



National Irrigators' Council

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Submission to the ACCC draft advice on water trading rules

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Introduction

The National Irrigators' Council (NIC) is the peak body representing irrigators in Australia. The NIC's objective is to develop projects and policies to ensure the efficiency, viability and sustainability of Australian irrigated agriculture and the security and reliability of water entitlements. NIC currently has 21 member organisations covering a variety of states, regions and commodities.

While this document has been prepared by the NIC, each member reserves the right to independent policy on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

Overview

The National Irrigators' Council is concerned that the ACCC has failed to heed our concerns in relation to applicability of these rules across the entire Basin. As a peak body seeking to represent the interests of all irrigators, we cannot abide a situation whereby rules purportedly for all, exclude a significant number. Our concerns relate specifically to the fact that, at this point in time, Victoria has failed to nominate the instruments that will make up its transitional water resource plans for the purposes of the *Water Act 2007*.

It remains our submission that this, coupled with the fact that transitional or interim water resource plans will override the Basin Plan in the event of a conflict between the two¹, could lead to the situation where these trading rules cannot be applied equally all over the Basin. It is possible that the absence of identified water resource plans from Victoria could be disadvantageous to Victorian irrigators, or to those outside of Victoria, or both.

The ACCC admits that this situation is likely:

"...the ACCC is limited to providing advice within the given legislative framework. In the view of the ACCC, where its advice is reflected in Basin Plan water trading rules, there is merit in applying these Basin Plan water trading rules wherever possible, even if they do not operate throughout the entire MDB initially."

NIC maintains its view that any rules relating to basin water resources should be equally applicable to all. To avoid any confusion, NIC makes no submission on the type, duration or expiry date of Victorian transitional plans, only that until they are prescribed under regulation, these rules cannot be equitably enforced. Moreover, Victorian irrigators face the prospect of great uncertainty given that all rules, including any reduction in sustainable diversion limits, will apply immediately once the Basin Plan is approved (2011) if Victorian transitional plans have not been prescribed.

We note that the ACCC is "limited to providing advice within the given legislative framework", however this should not preclude the ACCC from making a clear statement to the Murray Darling Basin Authority – and the Commonwealth – that these proposed rules will be worthless unless they apply across all jurisdictions.

One wonders whether the ACCC would not comment forcefully if a similar situation occurred in say, petrol pricing, which precluded a particular state from being bound by certain rules.

¹ *Water Act (2007)*, section 245(2)

Specific issues

2.1.3 Consistency of trading rules throughout the MDB

As outlined above, the NIC has significant issues with the fact that the trading rules could effectively operate without applicability to all jurisdictions. In our view, this would render the entire exercise pointless. Apparently the ACCC agrees, at least to some extent:

The ACCC considers that there is merit in applying Basin Plan water trading rules wherever possible in the MDB, even if they are not initially operating throughout the whole MDB.²

In relation to a transitional resource plan over-riding the Basin Plan rules (in relation to the 4 per cent rule), the ACCC even states:

The ACCC agrees that this would be an undesirable outcome.³

If the ACCC feels free to make the statement in relation to the 4 per cent rule, the NIC is puzzled as to why it will not make a stronger statement in relation to across the board coverage.

We are concerned by the apparent contradictions in the ACCC statements above and below:

The ACCC considers it unnecessary to obtain further commitment from Victoria to comply with the trading rules since they will apply to all Basin state agencies unless inconsistent with an interim or transitional water resource plan.

This statement appears to miss the point – if the rules are inconsistent with an interim or transitional water resource plan, this is exactly where a problem arises and we are asking the ACCC to acknowledge that this is a significant problem.

NIC is not asking the ACCC to take the matter up with Victoria. What we expect, at the very least, is advice to both the MDBA and the Commonwealth that any proposed rules may be unenforceable until Victoria nominates its transitional water resource plans.

Rule advice and recommendations

NIC does not intend to comment on every rule advice and recommendation. We comment below on those we have a strong position on or where we disagree with the ACCC position.

Rule advice 3-A - Ownership restrictions

NIC agrees with the ACCC position, however we support statements by the NFF and the NSW Irrigators' Council that the Foreign Investment Review Board should have a specific role in approving water purchases by foreign interests. In our submission, water entitlements have similar characteristics to real property for the principles of foreign ownership and should be treated as such.

² Page 18

³ page 109

Recommendation 3-F – Trading of stock and domestic water

This recommendation highlights a flaw in the ACCC’s approach to consultation– every industry organisation quoted in the draft has expressed its opposition to, or serious concerns about, the trading of stock and domestic licences, and yet the ACCC has maintained its position that trading should be looked at in certain circumstances.

While we don’t expect government agencies to drop ideas simply because there is opposition to them, we do expect that industry views will carry some weight. Presumably one of the objects of consultation such as this is to “see if ideas will fly” in the community. Clearly, this one does not.

Given the lack of industry support, and the ACCC’s own qualifications, NIC sees little value in pursuing this recommendation.

Rule advice 3-I - Trade into and out of the MDB

NIC concurs with the ACCC that no specific rules need to be implemented to address trade into or out of the Basin. We submit that this is a political issue, not one for trade rules.

However we reiterate our previous statement that the MDB should not be seen as a solution to water woes outside of its boundaries. Irrigators find it extremely grating to be told time and again that the system is under stress (often with the finger pointed at them) only to find governments simultaneously taking water for non-basin purposes. Taking water out of the Basin is counter-productive to the aims of the reform program which irrigators generally support.

Recommendation 3-Q – Metering

Unlike recommendation 3-F, it is clear on this occasion that the ACCC has listened to industry groups and removed any plans to include metering in the trading rules. NIC applauds this decision.

Metering is very important, but it is a function of use, not of trade and should be left to the appropriate authorities.

Rule advice 4-A - The 4 per cent limit

NIC supports the recommendation to remove the 4 per cent limit on trade for a number of reasons, including our desire for a level playing field for all irrigators when it comes to trade.

NIC is also concerned that the 4 per cent limit is, perversely, harming the irrigators and communities that it is designed to protect, as the ACCC has pointed out. Not only are distressed sellers being prevented from liquidating an asset during the difficulties of the drought and low commodity prices (winegrapes and dairy in particular), but they are also potentially facing a greater disadvantage when new sustainable diversion limits (SDLs) are introduced. The Commonwealth and MDBA have stated that all water purchased by the Commonwealth will go towards “offsetting” reductions under any new SDLs (and inevitably it will be reductions). By being restricted in the amount of water they can sell to the Commonwealth because of the 4 per cent rule, Victorian irrigators are reducing the size of the “offset” and face the risk they will eventually face a far more significant cut – and all at once – than they would otherwise.

This realisation, and the ongoing difficulties faced by many Victorian irrigators due to commodity prices, should be sufficient argument for the removal of the 4 per cent cap.

NIC sees little point in the ACCC's "alternate" rule advice that the 4 per cent cap should be phased out. In our view, the advice should be one thing or another - it can't be both.

NIC also opposes the corresponding cap on Commonwealth purchases from NSW, arguing that two wrongs do not make a right. In the event the 4 per cent rule is removed from Victoria, we believe the NSW limit should also be abandoned.

Recommendation 5-I – Water market intermediaries

NIC notes the ACCC position that regulation of market intermediaries is beyond the scope of the rules, but does not accept it on face value. As we are not in a position to provide legal advice on the scope of the rules, we will leave this issue aside.

Either way, we maintain our view that there must be, at the very least, basic regulation of water brokers and traders. If this cannot be achieved through these rules, then we submit that the Commonwealth should direct the ACCC to begin a process for regulation.

Section 6 – Trade in and between unregulated systems

NIC supports the general principles outlined by the ACCC in respect of trade within unregulated systems and between unregulated and regulated systems. That is, we do not support such arrangements being part of the trading rules but that significant further work is necessary before such trade could be supported.

NIC notes that the Commonwealth and NSW have established a taskforce to develop shepherding rules in that state. On this point, NIC registers its strong position that water entitlements held by environmental agencies (including the Commonwealth Environmental Water Holder) should be treated no differently than any other entitlements. That is, any rules developed for environmental water use, including shepherding, should also be available to other participants in the market.

Rule advice 6-P – Groundwater trading

NIC concurs with the advice that would allow groundwater trade to occur within trading zones defined by hydraulic connectivity.

Rule advice 6-T – Trade between groundwater and surface water systems

NIC concurs with the advice that trade between groundwater and surface water systems with low or no connectivity be prohibited. We also note the criteria listed in Recommendation 6-U that would be needed to allow trade in highly or moderately connected systems to occur, but in our submission there should be significantly more discussion, research and consultation before such trade is allowed.

Rule advice 9-A – Provision of information

NIC notes the draft rule advice that state government agencies should provide detailed information about the water entitlements. While we don't disagree on the principle that agencies should be providing some information, we submit that the detailed list of items contained in the rule advice is excessive and un-necessary. The list appears to be designed to provide information to a person who has no knowledge of the water industry at all. If a person or entity wishes to enter a market they

know little about, there are alternative avenues available to them (such as brokers and agents) who can assist with educating them. We are apprehensive about state agencies being forced to make this information readily available when informed players in the market – those who will make up the overwhelming majority of players in the market – will not need it, but will likely be forced to pay for it.

We would be particularly concerned if existing water users were to be charged by state governments for the cost of compiling this information.

To use a corollary, we are not aware of a similar requirement on government agencies to provide information about the number of houses in a suburb or what they're made from. If a home buyer wants to know that information, they can find out.

Rule advice 9-D – Trading volumes and prices

NIC supports the objective of this rule of providing more information to the market on volume and prices. It is a criticism of the current Commonwealth buyback that only average prices are provided which are close to worthless to the market at large. However the position as outlined is absurd as it requires market participants to notify price to the relevant agency, but places no obligation on the agency to publish that price publicly – either in a timely manner, or at all.

It would appear to be common sense that the price information is either provided and published, or not provided at all. The current rule advice and recommendation is a half way position that serves no use.

Rule advice 9-F – Allocation and policy announcements

NIC concurs with the ACCC position that such announcements should be provided to the market at the same time and that the basis for them should be properly explained.

END OF SUBMISSION