

**Public submission to the ACCC's
Water Trading Rules position paper
by the *Gwydir Valley Irrigators
Association***

October , 2009

Introduction: The Gwydir Valley Irrigators Association (GVIA) represents the interests of irrigation entitlement holders in the Gwydir Valley of North-West, NSW. GVIA is a voluntary organisation with an active financial membership that exceeds 90% of the irrigation entitlement in the Gwydir Valley.

GVIA is a member of both the NSW Irrigators Council and the National Irrigators Council, and while very supportive of these organisations, it does reserve the right to hold and pursue views that may be contrary to these peak organisations.

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General Comments: GVIA is very concerned about how water trading rules may not be uniformly applied across the Murray-Darling Basin due to the transitional arrangements included in the Commonwealth Water Act, which will allow the application of the rules only when the transitional water sharing plans expire. GVIA understands those plans identified in the Water Act Schedule expire at various times from 2012 through to 2017, with uncertainty surrounding the expiration of Victorian plans which may expire in 2019, or may persist beyond that year.

GVIA believe it should be a priority of the Australian Government to ensure the uniform application of this water trading rules.

GVIA notes that NSW Irrigators Council will be making an extensive submission on this issue, and therefore GVIA only intends to make comments on issues that are of particular interest to it.

Other Matters

Trade in Storage Entitlements

GVIA is disappointed that after it raised the issue of trade in storage rights in its submission to the ACCC Issues Paper, the ACCC has failed to address this matter in its position paper.

In summary, the issue is that to temporarily assign regulated water in the Gwydir Valley (and GVIA believes in the other Northern Valleys of NSW), it is necessary to hold a storage right in the headwater storage.

In the Gwydir, that storage right is an implied right attached to the Water Access Licence, and defined in the Gwydir Regulated Water Sharing Plan

Therefore, it is not possible for someone with a water works approval and a use approval, but no water access licence to utilise the temporary assignment market in the Gwydir, as they have no share of the storage in Copeton Dam to hold that assigned water.

Similarly, it is not practical for a person to retain a Water Access Licence with a minimum number of share entitlements, and rely on the temporary assignment market to meet their irrigation water requirements, as they would have to rely on a constant run of small assignment trades to ensure they did not exceed their storage capacity.

On the other side of the equation there are many entitlement holders who have excess storage capacity in Copeton Dam, and would be open to trading some or all of their storage capacity.

GVIA recommends to the ACCC that it adopts a position of further investigating the practicality and desirability of establishing a trade in storage capacity, which would in turn enhance the temporary assignment market.

Such a trade may involve the development of a defined and separate storage right.

Extraction Rights

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The ACCC position paper gives some consideration to extraction rights, and delivery rights within the context of Irrigation Infrastructure Operators, but does not address the restraint of trade issue currently being faced by many irrigators in the Gwydir.

Most, if not all, Gwydir Regulated River Water Access Licence state that extraction can occur at any rate, and at any time.

However, due to channel capacity constraints in many parts of the regulated Gwydir Valley, the Gwydir Regulated Water Sharing Plan prevents additional share entitlements being linked to works in defined reaches until extraction conditions are amended.

ACCC should note that the Water Sharing Plan commenced in July 2004, and the issues surrounding establishing extraction conditions still have not been dealt with.

By effectively placing an embargo on the further linking of WALs to works approval on certain parts of the system, NSW is supporting a significant restraint of trade.

GVIA recommends that the ACCC closely examine this issue, and develop a position which would accelerate the development of extraction conditions, which in themselves may or may not be tradeable.

Specific Responses to Preliminary Positions (These should be read in conjunction with the ACCC's preliminary positions included in Appendix 1:

Chapter 3

(3-A) – Concur with ACCC

(3-B) – Concur with ACCC

(3-C) & (3-D) – Concur with ACCC, but submit this in an area where much more thought and consultation is required to ensure the rights of all parties are recognised and respected.

(3-E) - Concur with ACCC

(3-F) - Concur with ACCC

(3-G) - Concur with ACCC, provided that in regards to (i) the process does not change the fundamental characteristics of the licence.

(3-H) - Concur with ACCC

(3-I) & (3-J) - GVIA has some sympathy with the ACCC position, but is concerned that access to stock and domestic water is currently not clearly enough defined, or strongly enough regulated to ensure water users would not be able to sell off entitlements but still access stock and domestic water through riparian or other rights. GVIA believes this area requires further work before there is comprehensive trade of

stock and domestic rights. There is certainly an issue where new subdivisions are sourcing water through a stock and domestic right, and the logical way to manage that growth would be through the trade of a well defined Stock and Domestic entitlement.

(3-K) - GVIA concurs with the ACCC position that the important fact is where the water is extracted, rather than where it is used, and the trade must comply with the rules that govern the area where the extraction occurs.

(3-L) - Concur with ACCC

(3-M) - Concur with ACCC

(3-N) - Concur with ACCC

(3-O) - Concur with ACCC

(3-P) - Concur with ACCC

(3-Q) - Concur with ACCC

(3-R) – Not currently relevant to the Gwydir Valley, and would require further consideration before taking a position.

(3-S) – GVIA believes the model used in the northern NSW valleys of continuous accounting is much preferable, with water only being credited into accounts when it has been physically made available, and therefore water “carried – over” from one season to the next has the same level of security as any other water in the account, as it is indistinguishable.

(3-T) – While GVIA is a very strong supporter of accurate meter of extraction, it believes in this context metering relates to extraction, not trade. Even in the position paper the ACCC has made some exceptions, and those exceptions only add weight to the GVIA position.

(3-U) – As with the answer above, GVIA supports the use of compliant meters, but questions the actual relevance in terms of trade rules.

Chapter 4

As this chapter primarily relates to issues in Victoria, and not of direct relevance to Gwydir Valley irrigators GVIA will refrain from commenting directly, and endorse the NSW Irrigators Council position on these matters.

Chapter 5

(5-A) – GVIA does believe there would be justification to setting maximum approval times, which in themselves would be subject to monitoring and review.

(5-B) - Concur with ACCC

(5-C) - Concur with ACCC

(5-D) - Concur with ACCC

(5-E) - Concur with ACCC

(5-F) - Concur with ACCC

(5-G) - Concur with ACCC

(5-H) – GVIA has some concerns with this position. Intermediaries are in many cases holding large sums of clients' money, as well as overseeing very valuable transactions, and there is a strong case for some regulation, even if there is little in the way of evidence proving wrong-doing to-date.

(5-I) - Concur with ACCC position, and point to the NSW Office of Water, NSW's primary water regulatory, which is now part of the Department of Environment, Climate Change and Water, which is a very large owner of NSW water entitlements, and therefore represents a very real conflict of interest.

(5-J) – See comment for (5-I).

Chapter 6

(6-A) - Concur with ACCC

(6-B) - Concur with ACCC

(6-C) - Concur with ACCC

(6-D) - Concur with ACCC

(6-E) - Concur with ACCC

(6-F) - Concur with ACCC

(6-G) - Concur with ACCC

(6-H) – GVIA cautions on the possible administrative complexity of this, and would need assurance that the any charges of fees associated with the tagged water in its source were paid.

(6-I) - GVIA largely concurs with this position, but cautions that the costs and difficulties associated with accurately gathering this information, may in itself outweigh the value of establishing a trading system, particularly where transmission loss allowances are likely to make trade unattractive and/or unviable.

(6-J) - Concur with ACCC – see comments for (6-I).

(6-K) - Concur with ACCC, but point out this will be a complex exercise and require a great deal of consideration and consultation.

(6-L) – GVIA has some sympathy with the practicality of the ACCC position, but is always wary of inconsistencies occurring/emerging when applications are considered on a case-by-case basis.

(6-M) - Concur with ACCC

(6-N) - While GVIA supports further investigation, it is not willing at this stage to support trade between regulated and unregulated systems. It is a very complex area, as discussed to some degree in the ACCC position paper. However, the paper did not even mention the issues surrounding how the interaction between unregulated flows and supplementary flows could be managed.

(6-O) – Concur with that position, but while zone should not be able to cross water sources, there may be multiple zones within a water source.

(6-P) - Concur with ACCC

(6-Q) – Concur with the ACCC position in principal, but cation this is a complex area that would require a lot of consultation and consideration.

(6-R) - Concur with the ACCC position in principal, but cation this is a complex area that would require a lot of consultation and consideration.

(6-S) - Concur with the ACCC position, but believe its application should be extremely limited at the moment.

(6-T) - While GVIA concedes that trade in farm dam water access rights might be feasible, GVIA would not support the introduction of this trade at this point. This in part due to the Basic Right nature of farm dams in NSW, and in ensuring there was no ‘double-dipping’ of this water source by landholders.

(6-U) - Concur with the ACCC position

Chapter 7

As there are no Irrigation Infrastructure Operators in the Gwydir Valley, to GVIA’s knowledge, GVIA will refrain from responding to this chapter.

Chapter 8

As there are no Irrigation Infrastructure Operators in the Gwydir Valley, to GVIA’s knowledge, GVIA will refrain from responding to this chapter.

Chapter 9

(9-A) - Concur with the ACCC position

(9-B) - Concur with the ACCC position

(9-C) – Not relevant to GVIA

(9-D) - Concur with the ACCC position, but point out the price information once provided must be published in a timely, accessible and consistent manner.

(9-E) - Concur with the ACCC position, but suggest it may take some fine tuning to determine the level of detailed actually required.

(9-F) - Concur with the ACCC position

Submission Concludes

Appendix 1:

·ACCC preliminary positions

This paper sets out the ACCC's preliminary positions on a range of matters related to water trading. The preliminary positions in this paper are **not** proposed or draft water trading rules.

To inform the development of the ACCC's draft advice to the MDBA, the ACCC is seeking stakeholder views on:

- the ACCC's preliminary position, and
- the advantages and disadvantages of giving effect to the preliminary position through a water trading rule in the Basin Plan

Information on how to make a submission is on page iii.

Water access rights—general matters

Ownership restrictions

- (3-A) There should not be specific restrictions on the ownership of water access rights by particular classes of entities such as non-landholders, environmental water holders and urban water authorities.
- (3-B) Basin states should be able to restrict the ability of an individual to own a water access right on the basis that the individual has been in breach of water legislation or owes money for water charges.

Co-held water access rights

- (3-C) The ACCC considers that there may be barriers to trade generated by:
- an individual who is a co-holder of a water access right having to obtain the approval of other co-holders and
 - the administrative process of obtaining the approval of other co-holders before subdivision or trade of the jointly held water access right.
- (3-D) The ACCC considers that basin state governments should review the existing arrangements for trade or subdivision of co-held water access rights by members of a co-holding that are not related entities.

Unbundled water rights

- (3-E) The approval of an application to trade a water access right should not be conditional on the purchaser holding, obtaining, trading or terminating:

- a water delivery right, or
- a water use approval

where these rights or approvals are governed through separate instruments or processes.

(3-F) The approval of an application to trade a water access right should not be conditional on the purchaser being the owner or occupier of land.

Restrictions based on the intended use of water

(3-G) In the case of tradeable water access rights, the ACCC believes that:

- (i) there should be no restrictions on trade due to the purpose for which the water has, is currently, or will be used
- (ii) exit fees (or fees of a similar nature) should not be charged by an IIO solely for the reason that a water access right has been traded and will be used outside of the IIO's irrigation network
- (iii) the purpose for which water arising from a trade is used should not be restricted as part of the trade approval process (water use on land should be separately addressed through use approvals)

(3-H) The ACCC also considers:

- There should be no exemptions from water trading rules for, or additional restrictions placed on, environmental water holders.
- Water access entitlements and water allocations held by environmental water holders should be treated no differently to water access entitlements and water allocations held by any other person.

Stock and domestic water use

(3-I) Both stock and domestic rights could be made tradeable where existing stock and domestic rights are converted into water access entitlements, provided that there are adequate safeguards in place to meet critical human needs in the event of very low allocation levels, and that no new stock and domestic rights are created.

(3-J) New stock and / or domestic water needs should be sourced through the market, rather than simply issuing new stock and domestic rights.

(3-K) A water access right trade should not be refused on the basis that the water will be used in an area outside of the MDB (and the use of water inside the MDB should not be restricted solely because it was taken from a water resource outside of the MDB). Relevant use approvals would be required in any case.

Trade into and out of the MDB

- (3-L) Water trading should occur within the environmental bounds set through the water planning process.

Environmental impacts resulting from trade

- (3-M) Where environmental impacts result from the use of water on land (e.g. salinity), these impacts should be managed through separate use approvals should, not restrictions on trade.
- (3-N) Water access right trades should not be conditional on a reduction in the trade volume to address overallocation.

Overallocation and overuse

- (3-O) Trade within an overallocated system should not be restricted solely on the basis that the system is overallocated.
- (3-P) The ACCC recommends against allowing for conversion between priority classes of water access rights. The benefits of allowing conversion may be realised through more efficient water market, and the potential disadvantages may be severe in terms of third party impacts.

Conversion between priority classes

- (3-Q) There should not be restrictions on trade specific to water carried over, nor should there be any specific exclusion of traded water from having access to carryover (assuming other criteria, such as the possession of a water access entitlement, are met).

Carryover

- (3-R) Where continuous sharing arrangements are not in place, the ACCC supports the use of a 'spillable water account' with no limits on carryover volumes.
- (3-S) Relevant agencies should determine appropriate signals about the likelihood of carryover water being available (and the timing of that availability in the season) and how this should be communicated to water access right holders. This could possibly be linked to the tiered water sharing arrangements in the Basin Plan.

Metering

- (3-T) Both the seller and buyer of a water access right should have an approved meter installed for all off-take points (except where the water is held independently of land, or where the seller does not retain any water access rights).
- (3-U) The meters should be compliant with relevant National Standards or Framework, such as that being developed through the Water Metering Experts Group.

The 4 per cent limit

- (4-A) As the rationales for the 4% limit are better addressed through other mechanisms, the ACCC believes that the 4% limit should be removed throughout the MDB.
- (4-B) If not already removed, a limit on the volume of trade out of an area (other than for environmental or physical reasons) should only be applied on permanent trades of water access entitlements (of any priority class) out of an irrigation area *as defined in the NWI* (that is, the area managed by an operator, rather than a number of particular areas within an operator's network).
- (4-C) If not already removed, any such limit should be raised according to a minimum transition path and must be completely removed by 1 July 2014.

Water access rights—approval processes

Approval Times

- (5-A) As long as COAG and NRMMC service standards are subject to ongoing review, monitoring and public reporting, there does not appear to be a compelling case to impose maximum approval times for trades of water access rights at present. However, should there be evidence of a continual failure to meet service standards, mandated approval times should be further considered.

Consideration of applications by multiple approval authorities

- (5-B) Basin states should investigate the potential for trade approval authority cross-delegations to enable a trade approval authority in one state to carry out specified approval functions on behalf of an interstate approval authority. This could potentially reduce processing times but would need to be considered carefully.
- (5-C) Over time, basin states should consider the merits of consolidating trade approval functions into one approval authority.

Information sharing between approval authorities

- (5-D) There are likely to be significant benefits in making approval authorities' systems interoperable, or otherwise providing authorities with the opportunity to access information contained on each other's systems. The ACCC notes the work being done by the National Water Market System in this regard.
- (5-E) Jurisdictions should prioritise work towards a common registry system as part of the National Water Market System.

Applications to trade

- (5-F) Jurisdictions should seek to standardise their application forms as much as possible. It may also be useful for jurisdictions and the MDBA to develop standard application forms for interstate trades that would include all information required by the relevant approval authorities to approve the transaction.
- (5-G) Basin states should provide a facility to allow electronic lodgement of applications to trade a water access right, where this is not currently possible.

The role of water market intermediaries

- (5-H) There is insufficient evidence to support the introduction of specific regulation of water market intermediaries.

Approval authorities' other activities

- (5-I) Approval authorities' other activities may give rise to potential or perceived conflicts of interest that may have the potential to undermine the water market. This is particularly where a conflict of interest is not disclosed to other parties to the transaction. This issue deserves closer attention by government.
- (5-J) Basin states should consider requiring their trading approval authorities to disclose whether they have any interest in a water access right (other than in their approval role), to all other parties involved in a potential trade of that right. It may also be appropriate to require trade approval authorities to inform the market of any water trade to which they have been a party.

Water access rights—location matters

Trade in regulated systems

- (6-A) Water resource plans should define trading zones for regulated systems, on which location-specific trading rules are referenced. The rationale behind each zone should be explicitly stated in the water resource plan (for example, environmental or physical constraint).
- (6-B) While differences in jurisdictions or management authorities may require different trading zones, they should not (in isolation) limit trade between these two zones.
- (6-C) The ACCC supports the following principles in relation to regulated systems (based on the MDBC manual):
 - trades within a trading zone should generally not be restricted
 - downstream trades between hydrologically connected systems should generally be possible

- where a downstream trade is impeded by a physical constraint to channel capacity (and delivery shares across that constraint have not been created), it should only be approved as back trade
 - where an upstream trade is made into a separate hydrological system, it should only be approved as back trade
 - trades should be possible between the upper reaches of regulated river systems that converge downstream, provided that any supply obligations of the original location's river below the point of confluence, which may be affected by the trade, are assumed by the destination location's river
 - upstream trades from a location supplied by more than one source to a location supplied by only one of those sources should be possible, but may be subject to special limits and conditions.
- (6-D) Trading zones and water trading rules that refer directly to these zones, should be re-assessed and if necessary amended in the event that hydrologic connectivity, or physical or environmental constraints change.
- (6-E) The current and likely future magnitude and variability of river transmission losses in the MDB should be assessed, and, if found to be significant, options to account for these losses should be explored.
- (6-F) Operators should regularly provide information to market participants about the likelihood of short-term changes to trading restrictions due to changes in hydrologic connectivity. This information should include relevant values (such as trading volumes or storage levels) relative to defined trigger values, estimates of transmission losses, the use of available delivery capacity and back trade opportunities.
- (6-G) Tagging, and not exchange rates, should be used to manage the trade of water access entitlements between trading zones in regulated systems.
- (6-H) The administrative process associated with tagging should provide irrigators with the option of how they access allocations made to their tagged entitlement, including the option for allocations to be automatically transferred to the irrigator's account in the area of destination according to set criteria.

Trade in unregulated systems

- (6-I) Water resource plans should consider the potential for trade of water along rivers which are intermittently connected. To inform this process:
- more detailed information should be established and publicly reported about delivery losses
 - arrangements for better communication between water users about options to minimise delivery losses for such trades should be investigated

- if triggers are used to define hydrologic connectivity, these should be clearly stated, reported against and communicated.
- (6-J) Where the likely benefits outweigh the likely administrative costs, trading zones should be established for unregulated rivers, defining areas within which trade can occur without detailed assessment. These trading zones should consider:
- that hydrology should be homogeneous within the zone
 - the location of important environmental assets and major offtakes
 - the existing volume of available water and likelihood of further development
 - transmission losses and local catchment inflow.
- (6-K) Options for improving the clarity and excludability of water access rights in unregulated systems should be examined. This should include an investigation of a range of management strategies including rostering, restrictions and options to ‘shepherd’ water through zones, while recognising that different management approaches may be better suited to different stream types.
- (6-L) In unregulated systems that are heavily used, trading rules should be established with reference to trading zones to enable trade between zones. In other unregulated systems, processes should be implemented to enable the assessment of individual trades between zones on a case-by-case basis.

Trade between regulated and unregulated systems

- (6-M) Exchange rates should not be used as a mechanism to manage trade between regulated and unregulated systems.
- (6-N) Further options to manage trade between unregulated and regulated systems should be considered. The conditions for such trade may vary between catchments. It may be appropriate to have unregulated and regulated trading zones in place for the same river reach. This investigation should be run parallel to any process of investigating trade options within unregulated systems.

Trade in groundwater systems

- (6-O) Trade of groundwater access rights should be allowed within groundwater trading zones.
- (6-P) Trade should not be permitted between groundwater trading zones that are not in the same aquifer.
- (6-Q) Consideration should be given to assessing groundwater extraction rights (which specify location and conditions of use) as a separate process to trade of groundwater access right. Impacts on neighbouring bores and surface water users could be assessed as part of the groundwater extraction right assessment.

- (6-R) The MDBA and state authorities should investigate the feasibility of tradeable extraction rights (pumping rates) in groundwater zones that are heavily utilised.

Trade between groundwater and surface water

- (6-S) Trade between groundwater and surface water would only appear feasible when:
- there is a high level of connectivity and well defined and clearly understood lag time
 - the groundwater and surface water systems are managed as a single resource (that is, with a common water access right governed by common extraction conditions, and a single diversion limit).

Farm dam trade

- (6-T) Trade of farm dam water access rights within the same catchment should be assessed on an individual basis and—in order to provide appropriate protection of third party interests—would need to consider the following:
- the farm dam has been duly authorised under the law of the basin state
 - the new location is in the same zone as the original farm dam
 - new dam construction in the zone is capped for that particular water use type
 - the size of the dam is comparable
 - the catchment areas (or inflow volume) of the two dams are similar in size
 - third party impacts are assessed at the new location and potentially impacted parties are consulted.
- (6-U) Trade does not appear feasible between farm dams and surface water systems while providing appropriate protection to third party interests.

Water delivery rights

- (7-A) IIOs should clearly specify the volume/unit share of their customers’/members’ access to their irrigation network under a water delivery right. The water delivery right should be explicitly provided for in a contract or agreement for delivery services.
- (7-B) An IIO may not require a person to obtain, terminate or vary the volume of a water delivery right as a result of, or condition for approval of, a trade of a water access right or an irrigation right.

(7-C) IIOs should not unreasonably prevent, deter or delay the trade of water delivery rights between persons who own or occupy land that is serviced by their irrigation network. Factors that may inform whether a trade has been unreasonably prevented, deterred or delayed include:

- overall capacity in the network
- capacity in the parts of the network where the water delivery rights would potentially be traded to
- connectivity of the network (i.e. whether there is one large network or several component networks that are not physically connected)
- payment of previous water access fees or security for future water access fees and other relevant charges
- the amount of water delivery rights reasonably required to irrigate a person's property
- ensuring the necessary administrative arrangements are in place to assess and give effect to a trade in water delivery rights.

Irrigation rights

- (8-A) Where an IIO does not have a written contract with each of its irrigators outlining each irrigator's individual entitlement to receive water under their irrigation right, the IIO should make a determination of the volume of water or unit share of all irrigation rights held against that IIO.
- (8-B) To facilitate informal and possible formal negotiations in the event of a dispute between the parties, the IIO should provide written details to support the determination of the volume of water or unit share of all irrigation rights held against the IIO.
- (8-C) IIOs have significant incentives not to restrict the trade of irrigation rights. In addition, there is a strong countervailing threat of irrigators seeking to transform their irrigation right and employing the protections offered to irrigators under the water market rules. In light of these considerations, there does not appear to be a compelling need to specifically prohibit IIO restrictions on the permanent or temporary trade of irrigation rights within, outside or into an IIO's network.

Reporting and the availability of information

Information regarding tradeable water right characteristics

- (9-A) The ACCC considers that state governments should provide information about the different licensed water access rights (but not 'temporary' water allocations) available under the water management regime in their state.

The information would be provided according to a template and could contain the following information (if applicable):

1. Location (water source name)
2. Water source type (regulated, unregulated, groundwater)
3. Priority class
4. Total entitlement on issue of that kind
5. Reliability profile (both long-term and more recent)
6. Fees and charges payable by the holder of the entitlement
7. Applicable carryover policy
8. Dates of allocation announcements etc.
9. Information on how allocation levels are determined (for regulated systems)
10. Links to applicable trading rules, especially applicable trading zone rules
11. Areas where the entitlement, and where allocation made against that entitlement, can be traded (tagged) to
12. Areas from which water can be traded to the water source location.

For some of these categories of information, it may be sufficient for a link to be provided, as long as this is to a readily accessible source of information. The ACCC considers that links may be appropriate for item 6 and onwards.

The templates should be available at a central location (e.g. the NWMS National Portal or as determined by the MDBA).

Information about trading rules and processes

- (9-B) Governments should provide all applicable rules regulating the trade of water access rights to a central information point (which could be provided by the MDBA or the NWMS National Portal).
- (9-C) IIOs should have to provide their own internal trading rules to the same central information point, on their website and/or upon request.

Trading volumes and prices

- (9-D) Trading parties should be required to accurately report to approval authorities or registers on the consideration paid for all trades of water access entitlements and water allocations.

Allocation and policy announcements

- (9-E) Water authorities should disclose how allocation levels are calculated whenever an announcement is made.
- (9-F) Allocation announcements and announcements of market-sensitive policy changes (including changes to carryover conditions and changes in the ability to trade between trading zones), along with amendments to announcements, should be made to the entire market at the same time. Parties privy to these policy changes before such an announcement should not be permitted to trade relevant water access rights until the announcement is made.