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Mr Peter Betson
Acting Manager Water Branch
Australian Competition & Consumer Commission

Email: water@accc.gov.au

Subject: Murray Irrigation submission to the Water trading rules draft advice

This letter provides the ACCC with specific comments on the water trading rules advice and recommendations dated December 2009.

Murray Irrigation understands that the ACCC deadline for the receipt of submissions on the water trading rules draft advice has passed. Murray Irrigation is a member of NSW Irrigators' Council and has provided input to the development of their submission to the ACCC. This letter provides more detailed information.

Murray Irrigation is supportive of many of the proposed rules that are directed at improving the operation of both the annual and permanent water markets. A number of the proposed rules are aligned with Murray Irrigation's current approach to both water entitlements and allocation trade.

Murray Irrigation has three key concerns with the water trading rules advice and recommendations. These are;

1. The potential for increased costs of regulation as a result of the rules.
2. The inclusion of prescriptive rules that are inclusive of trading of "delivery rights" within an irrigation infrastructure operator's network.
3. Recommendations in relation to carryover.

Brief comment on these concerns is below.

Increased cost of regulation

A number of the rules and recommendations, if adopted, will result in government or irrigation infrastructure operators incurring additional costs. In NSW at least, all of these costs will be passed on to water licence holders and water users.

Murray Irrigation recommends the ACCC rules should focus on the key elements of a regulatory framework that will drive the effective operation of a water market and these elements should be incorporated into the Basin Plan water trading rules. Evidence should be provided that benefits associated with the proposed rules will not exceed the cost of regulation. Murray Irrigation is interested to understand whether a regulatory impact statement is required in relation to the Basin Plan water trading rules.

Rules regulating irrigation infrastructure operators' arrangements for trade of "delivery rights"

Rule advice (7-A), (7-B), (7-C), (8-A), (8-B), (8-C).

The *Water Market Rules 2009* (Cth) and Water Charge Rules should be the instruments for regulating irrigation infrastructure operators actions in relation to "delivery rights", where the irrigation infrastructure operator is an "'of river irrigation supply scheme."

The private operators in NSW are highly regulated by the *Water Market Rules 2009* (Cth) and *Water Charge (Termination Fee) Rules 2009* (Cth), with the potential for substantial penalties for non-compliance.

Murray Irrigation does not support the Basin Plan including rules for the trade of delivery rights within Irrigation Infrastructure Operator networks. The Basin Plan Rules, in relation to delivery rights, should be restricted to trading of the yet to be determined flow share in the river system.

Recommendation (8-D) provides reasons why irrigation infrastructure operators have significant incentives not to restrict trade of irrigation rights and acknowledges that customers that elect to transform their irrigation right are offered protection under the water market rules, in terms of their access to the irrigation infrastructure's network. For these reasons the ACCC has recommended against including water trading rules in the Basin Plan that regulate "irrigation rights" and their associated annual allocation. Murray Irrigation considers similar reasons support confining the **Basin Plan water trading rules to the trade of Water Access Licences and their associated annual allocation and river flow shares.**

Murray Irrigation does not consider the proposed rules affecting the trade of delivery rights within an off-river irrigation supply scheme relevant to the Basin Plan and the effective operation of the water market.

Rules 7 and 8 are also based on that assumption that for irrigation infrastructure operators the most logical method of operation and allocation of rights to their system are to express rights in terms of volume or unit share of the irrigation infrastructure operator's system. Whilst Murray Irrigation has issued delivery entitlements to its customers, essentially in line with ACCC's approach, the company is not confident this model is the most effective tool to ensure the on-going viability of commercial irrigation infrastructure operators. This is particularly where capacity of the system may frequently exceed the demand for service as a consequence of a lower volume being delivered. In Murray Irrigation's case this is likely to be a result of Government purchase of water entitlements for environmental purposes and potentially the sustainable diversion limit (SDL) in the Basin Plan.

Murray Irrigation considers the prescriptive nature of the proposed rules in relation to delivery rights within an Irrigation Infrastructure Operator's network has the potential to restrict development of local solutions to utilise irrigation infrastructure. This would be an undesirable outcome.

Recommendations in relation to carryover (Recommendations 3-O, 3-P)

The ACCC's recommendations in relation to carryover, if adopted by the Murray Darling Basin Authority, will introduce a significant policy change that will alter the yield and reliability of NSW general security entitlements. Murray Irrigation does not support the Basin Plan including water trading rules in relation to either carryover policy or continuous accounting.

The ACCC acknowledges the implications on "third parties" of allowing conversion between different classes of water entitlements, for example, conversion from general security to high security entitlements. However the ACCC has ignored the implications of changed carryover policy on "third parties".

Murray Irrigation considers issues such as carryover policy and continuous accounting are issues to be dealt with by the individual states' in their water resource plans (water sharing plans in NSW).

The yield and reliability of water entitlements are currently defined in individual water resource plans. These plans have been developed based on a set of assumptions about water use and allocation policy, including carryover policy.

The introduction of unlimited carryover to all entitlement holders at a Basin scale is a fundamental change in policy. The benefits of such a change need to be considered properly during the development of the state's water resource plans. Each state should remain responsible for determining how they manage compliance with the new SDL (in terms of allocation policy) with the trading rules being restricted to the trade of water entitlements and the water available in accounts (i.e. annual trade).

Background to carryover

Under the *Water Management Act 2000* (NSW) two different water entitlement products for irrigation exist with the high security (irrigation) product being less than 10% of the total irrigation entitlement in the regulated NSW Murray (excluding supplementary water licences). As a consequence this product in an extremely secure water product. This situation contrasts with South Australia where only a high reliability irrigation product is available and Victoria which, whilst having two different reliability products, the high reliability product is a significant proportion of the irrigation entitlements issued.

Carryover was introduced as a policy tool in NSW, as part of the NSW Government's policy response to 1) the need for allocation policy to ensure compliance with the Murray Darling Basin Ministerial Cap on diversions and 2) as a mechanism to provide general security water entitlement holders with the opportunity to make individual management decisions about their "risk" profile in terms of annual allocation and volumes carried over.

Carryover as a policy tool in the NSW Murray was never intended to extend to high security water entitlements or to allow individuals to accumulate volumes in addition to 100% of their entitlements.

The current extended drought sequence, in particular the setting of a new minimum inflow sequence for the River Murray in 2006/07, has highlighted the differences between the different states' high security irrigation products. The revelation about the impact of the "worst" ever minimum inflows on announced allocations to both South Australia's and Victoria's high reliability irrigation products has driven their enthusiasm for the opportunity for all licence holders to realise the benefits that a carryover policy provides. This policy is an effective tool to assist licence holders mitigate the risks of annual accounting at an individual licence level

The sustainable diversion limit (SDL), carryover and the Basin Plan water trading rules

Murray Irrigation understands the Basin Plan will involve setting the sustainable diversion limit (SDL) and each state will be responsible for ensuring their revised water resource plan (in NSW water sharing plan) is consistent with the new limit.

At this point in time, how the SDL will be set, accounted for annually and between years, and how compliance with the SDL will be measured (annually or over time) is all unknown. Murray Irrigation does not consider it possible to understand the implications of the recommendations in relation to carryover without more information being available about how the SDL will be operationalised and how compliance with the SDL will be measured.

Murray Irrigation expects any rules in relation to carryover will be consistent with the Murray Darling Basin Agreement and will not allow:

a) South Australia's storage of water in headwater storages to affect upstream state's water availability that would have otherwise occurred.
b) Any changes to the internal spill arrangements between NSW and Victoria.

These are both key principles in relation to each state's right to water as expressed in the Murray Darling Basin Agreement, which require the approval of the Murray Darling Basin Ministerial Council to change.

Murray Irrigation therefore considers it completely premature for the Basin Plan trading rules to be inclusive of significant policy change in relation to water accounting <u>outside</u> of a state approved process.

If you have any questions in relation to this letter please contact Mrs Jenny McLeod, Executive Manager Policy & Stakeholders on T. 03 5898 3340.

Yours sincerely

Anthony Couroupis
General Manager