



29 November 2019

Director  
Murray-Darling Basin Water Markets Inquiry  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

By E-mail: [waterinquiry@accc.gov.au](mailto:waterinquiry@accc.gov.au)

Dear Director,

Re: ACCC Water Market Inquiry

Please find enclosed a submission for your consideration as prepared by Webster Limited, in relation to the Water Market Inquiry.

We also welcome any inquiries you may have on the views presented.

Yours faithfully,

Chris Corrigan  
Chairman

Maurice Felizzi  
Chief Executive Officer

## Submission to ACCC Murray-Darling Basin Water Markets Inquiry

Webster Limited

29 November 2019

### Background

Webster is a publicly listed company, which is primarily involved in irrigated horticulture and agriculture and focussed in the Murrumbidgee Valley around Leeton, Griffith and Hay.

Webster has recently received an offer, by way of a Scheme of Arrangement, from its largest shareholder the Public Sector Pension Investment Board of Canada. If approved the Scheme will result in the company being separated into two groupings but with the broad functionality of the existing businesses continuing, but with differing shareholder groupings, all of whom are current Webster shareholders.

As stated in our annual reports for several years:

*“Webster’s core business continues to be the ownership of water entitlements and the application of the annual water allocations from those entitlements to both permanent and annual irrigated crops. Our belief is that the conversion of the annual water allocations into horticultural and agricultural products, rather than selling the water allocations, will likely provide shareholders with a higher return on their funds in the medium to long term.”*

Relevantly, Webster holds a wide variety of water entitlements with a current market value of approximately \$410 million.

Webster has 3,500 hectares of nut trees and has holdings of 20,000 hectares of annual cropping land, developed for irrigation.

### Pressures on the Market

There can be little doubt that much of the debate and criticism of the current Murray-Darling Basin Plan (“the Plan”) stems from the amount of water acquired on market or by other arrangements and redirected away from irrigation in recent years, largely by the Commonwealth, for “environmental flows”.

This withdraw of water from irrigation is largely responsible for the significant upward pressure on water entitlement prices. Water now directed to “environmental flows”, was water previously used for agriculture, which has now been effectively withdrawn for agricultural use to “benefit the environment”.

We understand that the economic effectiveness and dislocation impacts of these decisions is beyond the scope of this review. However, it is impossible to discuss the irritation in the farming community, with the operation of the Plan, without understanding the perversion with which these decisions are viewed in agricultural areas.

This is particularly so when directed at the South Australian decisions surrounding the Murray River mouth and the Lake Alexandrina question. The strong view of large sections of the farming community is that the science, surrounding the question of whether Lake Alexandrina was a saline lake, has been distorted.

The consequence is that large amounts of water, previously available to agriculture have been withdrawn from that endeavour to support an artificial environmental reconstruction.



Furthermore, a number of the environmental benefits of this massive reclaiming of water have been inadequately tested in economic and environmental terms.

In particularly dry times, the questionable science raises community concern to a heightened level, which is often expressed as a dissatisfaction with the workings of the Plan.

Again, almost certainly outside the Commissions terms of reference, the construction of the Murray-Darling as a single Plan, in our view, creates confusion.

With the water storages in place and having connectivity to annual snow melts, both the Murray and the Murrumbidgee rivers and many of their tributaries, can be thought of as reasonably consistent water sources and hence lend themselves to a system of water rights.

By contrast the Darling River is a system by which water is drained from very infrequent, monsoonal activity in southern Queensland and is far less amenable to a systematic allocation of water rights. At the very least, those water rights are markedly different in character from those of the south-eastern regions

These differences are usually overlooked, and the debate is confused, by linking them into the one Plan. Whilst the Murray-Darling Basin Plan is a single plan, the health of the rivers within that Plan are not interrelated and the characteristics of each is very different.

### **Current Murray-Darling Basin Operational Plan**

Whilst it is fashionable to criticise the Plan, we would submit that there is much to commend the objectives of the Plan and its implementation.

The separation of water entitlements from the land holdings and thereby allowing the independent valuation of water entitlements and their transferability independently of land, enacted by the State Legislators, which was re-enforced by the introduction of the Plan, has allowed for water usage to migrate toward the most efficient user of that water asset. This is a system admired by some other countries and likely to be implemented in many over time.

Whilst environmental re-allocations and drought have brought hardship to many and an urgency to re-assess the structure of the Plan, the fundamental reasons for and the benefits of the Plan structure should not be overlooked.

The growth in high value horticulture should be an expected outcome of a Plan. The objective was to use the market mechanisms to direct water to its highest and best use. This is clearly working and from a National perspective this is a good outcome.

Equally, the diminishing returns to semi-irrigated grazing and to some extent dairy should not surprise those familiar with the current economics of those endeavours.

There is also widespread confusion over the use of water for annual cropping (say cotton and rice), which in some eyes is not a high value water use.

However, with limited storage and irregular rainfall patterns, whilst there is only really one market in each region for water allocations, there are several markets for water entitlements reflecting the demands for permanent or more secure water for permanent plantings and the more flexible demand for annual cropping when water is more plentiful.



As permanent crops need water security, the reliability of high security or high reliability water entitlement products is the best match for this demand. Hence there is a premium attributed to high security entitlements over general security entitlements even when adjusted for the average water allocation expected from each.

The growing of annual crops, when water is plentiful and unable to be captured in major public storages makes economic sense. If seasonal excess water is not used for annual crops, the alternative proposition would be to grow permanent crops with unreliable water. This would likely have unfavourable economic outcomes.

Annual crops do have a place in a balanced water use environment even whilst acknowledging that they are perceived as of lower economic value than permanent crops.

In terms of the improvements that might be considered in the operation of the Murray-Darling Basin Water Markets the key areas we would like to address are the following.

### **1. Market Transparency**

The health of any market is enhanced by disclosure of asset ownership, transaction data including volume and price, together with visibility of the current bids and offers for the various categories of products in the market. It is usually the case that market efficiency is improved if there is a central marketplace, or if volume allows, perhaps several competing centres of market activity.

The current market for both water entitlements and allocations is conducted in a grey market by unregulated brokers. There are varying degrees of post trading disclosure, both as to the availability and ready accessibility of the data and its timeliness.

The only access to market bids and offers within the market is what participants are told by brokers and a few online platforms. It is unlikely that all market participants have access to the same information about market activity and this inevitably places the brokers in an environment of potential moral hazard. It is clear that some of these market participants have found the temptations enticing.

Webster has had to resort to legal action from time to time to try and enforce trades and this is expensive and often difficult in evidentiary terms.

It must be the case that a central marketplace would enhance the confidence of participants and facilitate a greater availability and timeliness of market data, preferably in a single and accessible site. This would enhance participants knowledge base, increase confidence in the marketplace and lead to better economic outcomes.

The establishment of a single marketplace would likely involve Government instigation as it would be unlikely to enhance the returns to the current broker participants.

Trade within NSW and SA water corporations is not fully disclosed, with variations between the information provided by each authority. A solution to this issue would require that all trades are recorded on the relevant state registers, like Victoria where all transactions are recorded against the water product traded with the price, volume and date of the trade.

Consideration should be given to the reporting of forward trades and other transactions where there is a significant timing difference between the agreement for the trade and the eventual lodgement and



registration of that trade. These transactions should not be reported the same as spot trade of allocation water as the agreement is often for a very different product.

## **2. Transactional Costs**

Legally, water rights are transferred as a real property transaction. The time taken, by legal practitioners, to search title and document each transaction, is both time consuming, expensive and more importantly opens the way for participants to reassess the market movements and find ways to renege on transactions previously verbally agreed. This again lowers confidence in the marketplace.

Equally the costs of transactions and market friction, in a system conducted in a grey market by unregulated brokers, is unlikely to result in market efficiency.

The homogeneity of the various categories of water entitlements and allocations would seem to provide the opportunity, to attach to the marketplace, a clearing system much like that of the stock market, which would reduce transactional cost, facilitate title transfer and enhance timeliness of transactional reporting.

Movement toward more electronic forms of trade would also improve trade efficiency and disclosure along with the ability for Government Agencies to more readily determine if disclosure is in fact correct.

## **3. Ground Water Markets**

There is a distinct difference between the way in which surface water and ground water rights are managed and this, we would submit, is leading to over extraction and an uneconomic use of the ground water resource.

With surface water, the entitlement holder has the right to use their water allocation in the current year or carry-over a defined portion of that water allocation subject only to the “spill” provisions. Within these usage rules, the consumptive use of allocation has no wider impact on any other water user.

The general level of allocation is determined by Government Departments and announced progressively throughout the year, based on a variety of factors.

Ground water is managed on the basis of collective extractions from an individually identifiable groundwater resource. Extraction is monitored on a rolling 3-year period at the end of every water year (soon be extended to a 5-year period). If the annual extractions, during the averaging period, exceed the sustainable extraction limit plus 5 % then an available water determination is applied.

The effect of the available water determination is to reduce the allocation granted to all irrigators for the following season (or seasons) until annual extractions retract to the sustainable extraction limit. This reduction is applied to all groundwater access licence holders regardless of their individual extractions within the averaging period.

This is an inequitable approach, which disadvantages conservative users of the resource, whilst rewarding other, more aggressive users. More importantly, this approach does not produce the best economic outcomes, because it encourages water over-use on an individual user basis and consequentially diminishes an important and scarce resource, which might otherwise be preserved for drought conditions.



In the case of surface water, this is the same as saying that if a water storage level drops below a specified point, all allocations would be reduced the following year regardless of the extraction levels of any individual user.

The impact of this system of regulation is to accelerate the use of ground water by entitlement holders for fear of losing their annual “allocations” should other users’ extractions result in the overall usage exceeding the collective predetermined threshold.

From an economic perspective, one of the great benefits of ground water is that it can be stored with effectively no evaporation loss for drier times such as those currently being experienced.

However, the “socialisation” of the resource is mitigating against this more productive use of ground water and penalises those who preserve the resource for use in times of greater need.

Ground water is an ideal resource for times of drought, but the rules need to be changed so that those seeking to preserve the resource for these occasions are not pre-empted by other water holders over-use.

We would strongly recommend that ground water extraction rights on an annual basis are personalised to the ground water entitlement holder and are able to be carried over in a similar way to surface water, but with an annual average extraction limit, by each entitlement holder of 100% of their entitlement.

This does not detract from the ability of the regulator to reduce the amount of water that can be extracted annually from the aquifer to regulate, over time, its general level on a sustainable basis. However, in this process, previously allocated water which remains unused by an individual entitlement holder, individual extraction availability should not be reduced unless they have overused.

Our contention is that this system of regulation would lead to a higher economic use for ground water overall, whilst in no way detracting from the regulators medium term ability to manage the aquifer in a sustainable manner.

#### **4. Resource Management**

Greater transparency is required around the gross water resources available. Both NSW and Victoria are improving in this area. However, there is still not enough information to allow people to inform themselves of how water availability is likely to unfold. For example, which demands will be met from the next inflows and what is the driver of allocations derived from each category of entitlement.

Since the 2007/08 drought, there is evidence that the managers of the system have been more conservative in both the amounts of allocation announced and the timing of those announcements. This is leading to an under use of water for irrigation, whilst there is no corresponding environmental credit for the increasing incidence of spills.

Concerns around externalities of water delivery need to be addressed. The trade of water from a point nearer the water source to a point nearer the river mouth carries no conveyance charge, yet that trade has a conveyance cost, which impacts on the overall level of allocations. This impacts on the overall economic efficiency of the system. A conveyance surcharge is a mechanism worthy of consideration.



## **5. Carry-Over Water Rights**

The original purpose of carry-over rights was presumably to allow the water user to choose the timing of when that water allocation is used. Should the water storages spill whilst water is being carried-over the rights to that water allocation are lost.

This is a sensible rule as otherwise the water user with carry-over, would be disadvantaging other entitlement owners, by using dam capacity for carry-over, that might otherwise accrue to entitlements through great storage utilisation.

However, so long as the “spill” rules are in place and officials tasked with the allocation decisions, have proper regard to the water being carried over in assessing the amount of allocations in the relevant year, the right to carry a water allocation over to a following year would appear to have no detrimental effect on other entitlement owners.

Furthermore, the right gives greater security and flexibility to the water user in terms of the timing and availability of use.

Hence, we are supportive of the carry-over rules, without third party impacts, as a general practice.

## **6. Financial Market Participants**

Having decided to be largely balanced in its approach to water ownership and rural production, Webster does not have significant interaction with the financial participants in the water market. Furthermore, the opacity of the markets makes it difficult to judge if market abuse is being practised by some.

What is clear is that some water users have made decisions regarding water ownership or the lack thereof in the belief that water ownership was not the optimum use of capital. With hindsight this may not have been the correct decision.

However, to reward this misjudgement, whilst conversely penalising those, who with the benefit of hindsight, made different and perhaps better judgements would seem to send the market perverse signals.

Furthermore, from whom do those water users, without water rights, expect to purchase allocations in drier times if it is not from financial participants?

The real question here would appear to be whether financial participants are possibly using their ability to dominate a market to distort outcomes, which would not be possible in a more liquid market.

This is a conundrum that is obscured by the lack of market information about trading volumes, market participant relative size and liquidity.

