



**National Farmers' Federation**

**Public Submission to the**

**ACCC Water Trading Rules Draft Advice**

1 February 2010



Member Organisations



CANEGROWERS



Corporate Agricultural Group



COTTON AUSTRALIA



The Pastoralists' Association of West Darling



WOOLPRODUCERS AUSTRALIA

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# 1. The National Farmers' Federation

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The National Farmers' Federation (NFF) is the peak national body representing farmers and, more broadly, agriculture across Australia. It is one of Australia's foremost and respected lobbying and advocacy organisations.

Since its inception in 1979, the NFF has earned a formidable reputation as a leader in the identification, development and achievement of policy outcomes - championing issues affecting farmers and dedicated to the advancement of agriculture.

The NFF is dedicated to proactively generating greater understanding and better-informed awareness of farming's modern role, contribution and value to the entire community.

One of the keys to the NFF's success has been its commitment to presenting innovative and forward-looking solutions to the issues affecting agriculture, striving to meet current and emerging challenges, and advancing Australia's vital agricultural production base.

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.

The NFF recently implemented a re-structure of the organisation. Through an associate category this has enabled a broader cross section of the agricultural sector to become members of the NFF, including the breadth and the length of the supply chain.

Each of the 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.

## 2. Introduction

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The NFF welcomes the opportunity to make a submission to the ACCC Water Trading Rules Draft Advice (Draft Advice). NFF notes that the ACCC will not develop draft rules as this task will be undertaken by the Murray-Darling Basin Authority (MDBA).

Given that this is the final document prior to submitting the final advice to the MDBA, NFF will make comment only on the key points of difference to the position taken by the ACCC.

## 3. NFF position on Key Points of Difference

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### Application of Rules

While the ACCC have noted the NFF issue that the ACCC "recommendations" to the States cannot be enforced by the ACCC or more appropriately, by the MDBA<sup>1</sup>, there has been no move to address this issue by means of an agreement, legislative amendment or any other option. This will clearly limit the effectiveness of the Trade Rules and remains an unresolved issue.

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<sup>1</sup> p. 15

### Over allocation

NFF notes that the ACCC Draft Advice will not impinge on the rights of the states to issue, cancel and acquire water rights in an attempt to address over allocation or “re-scale” broad categories of water access rights<sup>2</sup>. While this may in fact be true, NFF asserts that any adjustment to the balance between consumptive and environmental water uses must be via the acquisition of water from willing sellers. Any attempt to make this adjustment by varying the reliability attached to those water rights must attract appropriate compensation under NWI risk assignment for a change of government policy. To do otherwise, impinges the property rights and is not within the spirit of the National Water Initiative.

### Foreign Investment

The NFF notes that the ACCC have not accepted the NFF advice regarding how the current FIRB rules might be amended to accommodate foreign investment provisions. Interestingly, on a recent visit to the USA, interest was shown in opportunities to invest in acquiring water in a non-user model (i.e. for temporary sale and/or lease arrangements to users). While NFF concurs with the ACCC position that such investors will wish to sell this water to users (i.e. it is the only way that the investor will get a return on their investment), there is an opportunity now to put into place some effective checks and balances. This is particularly the case when the current FIRB protocols are set at such a high level that it will take a significant single investment to trigger these protocols. The NFF again urges the ACCC to consider appropriate options for water.

### Urban water supply

The ACCC has recognised the NFF concern regarding critical human needs for urban centres and the need for relevant mechanisms so that this cannot be sold with consequential impacts on water for other users in times of very limited supply. However, the ACCC has failed to pick up the major point being that if urban water is permanently sold or if population predictions indicate an increase future water requirement, these towns and cities have the right to petition the Minister for additional entitlement to be issued on the grounds of insufficient water to meet current and future population requirements. Such actions create third party impacts by reducing the reliability of all other entitlements in the water source.

The NFF notes that where such largesse remains in existence (e.g. in NSW), this authority of the Minister must be removed and urban centres must acquire permanent water from the market for their current and future use or alternatively, invest in water savings or other water sources (e.g. desalination or reuse) to supply the increased demands.

### Stock & Domestic Water

At its November 2009 Members’ Council meeting, the NFF reaffirmed its policy position that stock & domestic water rights are not made tradeable and confirmed that stock & domestic water should not be metered. It is worthwhile noting that Members believe that many concerns and the drivers to meter stock & domestic water arises from inadequate compliance measures or poor implementation of compliance. To this end, NFF recommends that the States take appropriate steps to address this issue.

### Conversion between Priority Classes

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<sup>2</sup> p. 26

NFF endorsed the ACCC recommendation<sup>3</sup> and further comments that the water market now provides the opportunity for any entitlement holder to acquire the water products that best suit their requirements now or in the future.

### Carry Over

The NFF notes the discussion around carry over and the use by the States of this water to underpin critical human water needs. The NFF does not support the ability for the States to simply take this water. A water market is in operation and it is incumbent on jurisdictions (including the MDBA) to acquire water to underpin critical human needs where this cannot be met from reserves. The reason underpinning this position reflects that irrigators are asked to acquire any water needs from the water as their resolution to risk management.

Furthermore, irrigators may have already made a planting decision – and physically planted a crop – based on their carry over water. This occurred in NSW and the compensation paid was clearly insufficient to cover the costs associated with planting and the foregone income from a harvested crop. In this case, irrigators wore the real costs of providing drinking water without true compensation for their very significant losses in a drought!

The NFF concurs with the ACCC rule advice 3-N to 3-P<sup>4</sup> providing that third party impacts are assessed and considered. Any impacts to reliability entitlement must be duly compensated under risk assignment for a change of government policy.

### Consideration of Applications by Multiple Approval Authorities

NFF notes the proposed recommendation 5-E<sup>5</sup> to establish a working group to consider progressing cross delegations. NFF recommends that an irrigator is also appointed to this group to provide this perspective in deliberations to find an appropriate solution.

### Intermediaries

The ACCC recommendation<sup>6</sup> simply does not go far enough to provide confidence in market intermediaries by irrigators. Irrigators agree that it will not be “if” but “when” an market intermediary’s conduct will result in substantial losses by irrigator(s).

While self regulation is a halfway step, the NFF fully endorses that market intermediaries are regulated. Given that water trade turnover (i.e. both permanent and temporary) amounted to \$1.682 billion in 2007-08 and \$2.821 billion in 2008-09, the current position of Governments is untenable.

NFF recommends regulation of market intermediaries.

### Trade Information

NFF recommends that intra-business trades (i.e. water traded from one licence to another within the same business enterprise) should be excluded from data collated and disseminated about the water market itself. To do otherwise is to distort market volumes and prices.

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<sup>3</sup> p. 79

<sup>4</sup> p. 87-88

<sup>5</sup> p. 121

<sup>6</sup> p.134

NFF also notes that the timing of the information on trade volumes and prices is critical to informing the market and transparency. The requirement to collect the information is supported but there ought to be a further requirement for timely provision of this information to the market. The ACCC have failed to adequately consider this aspect.

## 4. Conclusion

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The NFF notes that this is the final draft advice from the ACCC to the MDBA. The NFF has made comment on a number of issues where it believes the ACCC could include amendments to its advice. Moreover, NFF notes that the MDBA will now draft the trade rules that will be included in the proposed Basin Plan and that there will be a further opportunity to make comment on these during the consultation process for the Basin Plan.

NFF encourages the ACCC to ensure that it has the appropriate mechanisms in place to ensure that the water market, trade and charge rules will be enforced and deliver outcomes for water management across the Basin. NFF remains concerned about a number of shortcomings that have arisen from implementation of the requirements of the Water Act (e.g. water planning & management) and would encourage development of advice to the Commonwealth Government to resolve these legislative inadequacies.

## NFF Contact

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