sources and states. Different interpretations of the rules have the potential to de-water viable regions in a short period of time when these are under significant economic pressure.

Question 7–J Where water access rights are not currently tradeable, what are the advantages and disadvantages of requiring them to be made tradeable?

NFF does not support the making currently untradeable water access rights tradeable. The main reason is the unintended and perverse outcomes that would arise such as third party impacts, and exacerbating over allocation in currently over allocated system, or risk making a currently sustainable system over allocated.

The exception to this position is the NSW supplementary and Queensland’s un-supplemented water flows (because of water harvesting). In both cases, these water products underpin the reliability attached to the water access entitlement. There have been many calls on Governments to recognise, particularly supplementary licences, as a property right and to allow trade. There are good strong arguments across the Basin to allow this to occur.

Water delivery rights

Question 8–A To what extent does the bundling of water delivery rights with either an irrigation right or a water access right present a barrier to, or restriction on, the trade/transfer of these rights?

NFF understands that water access entitlements, water use, water infrastructure (e.g. pumps) and delivery right are the four components of the previously bundled water rights. Entitlements are being unbundled and in most situations, can be traded. Water use is site (farm) specific and relates to the application of water on a specified piece of land – hence this is untradeable. Infrastructure licence is related to the relevant approvals required to install the physical mechanisms to extract water – again site specific and untradeable. Delivery rights are the final component.

Where untradeable at present, NFF believes that this will in time become a tradeable product and add value to the farm business. For example, a farm with surplus capacity to future needs may chose to sell these surplus delivery entitlements to another farmer in the same channel or river system that has insufficient delivery capacity. Unbundling may provide additional mechanisms to add value to irrigator assets. The barrier is not necessarily on the water access right but on the delivery right.

Water delivery rights should only be tradeable within an IIO in which they are issued.

NFF notes with some concern that there are different approaches being adopted by the major IIOs. A common approach to water delivery and access rights is a precursor to facilitating trade between regions.

It is unfortunate that many irrigators see the delivery right as a financial liability. This is connected to the termination fees and more appropriately, the cost of delivery access each year (i.e. the fixed water charges). During times of low water availability, there is little farm production and income and consequently, substantial delivery charges are incurred. It is easy to see why irrigators see this as a significant liability and not an asset of the business.

Implementation of a substantive trading regime may assist in a review of this current opinion.

Question 8–B What are the advantages and disadvantages of requiring more explicit separation of a water delivery right from an irrigation right or water access right where these are currently bundled?

See comments above. Value could be realised by making delivery rights tradeable within the same system.

It should be noted that for some delivery rights, explicit separation from the water right might need the establishment of formal capacity shares at the river system itself.

Where delivery rights are traded away, there could be a substantial cost premium to have water delivered on an informal basis. In addition, the farm will be required to wait until there is surplus delivery capacity in the system to be able to get water delivered. Where there are no delivery rights and an irrigator is seeking to acquire these rights, due to the thin market, these may not be available. The result may well be a increase in the number of dry holdings within an IIO or an increase in deals perhaps between farm businesses – one with a delivery right and another without (possibly by connecting channel systems between the two farms).

Trade and transfer of water delivery rights

Question 8–C What conditions and restrictions on the trade/transfer of water delivery rights are reasonable?

The trade must occur within the connected system, i.e. water source or corporation.

Question 8–D What factors should govern the specification of areas within which water delivery rights may be traded/transferred?

For some irrigation infrastructure operators, the entire channel system is designed around the delivery capacity of each channel and spur channel. This may need to be considered in allowing such trades.

NFF notes that many IIOs are undertaking modernisation plans under the Water for the Future package. This may affect the specification of the area currently under irrigation, with many investigating options to retire areas.

Question 8–E What are the advantages and disadvantages of requiring the development of arrangements to allow for the trade/transfer of water delivery rights?

At present, the problem with delivery rights is that most irrigators see them as a detrimental asset. The more you have the more you have to pay when there is no allocation. To comply with proposed rules IIOs must allow members to retain their delivery entitlements when they are forced to sell access entitlements in the drought. This is a risk for the IIOs that the new security arrangements only partly allay. The challenge is to develop an inherent value in the delivery entitlements. This is difficult when the IIO's can only charge ten times the fixed charges to create a termination fee.

Irrigation Rights

Question 9–A What requirements, if any, should be placed on IIOs so as to enhance the trade/transfer of irrigation rights?

See comments above in relation to delivery rights. In many instances, there is no formal irrigation right. These should be made explicit and there should be linkage with the water entitlement held by the IIO on behalf of its members. In some situations, formal channel capacity shares of the river system may need to be established in order to issue an irrigation right formally (i.e. where the IIO members pump directly from a water source rather than a channel).

Question 9–B What are the advantages and disadvantages of requiring more explicit separation of an irrigation right from a water delivery right, where these are currently bundled?

NFF understands that a water delivery right and an irrigation right are essentially the same thing – but with delivery rights attached to IIO's primarily because of implementation of termination fees (including the previous exit fees). Irrigation rights are those rights informally from an IIO to receive water. NFF believes that this question is confusing. How can an irrigation right be separated from a water delivery right? NFF does not believe that these are currently bundled.

Trade and transfer of irrigation rights

Question 9–C Are the policies and procedures of IIOs in relation to the trade/transfer of irrigation rights transparent and accessible to their customers?

In some cases policies, procedures, and implicit contracts are in existence (usually larger IIOs). In other cases policies, procedures and implicit contracts do not exist, let alone are transparent and accessible. All IIOs must enact full and proper policies and procedures and provide all customers with copies. In doing this, the ACCC may assist by providing templates that could be used to assist implementing accessible documentation for IIO members.

Question 9–D To what extent, and in what circumstances, is it appropriate for an IIO to impose restrictions on the ‘permanent’ trade of an irrigation right to another person located within the IIO’s area? What are the specific forms of any current restrictions, and their implications?

Any restrictions may need to consider the type of IIO. For river based pumpers within an IIO area, restrictions may be appropriate for capacity constraints where such a trade may occur downstream of the existing irrigation right. For channel based IIOs, trade may be restricted to the channel spur on which the existing irrigation right is located. Trade to another channel may need to consider the design of the entire irrigation system as well as the ability within the proposed buyers channel spur. The additional irrigation right may need to take a lower priority of access to reduce third party impacts within the system.

Care must be taken to ensure that the irrigator(s) near the end of the channel are not disadvantaged by the irrigation right trade.

Future considerations may need to include the modernisation planning process currently underway in many IIOs, particularly the issues around retirement of areas and infrastructure.

Question 9–E To what extent, and in what circumstances, is it appropriate for an IIO to impose restrictions on the ‘temporary’ trade of water allocated under an irrigation right to another person located within the IIO’s area?

What are the specific forms of any current restrictions, and their implications?

Allocation trade of water should not be an issue within a system, as the irrigation right does not change. Therefore, for water bought into a system, the IIO will need to consider the capacity of the system to deliver the water ordered at any given point in time. IIO’s are best placed to make this decision, given the water orders placed and capacity of the system. This is a day-to-day management decision of the IIO. Issues usually only arise in times of full capacity during the peak irrigation season – this is usually December and January.

Appropriate restrictions will include farm off take (wheel or other metering device) restrictions, pumping restrictions, alternative farm supply restrictions or which channels may be receiving water (the latter is important in times of drought where little conveyance water is available to “fill” the system).

Importantly, should the mix of irrigation change (e.g. summer watering becoming more autumn or spring based), then demand patterns change and rules set for one issue may disadvantage the new demand pattern.

It should be noted that experience shows that capacity constraints do not necessarily match full allocations (i.e. closer to 100%). For river systems, constraints may occur at mid to low allocation levels (i.e. less than 50%). Furthermore, the mix of irrigation along a border system, such as the Murray, need to be considered. For example, NSW and Victoria share the Murray channel capacity equally. However, the majority of NSW extractions occur above the Barmah Choke and Victoria has 70% of the demand downstream of the Choke. A formal channel capacity policy remains informal, and this does have flow on impacts to IIOs located off river (such as Murray Irrigation and Goulburn Murray Water).

Question 9–F What are the arguments for and against linking the ability to trade/transfer irrigation rights with the possession, transfer or termination of water delivery rights against the IIO?

Again, NFF notes that this question is confusing. Does the ACCC mean members rights against the IIO right? Alternatively, does the IIO water delivery right refer to river channel capacity shares? Clarification of the intent of this question would be helpful.

Question 9–G To what extent, and in what circumstances, is it appropriate for an IIO to impose restrictions on the trade/transfer of water allocated to an irrigation right to a location outside of the IIO’s area? What are the specific forms of any current restrictions, and their implications?

NFF does not support such an option. Irrigation or delivery rights are based on the channel capacity of the system delivering water. Hence, these are limited in their location to the river or IIO area.

Question 9–H To what extent, and in what circumstances, is it appropriate for an IIO to impose restrictions on the trade/transfer of a specific volume of water from outside the IIO’s area, to a location in the IIO’s area?

Generally, most IIOs do not put restrictions on the inward trade of water - either on a permanent or allocation basis. This is because IIOs income is based on the delivery of water. The more water delivered, the more financially viable the IIO’s business (and consequently, their farmers and communities).

Over the last few years, some of the IIOs have attempted to optimise water for the greater good by introducing short-term specific rules. An example of this occurred within Murray Irrigation Ltd after the state suspension of carryover in 2006/07. Buyers were required to buy 2 ML to have 1 ML delivered. Whilst this may have answered some of the issues, it imposed an extreme burden on some individual shareholders with crops in the ground. It would be helpful if IIO’s and bulk water providers could avoid ad hock rule changes within an irrigation season.

As outlined above (question 9-E), some constraints on the use of water during peak irrigation periods (or drought) may be appropriate to deal with hydrologic issues such as capacity constraints.

Approval Process

Consideration of applications by multiple approval authorities

Question 10–A What are the practical implications of multiple approval authorities involved in the approval of a trade/transfer?

For allocation trade using water brokers the trade may appear to be a streamlined, mostly electronic process. However, there is some confusion in the minds of sellers and buyers where the delays are happening. Is it approvals (which state), tardy provision of paper work or money by the other party or is the broker just hanging onto the money. The Murray Irrigation Ltd Water Exchange sets the bar high in this regard. Trades are only listed when under Murray Irrigation Ltd control and payment is made to sellers within two days. For permanent trades, it is an antiquated system using an outdated manual process, with significant contractual documents. For both, there is a requirement for original physical forms to effect the transfer.

The issues associated with one approval authority are exponentially increased for multiple authorities, including the introduction of issues specifically relating to that authority only.

Information sharing between approval authorities

Question 10–B What are the advantages and disadvantages of enabling Basin state approval authorities to have direct access to each other’s registers and/or accounts for the purposes of determining or giving effect to particular kinds of trade/transfer?

NFF understands that COAG has endorsed a move towards facilitating water markets via water registers, and that initially this will occur via making existing state registers more efficient and later, a move towards a national register.

In the interim, the ability for information sharing particularly via registers, would facilitate trade outcomes, reduce transaction costs and lead to more consistent procedural and information requirements. However, the ultimate approval for a trade must ultimately rest with the approving jurisdiction until jurisdictions agree to a different process and protocols.

What would facilitate the operation of the market in the first instance would be the installation of modern systems, including appropriate metering and telemetry to allow offsite meter reading. One of the biggest issues with allocation trade approvals is the need, in some instances, to be physically present to read the meter to establish whether the water is available to trade.

The only other option is to approve the allocation trade and include significant penalties for selling water that is not or is no longer available for sale (in the latter situation, the irrigator may have used the water due to the time delay in selling). Neither irrigators nor approving authorities would wish this approach to be implemented. Perhaps DHL or FEDEX could be approached to ascertain how they track parcel delivery. If buyers and sellers could track trades on the internet it would clear the air about what is going on.

Applications to trade/transfer

Question 10–C What considerations are relevant when considering the form and manner of applications to trade/transfer tradeable water rights?

See previous comments about the use of modern technology to facilitate trades.

It may be worthwhile considering the different forms and requirements for each approval authority and see what the common items are, and what is specific to each area. The development of a common form may facilitate trade. However, dealing with those areas that are not common may need an assessment of whether these are necessary to accomplish the permanent or allocation trade. A high-level agreement between jurisdictions of a common form may then be facilitated.

In many instances, the delay is not due to the trade itself but the failure by the irrigator selling the water to complete the form appropriately. In some instances, statistics regarding trade times specifically exclude the time required to have the irrigator complete the form fully (and this process for collecting statistics is endorsed).

For irrigators pumping directly from water sources (either as an IIO or individually), it is essential that appropriate technology is installed to ensure that information on water use is current – this is needed to underpin the allocation trade. Bulk water providers, such as SunWater,

State Water, Goulburn Murray Water etc, will need to be adequately resourced to install such technology. NFF notes that there is funding available under the Water for the Future program that may assist in this regard. However, NFF urges a cost to benefit assessment of installation of this technology is a consideration.

Question 10–D Are there other legislative requirements limiting the ability of approval authorities to accept applications electronically?

NFF is not in a position to answer this question.

Question 10–E Is there scope to develop application forms relating to the trade/transfer of tradeable water rights that are consistent between states? Would there be merit doing so?

See comment above. NFF endorses an assessment of the common areas to determine whether there is merit in developing one application form across all states.

Question 10–F What are the advantages and disadvantages of allowing applications to be lodged through a single portal (to be forwarded to the appropriate approval authority or authorities)?

See comment above. NFF understands that COAG are moving towards a national register over time. Initially, however, this may be establishing registers that are able to communicate. In the interim, the use of a single portal to lodge trades may be part of the process in moving to the new system. NFF notes that this is not a proposal for approving the trades but the use of technology for one lodgement portal.

NFF notes that a single portal may also be used for buyers and sellers to track the approval process through the relevant approval authorities. There may also be advantages for tracking trade statistics, such as volume and price.

Approval times

Question 10–G What factors can negatively influence approval times? What measures should be taken to address these factors?

For allocation trades, approvals should be effected electronically within days. The main issue is ensuring that the water is available in the sellers account to sell. The suggestion outlined above of metering and telemetry will facilitate this process.

The resources (i.e. human and financial) assigned by approval authorities for trade approvals can be a limiting factor, particularly with a high number of trades in low water resource years. Conversely, this may not be an issue when there are sufficient water resources.

During the drought, there were also policy decisions to prevent assessment of trades because of issues surrounding the ability to deliver the water. In NSW, this occurred just prior to water in water accounts being suspended in 2007, i.e. it was a deliberate decision by Government not to process the applications.

Regarding the allocation trade service standards in the issues paper, NFF believes these are too generous. The ACCC have provided only the COAG service standards that are to apply until October 2008. NFF understands that these services standards are different for the period ending June 2009 – intrastate trades within five business days and interstate trades within 10 business

days. NFF also understands that the service standards will again change when there is a national water market¹¹ in place, i.e. five business days regardless of intrastate or interstate. NFF also understands that South Australia has been set more generous service standards for the period ending June 2009, i.e. remaining the same as the current service standards.

ACCC should align service standards to those described above and agreed by COAG. Allocation trades intrastate should be processed within five business days and interstate within ten business days (for all jurisdictions) until the national water market is operational. The onus should be on the jurisdictions to put in place the appropriate mechanisms that will facilitate faster processing and approvals times, whether this is staffing, metering and telemetry.

For permanent trades, NFF understands that more time is required. Unlike the Australian Stock Exchange, water entitlements may underpin lending arrangements. Therefore, time is required to discharge mortgages and establish indefeasibility of title. NFF has made previous comments relating to environmental provisions and these perhaps may be better managed through the use of approval. It is appropriate, therefore, to align permanent trade service standards to perhaps those normally adopted for land/house sale, i.e. say three months, or less if ACCC adopts the approach of ceasing the need for environmental assessments for permanent trade.

NFF supports the establishment of appropriate service standards for permanent trades, but acknowledges that these will be much more generous given the requirement for third party approvals such as lending institutions and appropriate due diligence.

Question 10–H What are the advantages and disadvantages of incorporating maximum approval times into water trading rules? What factors would need to be taken into account in setting these times?

NFF notes that COAG have already agreed to service standards for allocation trades. This policy position should be translated into action. If the State approval authorities do not comply with the agreed timeframes for most trades, then it should be mandated. However, NFF submits that a voluntary adoption of service standards is the preferred option.

NFF notes that COAG have not yet adopted service standards for permanent trades. NFF are aware of the frustration of some individual irrigators, seeking to make a permanent trade, where there have been significant time delays. This has created issues, particularly where financiers are waiting on those funds to repay loans, or where business opportunities have lapsed due to the delay. Mandating a maximum approval time would provide the buyers and sellers with an expectation of when the trade will be approved and settlement could occur.

An alternative option may be an accessible tracking process that would have potential to embarrass parties into compliance. Furthermore, it should be possible to produce statistics on the most efficient brokers and approval authorities. Because of these suggestions, trade will be undertaken using the most efficient process.

The interaction between approval authorities and intermediaries

Question 10–I What requirements are placed on intermediaries when dealing directly with approval authorities regarding an application to trade/transfer?

NFF is not in a position to answer this question from the perspective of the requirements imposed on intermediaries from approval authorities.

¹¹ This may be a market where state based registers simply “talk” to each other or a separate national system.

NFF notes that the ACCC has viewed this issue to be of importance. Aside from drafting of advice to the Minister and Authority on water trade, market and charge rules, the ACCC has published three documents aimed at informing water brokers and their clients of their rights and responsibilities under the *Trade Practices Act 1974*. In particular, the documents look at the conduct of brokers and when certain conduct may contravene the Act.

Likewise, the National Water Commission released a report in 2007¹² seeking to examine whether government intervention was justified to prevent market failure, whether there was any misconduct (and the scale), investigate the case of mandated governance arrangements and what form might be appropriate. The report found that misconduct was not widespread (although it was occurring) and many of the issues raised were “teething” issues and recommended not to licence and take a minimalistic approach at present. Where misconduct occurred, this was primarily a result of a lack of standard industry documentation and fiducial procedures.

Furthermore, the report found that there were concerns regarding the competency of brokers. This mainly related to the lack of understanding of trade rules, lack of information on key market events, incomplete documentation, not checking on whether the seller had the allocation water to sell or whether the same parcel of water was listed with multiple intermediaries. Brokers indicated a need for an accreditation system, and updates on trade rules.

NFF concerns related to where any action of an intermediary results in a financial cost to the buyer or the seller, then NFF will not condone this. As an example, the broker settles a trade, but does not pay the seller the proceeds in a timely manner (say within five business days of settlement).

NFF has concerns about the lack of regulation of water market intermediaries. Real Estate Agents, solicitors and accountants are like businesses that are regulated – giving confidence to their clients. These professions hold funds on behalf of third parties, in fully audited trust accounts. NFF understands that some intermediaries, while not regulated, already operate under such protocols as would apply to say real estate agents (regardless of whether or not they actually are).

NFF has undertaken to work with the intermediaries to develop a code of conduct that would be adopted by all intermediaries. This code of conduct should ensure full disclosure and transparency and provide a measure of confidence to market participants.

If any market participant has to resort to litigation to resolve an issue arising from the conduct of an intermediary, then there will be market failure and Governments will have failed to address market concerns.

Question 10–J Do approval authorities recommend specific brokers or exchanges to water market participants? On what basis are such recommendations made?

NFF does not support, nor is it appropriate, for approval authorities to recommend specific intermediaries.

NFF would view the recommendation of specific brokers or exchanges by approval authorities as a poor outcome. Each is different and operates under different charters or codes of practice. None has any legal obligation for behaviour or the use of trust accounts. A recommendation may see a particular broker be supported over others in what should be a business decision by the seller and buyer of an entitlement.

¹² 2007 NWC, Improving Market Confidence in Intermediaries, The Allen Consulting Group, Waterlines Occasional Paper No 3

NFF has real concerns that a major fraud is inevitable due to the lack of regulation of brokers. If this were to occur, this would be a failing of governments.

Question 10–K Is there evidence that particular applications to trade/transfer are expedited or processed differently by approval authorities because those applications take place through a particular exchange or broker? If so, what is the justification for this?

NFF are not in a position to answer this question.

Approval authorities' other activities

Question 10–L What influence, if any, does an approval authority's other activities have on its consideration of applications to trade and transfer tradeable water rights?

Question 10–M Are there examples of approval authorities with conflicts of interest? If so, are measures taken to address this possible conflict? Are these measures adequate?

NFF is not in a position to answer these questions.

Reporting and availability of information

Information regarding tradeable water right characteristics

Question 11–A What issues do market participants encounter in relation to obtaining information to enable the trade/transfer of tradeable water rights?

One of the most common would be trying to understand the terminology, procedures and processes in use across jurisdictions. This is not helped with jurisdiction introduce a range of new terminology, as has occurred with the Federal *Water Act 2007* and its subsequent rules being developed by the ACCC.

Irrigators continue to face a wall of silence and an aggregation of data when they attempt to find out what government purchasers are paying for water acquired under various programs to return water to the environment. NFF understands that for the Federal Government's 2007-08 \$50 million tender, the following information is available:

- The Hyder Report states that 10,423 ML NSW Murray general security entitlements purchased (Table 4, p. 22); and
- Environment website states that 5,185 ML was currently being pursued (accessed 23 April 2009, online: <http://www.environment.gov.au/water/mdb/entitlement-purchasing/2007-08.html>).

What is currently unknown is what volume of the above water was actually purchased (i.e. the money and water transaction was completed), and what offers were withdrawn. This information is not available to the market for all Government purchases and ought to be publicly available, along with the reasons for the failure of the trade.

Question 11–B How relevant are the particular characteristics of a tradeable water right to a decision to trade/transfer?

The characteristics are very important as they describe the property right. The test for a property right was first described by Scott (as summarised in Sheehan) and relies on a minimum of six fundamental characteristics, those being:

- Duration
- Flexibility
- Exclusivity
- Quality of title
- Transferability
- Divisibility¹³

The report also describes the common qualities of a property right as being a management power, an ability to receive income or benefits, and an ability to sell or alienate an interest. The degrees to which these are present in a property right will be dependent on the mix of the six fundamental characteristics¹⁴. Sheehan also notes¹⁵ that Governments can restrict or curtail the property right by the application of regulations and attenuate the right by the need for review (such as those for water sharing plans).

These characteristics differ from those described in the Issues Paper, which may relate to the quality of title characteristic referred to above. In effect, the “characteristics” described in the Issues Paper largely relate to Government efforts to curtail or attenuate property rights (i.e. carry over, fees and charges, other terms and conditions).

Setting the above discussion aside, the Issues Paper is correct in that there is no single easily accessible place to obtain information about water entitlements, the inherent rules and policies that determine priority, reliability fees and charges and other terms and conditions such as carry over, the cap and so on.

The most basic information on which buyers rely on to acquire a water entitlement is its security (e.g. high or general), its price and the trade rules that apply (i.e. can the buyer use the water where intended). For sellers, the relevant price of recent sales can provide an indicator for a sale value.

Whether the remaining information is critical to a sale is arguable but in the very least, helps to inform the market participants.

Question 11–C Are there particular characteristics of water access rights where greater consistency throughout the MDB would lead to more efficient markets?

NFF does not support any move to introduce consistency of characteristics across the MDB, as this is setting the scene for introducing one water product. There are some well intentioned but ill-informed commentators who would believe this is the future for water entitlements. However, to do so would be to jeopardise our entire irrigation system. As an example, if all irrigation entitlements were converted to a high security product, there would be very little water delivered, as there would be a need to set aside an extremely large volume of water for allocation.

Additionally, farms produce different commodities, which have different capital, equipment and water requirements. Permanent plantings and dairy require a more secure product. Whereas

¹³ 2000 The Sarasan Consulting Group, Advice on Water Property Rights, A Report Prepared for NSW Irrigators Council (also known as the Sheehan Report)

¹⁴ Ibid, p. 14

¹⁵ Ibid, p. 19

annual crops do not require a high security product and farms can be “mothballed” during a drought without the need for significant capital investment post drought (unlike re-planting trees).

These differences can be seen during the current irrigation season. Both Victoria and South Australia are primarily based on high security products (some 1484 GL and 718 GL respectively), with NSW having approximately 160 GL of high security irrigation water. With small system inflows, this resulted in the NSW High Security irrigation entitlements able to receive 100% and enable a small allocation to general security irrigators, whilst Victoria remains on 35% and South Australia on 18%.

NFF does not support contention that a more consistent water characteristic will result in better market outcomes.

Question 11–D What are the advantages and disadvantages of developing consistent terminology for use throughout the MDB in relation to the trade/transfer of tradeable water rights?

NFF supports the use of more consistent terminology (also see Terminology and key concepts on page 6).

Question 11–E What are the advantages and disadvantages of providing information about the characteristics associated with tradeable water rights:
(a) at a single point (e.g. a website)?
(b) in a particular format and/or template?

The information required to facilitate trade is the volume and price on a per megalitre basis for each water entitlement type, and not just average, high and low volumes and values. This information should be made publicly available and preferable at a single point. This does not mean one register but one data source point.

While this is supported, care must be taken to ensure that trade rules do not compromise valuable trade information, e.g. by lack of information through simplification of the rules.

NFF supports a move towards standardised templates. However, trade rules are complex and may not be able to be captured in a single template, without that template becoming a significant document to complete. Ideally, such templates ought to be no more than a few pages at most.

The work undertaken by the NWC is noteworthy. The release in late 2008 of the Australia Water Markets Report 2007-08 is a document that provides useful benchmarking for future reference. As such, it should be distributed more widely. NFF understands that the NWC are currently working on the 2009 Report, due for release in late 2009.

Question 11–F What measures could be taken to make trading rules more easily accessible and transparent for stakeholders?

NFF does not believe there is sufficient work being undertaken to provide clearer, more accessible and more transparent information on trading rules. The suggestion of a single portal for trade lodgement may be an appropriate mechanism to see the trade rules that also apply. Currently, if a buyer is seeking to acquire water, the rules sit “behind” intermediary systems (i.e. are not seen by the buyer). The market participant is “blocked” from acquiring certain parcels due to say, no system connectivity.

NFF is also looking to the new MDB Authority to set a new standard in trade reporting particularly the activities of Governments.

Information about trading rules and processes

NFF notes the comment in the issues paper (Box 11.2, p. 60) that conveyance arranging for the transfer of title. This should be checked at a jurisdictional level, as some states conveyancer's can only undertake transfer of land (not water).

Question 11–G What are the advantages and disadvantages of providing information about water trading rules and requirements:
(a) at a single point (for example, a website)?
(b) in particular format(s) and/or template(s)?

See comments at question 11-E.

Question 11–H Are there any concerns about the role of intermediaries in providing information about trading rules and other related matters to water market participants?

NFF has previously noted concerns regarding regulation of market intermediaries. Part of such regulation must ensure that there is disclosure of all relevant information relating to water trade.

NFF does not have any specific concerns. However, NFF notes that if intermediaries are required to provide additional services, these may well feel the need to recoup these costs from market participants. This may be via increased commissions, or an annual market subscription fee or perhaps a fee for information requests, i.e. direct or indirect charges. The obvious outcome is an increase in the costs of market participation, not a decrease.

Notwithstanding, rural areas are still rife with rumour about the activities of governments in the market. The MDB Authority must put in place real time web information.

One of the major issues is the timing of such information. Publishing information six months after a trade does not assist market transparency and operation. Service standards must be applied, for example, report trades with X days of the trade being approved. NFF supports that this occur as close to the approval as possible to inform the market.

Trading volumes and prices

Question 11–I What are the advantages and disadvantages of requiring water market participants to report the price of their water trades/transfers as a condition of approval and/or registration?

NFF supports that intermediaries and approval authorities report this information as the trade occurs, including for internal IIO trades. Requiring market participants (i.e. the buyers and sellers) would be a significant undertaking. Making this a requirement of approval is not supported. NFF considers that intermediaries with the best price disclosure will have a market advantage.

Simple work could be done to filter out related farm-to-farm allocation trades. A farm with a number of related irrigation holdings may make a number of allocation trades a year between these holdings. This is a major distortion on trade statistics and ought to be excluded.

Question 11–J What practical measures could be taken to ensure the accuracy of pricing data that is reported?

In some situations, it may not be possible to provide accurate pricing information on trades, e.g. where no exchange of money has occurred. In such situations, it may be appropriate to place an explanation on the site providing the trade information.

Trades where money has changed hands must be recorded and reported, perhaps linked to the approval of the trade.

NFF also supports an incentive or discount on transfer fees for related party transactions. However, in order to obtain this discount, the transfer must be supported by evidence of the related party transaction.

Question 11–K To what extent do differences in how data (in relation to the trade/transfer of tradeable water rights) is collected, classified and reported affect the usefulness of trading volume and pricing information?

See comments above in relation to timing of trade information (question 11-H). Furthermore, the wider distribution of the NWC water trading report and data that will be available under the BOM in future is essential to inform market participation.

Question 11–L What measures could assist in making trading volume and price data more readily available to interested parties?

See previous comments.

Other market-sensitive information

Question 11–M What concerns, if any, are there with the current approaches informing water market participants about allocation announcements?

Having regular allocation announcements is supported, as the market understands when an announcement occurs. An irrigator wishing to purchase water knows that if this occurs in the few days prior to that announcement, this is his risk should his water allocation increase to where the purchased water is no longer required.

In reality, a move to real time allocation announcements is strongly supported. This should be facilitated by appropriate metering and telemetry.

Question 11–N What are the advantages and disadvantages of water authorities providing forecasts for future water allocation announcements?

Historic and forecast information underpins decisions about market participation. NFF supports and endorses widespread use of such information to inform the participants and operation of the market.

Question 11–O Is sufficient information available on how water allocations are calculated?

The knowledge base of participants is the biggest issue. Some are very well informed individuals and can “read” the likely allocation outcome because of a rainfall event in the upper catchments. Others, likely those who have little market experience, will have little such understanding.

In some cases, particularly the southern Basin, there is a lack of understanding about interstate sharing and how each state undertakes its allocation announcement, leading to much confusion over why NSW high security received 100% but South Australian's received 18%.

Another example is that first year that South Australian irrigators did not receive 100% allocation at the start of the year (but this built to 100% later in the season), many irrigators either bought permanent water or pulled out permanent plantings. Conversely, their Victorian and NSW counterparts understood that the allocation would build and waited until much later in the season before making a decision on market entry.

In other situations, NSW irrigators would look at a full dam and did not understand why they had little allocations (the dam was full and Victoria and South Australian irrigators had 100%).

The simple story is water entitlements, planning and management and allocation calculations are complex within a state or water source let alone across jurisdictions. The good news is that the drought has enabled significant capacity building in this respect and a better understanding of the process for those irrigators who did not understand before.

Question 11–P How can the way in which a trading rule policy change is communicated affect the water market?

NFF submits that the implication of new policies or policy changes must be well understood and the impacts modelled to give assurance to market participants.

Question 11–Q What principles and procedures should be implemented in relation to the communication of policy changes that affect the water trading rules (e.g. should all stakeholders be notified of a change at the same time)?

It may not be necessary to have knowledge at the same time (this may be possible via use of technologies such as SMS). However, it may be pertinent to introduce the changes at a later point in time. Most water trading rules are contained within water plans, which are statutory instruments reviewed on a ten-yearly basis. The development and introduction of new rules will coincide with each ten-yearly (or other period) review.

Hence, there should be sufficient consultation with stakeholders about the changes, and sufficient time for market participants to understand the effects of such changes.

NFF does not support changes to be effected with little or no notice but as part of a water-sharing plan.

NFF believes hardcopy yearly allocation /trading rules should be provided to all licence holders. A good model is the NSW DPI management guides like the winter crop variety sowing guide. Most cereal farmers use and keep these for future use and reference. MDBA needs to scope out such a yearly publication, as should state authorities.

Information provided by water registers

Question 11–R How should the water trading rules provide for the use of registers to provide information about the trading or transfer of tradeable water rights?

Until compatible water registers (or one water register) is implemented, this is likely a mute question. The water trading rules ought to provide for information to be provided either from

one point source (such as a website) or generically. It is likely that the latter will result in the least outcome for market participants.

Question 11–S To what extent are inter-operable registers between Basin states necessary to facilitate the operation of efficient water markets?

The market operates now and there is some argument as to whether this is deemed efficient. Much can be done now, without inter-operable registers to improve the efficiency of markets. Such registers would likely assist, but as is widely known, movement to inter-operable registers is likely some way off. This is a given considering this is the least developed area of NWI implementation, and the COAG working group on water have recently initiated the project to effect this. It may be that this objective is achieved before the Basin Plan commences.

Consultation

Given the importance of the trade rules, NFF suggests that the ACCC undertakes considerable consultation on a regional basis. Regional consultation is necessary to ensure that the ACCC clearly understands the hydraulic issues underpinning the movement of water in each water source. Rules regarding the trade of water are largely constructed around these hydraulic issues. The development of water trade rules must consider such issues and not be drafted in isolation.

Such consultation should be based on an engagement of the kind that engenders good dialogue and discussion with these communities. This is the only way the trade rules will adequately consider and incorporate local hydraulic issues.

In addition, it may be appropriate for the ACCC to engage with IIOs. Historically, these IIOs have complied with state legislation. However, the new regime of Federal legislation will require implementation at a local level – not only the trade rules, but also market and charge rules. The transition to the new regime must be smoothed to ensure that IIOs become compliant and their members understand the new requirements being established.

Supplementary Water

NFF submits that a major omission is that the Issues paper failed to canvas the issue of supplementary water.

In both Queensland and NSW, the extraction of unregulated flows underpins the reliability of water entitlements. In NSW, the issue of supplementary licences within a water resource plan formally underpins supplementary water. In Queensland, the regulator manages right to harvest unregulated flows is permitted (including its subsequent trade).

In both jurisdictions, this water forms an important part of the resource set. NFF would not support any rules that attenuate this right.

In both situations, there is a need to formalise these arrangements and duly accord the policy instruments as a property right. Necessarily, these may have a lesser priority than high and general or low security water products.

Modelling of Changes to Trade Rules

NFF notes that trade rules underpin the water property rights (water access entitlements) issued under state legislation. Many of the current rules seek to address issues surrounding the hydrology of water sources, or channel systems. Changes to existing rules will necessarily deliver winners and losers. NFF does not support any changes that will result on third party impacts on

existing water entitlements, and particularly those essential characteristics that define the property right. Most important of these is the reliability attached to the property right.

To understand the implications, modelling is required. The benchmark for the modelling must be the commencement of existing water resource plans, i.e. 2004 for most. Where water resource plans were not in existence, then the rules that applied at that date. Modelling will also assist in understanding any perverse or unintended consequence that will arise. No water entitlement holder ought to be affected by a new trade rules environment.

Any impacts must be compensable, under NWI Cl. 50, i.e. 100% government for a change of government policy. To do otherwise, is most egregious.

NFF also notes there will be some significant changes in the Basin over the next few years. The impacts of changes on rules must be able to be identified and separated from other impacts. This will need to be underpinned by modelling of different scenarios and benchmarked to 2004.

Anomalies

In undertaking the development of the trade rules, the ACCC should be aware that there is a high likelihood for anomalies to occur. As an example, NFF are aware of an individual irrigator who holds the sole volumetric licence on an unregulated tributary of the Murray. The state government has physically shut off this unregulated system, using a regulator. This regulator would be used during times of high river or flood. This licence cannot be traded, either permanently or allocation trade. There is no water resource plan, and it is unlikely there will ever be one. NFF understands that the irrigator has sought to sell this licence back to the Government, but is unable to do so – possibly, because it is untradeable.

If the trade rules seek to change the existing trade rules, an ongoing assessment needs to be made of such anomalies as these arise. NFF would recommend that a committee be established, that would include irrigators, to assess and recommend resolution of these issues.

Conclusion

NFF has made numerous suggestions in response to the issues paper. Significantly, NFF has sought to establish some principles for the development of trade rules. Importantly, communication (including a shared understanding of the key concepts and terms) and consultation is a good cornerstone for the development of these important rules. NFF urges the ACCC to develop an understanding of the particular hydrologic issues that underpin many trade rules currently in operation. In many cases, it may not be appropriate to deliver one set of rules that will apply consistently across the Basin and across all water sources.

Invariably, winners and losers will eventuate from any changes. NFF urges that trade rules are underpinned by modelling benchmarked to 2004 and for any impacts to be compensable under NWI Cl. 50.

NFF supports the goals of the ACCC to enhance the tradability of water in Australia. No jurisdiction or stakeholder has a clean sheet on the issues and mistakes have been made by most in the evolution of the current system. NFF encourages the major players including the MDB Authority and Governments to not only talk the talk but also walk the walk.

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