

Location: GRIFFITH
Contact Name: Brett Tucker
Our Reference:
Your Reference: 39110

Ms Marie Conti
Director
Water Branch
ACCC
GPO Box 520
MELBOURNE VIC 3001

Dear Marie

RE- Request for further information on proposed amendments to the Rules

I refer to your letter dated 12th October 2009 and subsequent email dated 21st October 2009 in relation to proposed amendments to the Water Market Rules.

The following is our response to the specific matters raised:-

Conveyance Position

At the time of separation from government ownership, MI insisted that there be no adjustment to customer entitlements as a result of the transition to Member Contracts – the volumetric entitlement held by each customer remained unchanged. MI holds a separate WAL for its conveyance requirements. This situation mirrored the long standing arrangements where the operating entity was responsible for conveyance, separate to customers' water entitlements. The NSW Irrigation Corporations Act 1994 had to be amended to accommodate our request.

It is also worth noting that as part of negotiations with the NSW Government at the time of privatization, MI was issued with a conveyance WAL which was less than historical operating requirements, on the basis that system savings would be made by MI to ensure future conveyance commitments could be met.

Immunity from prosecution for IC's

As part of an industry consultation process in 2007, MI sought and obtained agreement to amend the proposed federal water legislation to include provisions that protected IC's from prosecution as a result of complying with new federal law. At the 11th hour the provisions were withdrawn from the final Bill before it went to parliament, despite our warnings that this may become an issue. We would be happy to resubmit the amendments as they were agreed with the then Minister in 2007.

Delivery Entitlements

The ACCC is attempting to modify the wording of the market rules to provide certainty about the prerequisite conditions for taking security over future water charges, including termination fees that may be payable. It seems unnecessary to force each Corporation to adopt a definition of delivery entitlements which is inconsistent with

system design/operation and has no historical reference point, for the sake of making the approach to financial security workable.

We do not think the solution proposed in your email dated 21st October will work:-

- The key new phrase is "... the number of units ... of water to delivery of which the person is entitled under their water delivery right in respect of the current financial year ...". Its unclear how the "number of units" is different from "volume", which is the word currently used in rule 10(1).
- In MI's system, the number of delivery entitlements does not entitle the holder to delivery of a "number of units ... of water". They entitle the holder a share of a flow at any point in time. This share can vary depending on whether there are any prior-ranking types of delivery entitlements or capacity constraints to be considered.
- The original channel designs in the MIA were based on servicing a defined area of land for each landholding as well as collectively. Later (about 1982), area-based entitlements were converted to volumetric entitlements in the Murrumbidgee Valley. A specific engineering formula (the Todd Formula) was developed for channel design which in basic terms provides for a delivery capacity of 0.75% of entitlement per day – ie : the more entitlement serviced the bigger the channel required. For various reasons of history it was necessary to reduce this figure to 0.66% entitlement per day. This is the basis of our flow rate sharing formula and is currently based on water entitlements held. When we separate Delivery Entitlements (DE) from Water Entitlements (WE) the link to flow rate share will be with the former.
- In addition to flow rate sharing, DE's are described in terms of ordering lead times and priority of flows between high security and general security entitlement (soon to be premium and standard DE's).

I note the last time MI sought ACCC opinion on this matter, in March 2009, you responded as follows:-

"In light of this, you seek an assurance that MI would not be subject to enforcement action from the ACCC if MI was to require security from transforming irrigators. This is because, in your view, a strict interpretation of rule 10 of the water market rules does not apply to MI delivery entitlements.

As identified in the Final Advice to the Minister, the purpose of WMR 10 is to allow operators to require security against payment of future access fees, in particular circumstances when an irrigator applies for transformation. The value of security is capped at the applicable termination fee and this provides the operator with surety about future payment. The threshold for when security can be required recognises the relationship between the asset held as the irrigation right relative to the risk exposure of the delivery right held by the irrigator. The rule identifies that the threshold point for an operator requiring security is when the relationship between delivery rights and irrigation rights held by the irrigator is expressed as a ratio of more than 5:1.

Provided MI's conduct is consistent with the purpose of WMR 10 – that is, requiring security consistent with the ratio outlined – as well as in accordance with the other requirements in WMR 10 and the WMRs generally. MI's conduct in this regard is unlikely to be a concern for the ACCC".

Certainly it is MI's intention to apply our security of payment policy consistent with the intent of WMR10.

Related matters:-

ACCC is no doubt aware that the requirement to separate DE's from WE's has created taxation problems for almost all joint water supply entities – from businesses like MI and MIL through to small joint water supply

entities. For MI, the issue we are seeking to address with the ATO and federal treasury is the Capital Gains Tax liability for our customers during the transition. This matter is still unresolved.

If you have any queries in relation to these matters please do not hesitate to contact me on 02 6962 0200.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Brett Tucker', followed by a period.

Brett Tucker
Managing Director

3rd November 2009

