

Mark Cameron, MIA irrigator, response to the technical issues with the Water Market Rules 2009.

1. Demerging members' water entitlements

Regardless of the introduction of the Water Market Rules Murray Irrigation Limited (MIL) has the choice of whether it wishes to convey to its members their water rights net of conveyance water or including conveyance water. If members water rights are expressed gross of conveyance then the Water Market Rules allow for this scenario and protect Infrastructure Operators when they remove this portion of conveyance water upon an external trade taking place.

While the ACCC may recommend that MIL convey to their members their water rights net of conveyance water this is not mandatory to comply with the Water Market Rules. It is understandably a neater way of expressing a member irrigator's water right. It leads to a simpler understanding of an irrigator's water right, and it means that MIL into the future will only have its conveyance water expressed in the one place, a conveyance water account.

However this separation of an irrigator's deliverable water and 'their' conveyance water could undermine a member irrigator's water right if an Infrastructure Operator sells this conveyance water.

The demerger of a member irrigator's deliverable water and the conveyance water does not warrant special legal protection under the Water Act 2007.

2. Operators seeking security from irrigators

It seems Rule 10 only serves to protect member irrigators who hold 'inhouse' water rights, as at 1st July 2008. I understand Rule 10(1) to be a rule that limits the security that an infrastructure operator can ask a holder of 'original water rights' for. There seems to be no directive towards new holders of water rights and delivery rights. Thus no limitation on security sought by infrastructure operators upon newly acquired delivery rights (except in relation to transformations, Rule 18).

All foundation delivery rights issued by an infrastructure operator will have some relationship with 'original water rights'. In the past fixed costs were shared amongst members in relation to their 'inhouse' water rights held. The future has fixed costs being payable in accordance with delivery rights. A major member revolt would result if there was a large shift in how the infrastructure operators fixed costs were to be shared or how water delivery is allocated. The future of delivery rights might define flow rate share but delivery rights will be born from water rights held.

Rule 10 does not seem to limit the amount of security that can be asked for new owners of delivery rights. In the absence of any rule stipulating when security is not to be given, security can obviously be asked for (subject to Rule 18). It is normal business for an 'is payable' obligation to require some security.

This Rule 10 needs to cover traded or new delivery rights to prevent infrastructure operators aggressively seeking too much security. The withholding of water delivery is certainly enough leverage to acquire security.

Parts 2 & 3 of Rule 10 could easily cover newly purchased delivery rights. Hence into the future delivery rights could lose their relationship with water rights.

3. Operators preventing transformation

The coercion of members by infrastructure operators to not transform will be as aggressive as possible. Infrastructure operators paying money to irrigators to not transform will be real. The issuing of shares according to 'inhouse' water rights held tells us this, along with moves to pay dividends.

These Water Market Rules demonstrate that a great deal of effort has gone into unencumbering water entitlement rights from external costs (external to the water right), as these pose an economic barrier to water trade.

An exit fee upon a trade/transformation has the same economic effect as the removal of payments upon a trade/transformation. Infrastructure operators fixed cost has been removed from the water right product only to be replaced by the reimbursement of those fixed costs.

Water Market Rules is already saying infrastructure operators can not add a cost to this water right product. (ie. add fixed delivery right charges) But these Water Market Rules do allow for the reimbursement of these delivery charges to be attached to the water right product.

The intent should be that water rights should do no other work than defining access to water.

Laws can be written to look through otherwise legal instruments used to flout laws. Laws are written to prevent the medalling of products.

So far we have

- Water Charge Rules
- Water Market Rules, and
- Water Charge (Termination Fees) Rules.

Maybe there needs to be an additional

- Water Charge (Reimbursement) Rules

These Water Charge (Reimbursement) Rules would deal with the flip side of the market barrier that the Water Charge (Termination Fees) Rules deal with. Both rules together would deal with the manipulated economic disadvantage of moving water rights out of an infrastructure operator's water licence.

4. Detailing irrigation right demerger

Upon the demerger of irrigation rights into water rights and delivery rights there is the capacity to treat the same irrigation rights differently and for arbitrary shrinkage. Infrastructure operators should have to demonstrate that this demerger of irrigation rights is uniform. That is the same class of irrigation rights separate into one product of water right and one product of delivery right.