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Water Branch: Water Trading Rules Issues Paper
Australian Competition and Consumer Commission
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**PUBLIC SUBMISSION TO WATER TRADING RULES ISSUES PAPER BY
DEPARTMENT OF SUSTAINABILITY & ENVIRONMENT, VICTORIA**

The Department of Sustainability & Environment (DSE) is pleased to provide the following comments on the Australian Competition & Consumer Commission (ACCC)'s Water Trading Rules Issues Paper. Please note that the following letter does not constitute a whole of government submission.

Subject to the advice provided below, DSE is very supportive of ACCC involvement in the setting of Basin-wide water trading rules, which should have as their objective the facilitation of open trade. Properly functioning and transparent water markets are integral to better water management, and ACCC involvement in the regulation of the market is welcomed.

However, DSE has some concerns about the lack of any requirement for transparency around the treatment of ACCC advice by the Murray-Darling Basin Authority. It is our understanding that the Authority has complete discretion as to whether or not to accept the ACCC's advice. It is our view that, to aid transparency, the Murray-Darling Basin Authority should be required to publicly justify and defend any rejection or alteration to the ACCC's advice from that provided. The key comments outlined below are largely the same as the points which we made when you met with us on 22 January 2009 and 23 February 2009.

Comment 1: Scope

We believe that the Basin Plan should not include trading rules for individual streams or aquifers. These systems can be complex and detailed rules to govern trade within them should not be made without adequate understanding. For example, Victoria allows a certain amount of allocation trade from the Goulburn River below Goulburn Weir up into the Goulburn irrigation areas in dry years, regardless of whether there is a back trade opportunity. This is possible because in dry years there are no unregulated inflows, and all water supplied on the lower Goulburn is regulated past Goulburn Weir. When we discussed issues such as this at our recent meetings you recognised that the ACCC do not purport to be experts on hydrology.

We believe that in detailed matters like this, it would be preferable for the states to remain accountable for trading rules and not to have that accountability diluted. Trading in water can have intricate repercussions for other users and the environment which need to be carefully managed. The better course would be for the trading rules to stay at the level of broader principles and make sure that there are not major, unnecessary barriers on water trade.

The principles should also be specifically applicable to matters that are an essential foundation for water markets. This would include topics such as entitlement security, allocation policy (for example, no claw-back of allocations already made) and the governance of decision makers.

Further to this, DSE would be very supportive of the water trading rules also creating both a process whereby the ACCC assessed state rules for consistency with the ACCC's principles and a dispute or appeal process that provided an avenue for parties to challenge state rules should they believe that certain state rules were inconsistent with the principles. In particular to ensure that hydrological considerations do not act to set rules that impede trade, there needs to be a review process established that allows for those trading rules based on hydrological considerations to be reviewed by independent expertise (managed by ACCC) to ensure that unnecessary trading impediments are not established.

The *Water Act 2007* states that the water trading rules may not be limited to rules for the trade of water rights but may also cover the processing and reporting of trade. There are a number of exercises taking place under COAG auspices which are looking at these latter matters. DSE is concerned that Basin Plan trading rules may result in duplication of requirements which have already been established through other processes, unless the scope of the rules is clearer.

Comment 2: Limits to trade

Victoria currently maintains a 4 per cent limit on permanent water trade each year out of irrigation districts in northern Victoria. This limit was initially introduced to manage the risk of stranded assets and to limit the rate of social change in a district due to trade of water out. The introduction of delivery shares and associated termination fees has addressed the stranded asset risk. However, there are still concerns in the community that removal or alteration of the limit would increase the rate of social change to unacceptable levels, particularly with the Commonwealth in the market purchasing \$3.1 billion of entitlements (discussed below). Victoria is currently engaged in a process under the auspices of COAG to consider the limit. DSE believes this is the appropriate forum through which this issue should be resolved.

Victoria also maintains a 10 per cent limit on water held without association to land. Although this is not necessarily a barrier to trade, Victoria recently announced a review of this limit.

Comment 3: Government entry into the water market

There are a number of recent instances where Governments have purchased water on the water market and it is likely that this activity will increase over time.

Currently, some governments are in the market buying substantial volumes of water without a well thought-out strategy about how this will affect the water market, how it will fit in with channel modernisation and water saving investments, and what benefits the purchased water will be used to generate. Hasty efforts by governments to buy water are likely to inflate prices, resulting in the unnecessary erosion and destruction of important parts of the Australian economy.

Given the potential for Government purchase to cause significant impacts on communities in the Basin, especially over the next 10 years, it is surprising that this problem has not been addressed in the Issues Paper. It is DSE's belief that this issue overshadows any other possible refinements to the water market that the water trading rules will give effect to, and that ignoring the issue will not allow the trading rules to meet their stated multiple objectives.

We believe that the ACCC needs to provide clear direction on how Governments should behave in the water market to mitigate the likely negative impacts of this activity. Also of relevance to this exercise will be the study that the Productivity Commission is to conduct on alternate mechanisms that governments could use to diversify their water purchase programs. DSE believes that this issue goes to the heart of the ACCC's role in protecting consumers and small businesses. As such, it must be addressed in the ACCC's water trading rules position paper.

Comment 4: Inter-operable registers and interstate inter-operability

Victoria has been working with other jurisdictions to develop a realistic and effective model for a National Water Market System. Under the proposed model, each state would maintain its own statutory responsibility for its register and would provide data from its register to a national portal.

Interstate inter-operability is the automated exchange of information between state and territory registers to facilitate interstate trade. Victoria is committed to developing interstate inter-operability and has initiated discussions with NSW and SA to facilitate this.

Comment 5: Reporting

DSE supports summary data on trade being available through a single central source. This central location could be the national portal that is proposed as part of the proposed National Water Market System.

However, DSE is concerned that several national agencies are currently collecting data on water trade, including the National Water Commission, the Murray Darling Basin Authority and the Bureau of Meteorology. DSE does not see the value in providing the same data to multiple agencies and would prefer a single central database.

Comment 6: Flexibility

Any trading rules which are established, need to have the flexibility to be changed quickly and easily in response to emerging issues. For example, if a loophole is found in a rule, that inadvertently allows trade which is not hydrologically possible or has unacceptable impacts, it needs to be closed quickly and without wide advertisement prior to closure.

Comment 7: Ongoing monitoring and review

DSE are continually monitoring the operation of trading rules and reviewing them where necessary. Conclusions from the current review of trade in unregulated systems will be announced in the forthcoming Northern Region Sustainable Water Strategy. Further revisions to trading rules may also be announced in the Western Region Sustainable Water Strategy. The new arrangements should make provision for such a process.

We are happy to discuss these broad points and other more detailed matters if you wish.

Yours sincerely,



David Downie
General Manager, Office of Water