

Public Submission to water trading rules issues paper by Silver Moon on 1st May 2009

To Water Branch: water trading issues paper
Australian Competition and Consumer Commission
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Introduction: Any discussion on water trading in the Murray Darling Basin has to take into account

- Current environment crises in the basin
- Current infringements of aboriginal land and water rights in the basin
- Current inequities in water allocation and distribution
- Current inequities in the control of water between the basin states
- Future changes in the basin due to climate change
- Future changes that are likely in state and national legislation
- Future changes that are likely in international legislation and agreements

I am hoping that the current water practices can be replaced by a fair common sense system that keeps the Murray Darling Basin alive so that future Australians, at minimum, have access to enough water for basic needs, and at best, enough water to be able to make a living and contribute to community.

I live on a farm in the Finnis Catchment, part of the Eastern Mt Lofty Ranges catchments of the Murray Darling Basin in South Australia. I am a member of the Finnis Catchment Group and a board member of the Goolwa to Wellington Local Action Planning Association. On our farm we use ground water to irrigate vines, river water (Finniss River) for sheep, and rain water for ourselves. When our place was purchased in 1997 a condition of purchase was to share a bore with two adjoining grape growing properties. As well, across the property there was a pipeline from the river which provided water for a further property for sheep production. All across the basin there are a myriad of properties that, like us, have a network of pipes, channels, and agreements both legal and not, that have arisen over time and in a context of government mismanagement and human greed, stupidity, ignorance, short sightedness, hope and neighbourliness.

In South Australia by the 1880s, only fifty years after settlement by white people, there were the first calls by landowners and fishers for the protection of waters of the Murray River from over extraction. The waters of the Lakes Alexandrina and Albert were reducing significantly in volume and were becoming more saline. Eventually as a band aid measure the barrages at Goolwa and Hindmarsh and Mundoo Islands were built.

Now the federal and state governments intend to repeat that exercise by building weirs on the tributaries and across the River Murray at Wellington, thus

destroying a unique and extraordinary environment that theoretically is protected by Australian law.

We need to learn from the past and with the help of the increasing scientific information about the basin, create a common sense system of sharing water.

There will be no water to trade if the basin is a desert. Current practices along with climate change and a drought or two will make the basin a desert if we do not take action. Rivers die from the bottom up, so it is useful to look at what is happening at the end of the Murray River. The Coorong is more than three quarters dead; Lakes Alexandrina and Albert are dramatically reducing in volume by the day and are in crisis. Birds, animals and fish are dying. The communities that depend on the end of the river, in particular the Ngarrindjeri traditional owners are also in crisis.

What system of operation can help keep the river and its basin alive so that there may be water to trade?

3.1 Scope of the Basin Plan water trading rules

3.1.1 What are basin water resources?

It is important that both ground and surface water are seen and calculated to be part of a single system.

3.1.2 What are tradeable water rights?

Stock and domestic rights should be unbundled. Non-intensive raising of stock is a business no different from any other and should not be bundled with domestic water rights. When the Murray Darling system is in trouble and water is not available for business, it would be unfair that non-intensive raising of stock is allowable when no other business enterprise is able to function. To unbundle this would also be useful in clarifying what "domestic" water consumption might be and what might be fair and equitable use during times of water crisis.

3.1.4 Water trading rules - relevant objectives, principles and purpose

In (d) *to recognise and protect the needs of the environment* - this is a weak statement. It is not sufficient to recognise and protect, it should be that the objective is to fulfill the needs of the environment. Without a functioning environment there is no society or economy. Water trading and water use in general is utterly dependent on the environment. To date in Australian history the environment has not received its consideration. I have heard many people describe this as "The environment always bats last". The current economic and water crisis are inextricably linked.

In the Act quoted in the following paragraphs on p16 "(e) *water to reach its most productive use through the development of an efficient water trading regime across the MDB*"; the most productive that water can be is when it is used for the environment, not water trading.

On p17 ...*the Commonwealth and the states have agreed that critical human water needs - in particular, the conveyance water required to deliver water to meet those needs - are to have the highest priority.*" The term **critical human water needs** needs to be analysed, In SA this phrase includes water for industry, while most people who hear this phrase seem to think that it describes water for drinking. Why should some businesses be given higher priority than other businesses?

3.2.4 Review of the basin plan

In SA water allocation plans are reviewed every five years so it would make sense to review the Basin plan every five years also. As well given the unknowns that climate change may bring, reducing the number of years in between reviews would be sensible.

4 Water market and trading objectives

4.1 Facilitate efficient water markets

Efficiency is all very well but efficiency will not increase the amount of water available for the survival of the river. It's like rearranging the deck chairs on the Titanic.

Others have shown how creating more efficient water distribution is a two edged sword. Where wasteful channels are used to move water through the landscape there is a great deal of loss of water through seepage. This benefits the environment through filling aquifers and seeping back into the river. When channels are replaced by pipes and there is a reduction in losses, the reduction is used by the authorities for more irrigation while the environment misses out. Sometimes people hoodwink themselves as in the Victorian government who described their water savings in this way as "new" water which they could then allocate to users in the city, thereby depleting the environment even further.

Efficient trading works similarly. People can hoodwink themselves into believing that they are doing the right thing but unless the big picture is taken into account and the river consciously kept alive and functioning then trading efficiency is meaningless.

4.3 Enable a mix of water products to develop

Where is the common sense in this statement? Variability in water supply is natural and normal. Landowners make choices that are a business risk - why should they have access to a more "secure" supply of water than other farmers?

An example of a relatively "new" water product is the extraction of water for the bottled water industry. This extraction has expanded significantly and the amount of water being lost from the system is increasing. As more mining of water from the system occurs there is less available for the hydrological cycle to continue and agriculture and the environment are affected by reduced rainfall. This new water product should be under strict control.

4.4 Recognise and protect the needs of the environment

Water for the environment should be the most highly valued water as it is this water that keeps us all alive.

The needs of the environment need to be fulfilled as well as recognized and protected. If we do not do this the MDB will eventually become a desert, with the river dying from the bottom up and there will be no water to trade. This slow death is already in process but can be reversed by government action to bring fresh water down the system.

The current system of operation of the MDB only allocates water to the environment **after** they have allocated to people and businesses. As a consequence as water volumes reduce the environment always misses out and the prospect of killing off the system that keeps us alive becomes more likely.

We need to reverse our current practice and make the first and inviolable allocation of water to the river. This should be sufficient to generate end of river flows though the Murray mouth. And end of river flows should be the measure. Only after this occurs should any water be allocated for other purposes. Further high value environmental water needs to be made available to the system for the regular wetting of swamps and wetlands as they are the nurseries of all life in the system.

The affects of climate change need to be taken into consideration here. As southern Australia dries up then there will be less water available for irrigation and other uses but if we are able to keep the river alive then the basin will stay alive and the highly valuable dryland farming of cereal crops in the basin will be able to continue. Without saving the river not only will irrigation cease but dryland farming will cease also. This would be a threat to the entire nation with the removal of about 40% of food which currently comes from the basin.

After environmental allocations water could be distributed equitably. An equitable distribution however would be difficult to introduce given the extremely unfair system currently in operation. A solution to this could be to nationalize water and start with a clean slate. This makes sense as it is a national emergency.

I can imagine that the water "rich" would kick up a fuss and demand compensation. However they would need to be told that they have been lucky to have overexploited the system for so long. No compensation should be paid as they were all taking a business risk and if they had done their research when they set up their irrigation business they all knew the water was going to run out. In SA it has been known since the 1880s that the system was going to fail. Every business that has set up since then has had the opportunity to do their research and find out the water was running out. They have taken a standard business risk by overexploiting the system and merit no compensation. I don't want to seem too hardhearted here – I would advocate government funded programs to help these people find other work.

4.5 Provide appropriate protection of third parties

I'm not sure whether it fits in here but I couldn't find another spot where discussion of aboriginal land and water rights seemed to go.

Aboriginal groups in the Murray Darling Basin have traditional and modern rights to water and to land and to the continuation of their spiritual, social and economic lives in the basin. Aboriginal concepts like belonging to the land and waters rather than the land and waters belonging to them seem incompatible with the notion of water as a commodity and as something which could be traded, exploited and possibly exported.

This dilemma could be resolved by enacting the suggestion that I have made for the environment in my response to 4.4. If there are end of system flows then there will be water for aboriginal practices and responsibilities and aboriginal water rights will be addressed in addressing water rights for the environment.

5 Water access rights – rules relating to ownership

Question 5-B Should the ownership of water access rights be restricted for any particular individuals?

Water rights relate to national security as there is a decreasing amount of fresh, potable water on the planet. Foreign companies or individuals should not be allowed to own water rights in Australia.

6 Water access rights – rules relating to location

Question 6-A What improvements (if any) could be made to the way in which: (a) physical constraints, (b) environmental limits are incorporated into water trading rules?

The system for water trading needs to include the ideas that are part of sustainable environmental best practice. This would mean that water could only be traded downstream. This is necessary because where water is traded upstream the environment misses out on the benefits gained from the flow between the water seller and the water buyer.

6.1.1 Carryover

Question 6-D What restrictions relating to carryover should apply to the trade/transfer of water access rights.

Whether carryover water can be made available should depend on whether there is sufficient water to keep the river alive and to cater for aboriginal water rights (see my response to 4.4 and 4.5). If there is not, there should be no allocation of water for carryover.

6.1.2 Conveyance losses

Question 6-E What are the advantages and disadvantages of imposing an adjustment for conveyance losses on the trade/transfer of water access right? How should the adjustment be calculated?

Conveyance losses are not “losses”. They are an environmental benefit and therefore a community benefit.

Water users should pay for what they need and use. In much of the basin inefficient irrigation practice is rife. Often water will travel long distances through channels before it gets to somewhere where there is a meter. Water lost as seepage is not paid or accounted for. There is no incentive to change irrigation practice to best practice which involves the least loss of water.

Water users should have their meters located where the takeoffs are located and water users should pay for all water that they use and that is needed to convey water to their businesses. In this way they will see that they need to spend money on pipes and other water saving devices so that they can be more frugal with water. While irrigation practice in SA is world’s best practice with an emphasis on drip irrigation and little or no flood irrigation, this is not the case in Victoria, NSW or Queensland where huge quantities are lost to seepage and evaporation. Water users need to have a financial penalty if they are flagrant with water.

6.2 Trade/transfer between Basin states

Question 6-I and 6-J

The Murray Darling Basin is one environmental system. There should be no impediments to trade within that system except those impediments that help the environment, like only trading downstream. All rules about water should be identical in all basin states.

6.3.4 Between ground water and surface water

Question 6-L Under what circumstances should a trade/transfer between a ground water system and a surface water system be permitted?

All water comes from rain. Ground and surface water are connected. (“All things are connected”, Ellen Trevorrow, Ngarrindjeri Elder)

Ground and surface water in the whole basin are one system. In some areas there is not so clear a local connection. Trade between ground and surface water should only occur where there is sufficient information about the quantities and quality and permanence of the water to be able to make a fair decision based on sustainability of the water resource.

6.4 Trade/transfer within a water system

Questions 6-M and 6-N Regulated and unregulated systems

The system for water trading needs to include the ideas that are part of sustainable environmental best practice. This would mean that water could only be traded downstream. This is necessary because where water is traded upstream the environment misses out on the benefits gained from the flow between the water seller and the water buyer.

6.4.3 Within a ground water system

Questions 6-O and 6-P

Ground water trading needs to be based on sustainable best practice. Some ground water systems are replenished at different rates. Some ground water systems are not replenished at all (eg. coral aquifers). As ground water in one aquifer reduces in levels it may change levels in an aquifer that is nearby. This can occur where it is simply the pressure of the volume of water in one aquifer that prevents the mixing of the waters with an adjacent aquifer. As levels reduce the pressure changes and water from the adjacent aquifer may enter or mix with the water from the first. If the water is saline then there will be additional problems. Trading should only occur when there is sufficient scientific information to indicate what really will occur and the effects that this will have on the water quality and quantity.

6.5 Trade outside the MDB

Question 6-Q

There should be no trade outside the basin. There should be no supply of water outside the basin except for drinking water in exceptional circumstances.

7.2.2 Water held for the environment

Question 7-E

Water for the environment should have priority over all other water allocations and occur first.

11.5 Water registers

I think it is important that there are publicly available records of water trading, irrigation use and abuse, and also information about allocations for the environment. These should be freely available to the public. Information is power!

Future legislation

It should be noted that there is a worldwide movement to change the way in which people view water. The likely consequence of this movement will be that ultimately the Australian government will sign a UN agreement about water that will see water as a commons and not as a commodity. Changes in Australian law will also occur. It would be sensible to set up processes here that bear the likely world wide change in mind so that we are not in a more difficult or complicated position than necessary.

Maude Barlow, Senior Advisor on Water to the President of the UN General Assembly has said -

“The water crisis is perhaps the most urgent ecological and human threat of our time and the first – and most devastating – face of climate change. More children die each year of water-borne disease than war, HIV/AIDS and traffic accidents combined. In their recent World Water Development Report, 24 agencies of the United Nations confirmed what those of us working in the field already knew:

that the global water crisis is getting worse by the day and threatening millions more people every year.

The problem is that we humans have seen the Earth and its water resources as something that exists for our benefit and economic advancement rather than as a living ecological system that needs to be safeguarded if it is to survive. We have polluted, diverted and displaced so much water from where it is needed for a healthy hydrologic cycle to function, that whole parts of the planet are drying up. We are just beginning to understand the devastation of this drying to the ecosystem and other species as we humans continue to rob the Earth of the water it needs for survival. The human water footprint surpasses all others and endangers life on Earth itself.

The path to a sustainable water future is difficult but clear. First, water must be seen as a commons that belongs to the Earth and all species alike. It must be declared a public resource that belongs equally to all people, the ecosystem and the future. It must be preserved for all time and practice in law as a public trust and a human right. Clean water must be delivered as a public service, not a profitable commodity. We must efficiently manage our water for the common good, encourage social control mechanisms that put decision-making back in the hands of communities, and always remain vigilant against persistent power inequities.”

Thank you, ACCC officers, for the opportunity to comment on your work.