

**MURRAY VALLEY PRIVATE DIVERTERS  
(INC)**

**Public Submission to:**

**Murray Darling Basin Water Markets Inquiry –  
Interim Report**

**30<sup>th</sup> October 2020**

**Introduction:**

Murray Valley Private Diverters (MVPD) represents private entity river pumpers in the NSW Murray Valley and its tributaries The Edward River, Wakool River, Niemur River and other creeks and streams.

We appreciate the opportunity to comment on the ACCC Murray Darling Basin Water Markets Inquiry – Interim Report

MVPD encourages the ACCC to have further direct dialogue to explain issues and/or to provide further information to the ACCC for its final report.

## **Issues affecting Trade:**

Since the signing of the Council of Australian Government's communique on the 25<sup>th</sup> February 1994, Federal and State Governments have shifted water policy towards agreed objectives.

The separation of Land and Water and the COAG agreement to the notional concept of moving water **to 'high value crops'**, have all influenced the development and evolution of water markets.

The emergence of issues relating to Water Markets requires urgent attention to the physical limitations of the Murray and Edward Wakool Rivers system in Southern NSW and the Goulburn River in Northern Victoria.

MVPD agrees with the ACCC summary where it is noted that:

- "Water trading has brought substantial *benefits*"
- "*that is not to say that the benefits derived from water markets are universal or equally shared between participants*"
- "*the ACCC acknowledges that some individual industries and regions have experienced adverse consequences due to water markets*"
- "*water trading in the Basin had its origins between neighbouring farmers and that over the past two decades it has evolved into a more complex market*"

MVPD also agrees with the ACCC summary where it states that:

- *water market intermediaries such as brokers and water-exchange platforms operate in a mostly unregulated environment, allowing conflicts of interest to arise, and opportunities for transactions to be reported improperly*
- *there are scant rules to guard against the emergence of conduct aimed at manipulating market prices, and no particular body to monitor the trading activities of market participants*
- *there are information failures which limit the openness of markets and favour better-resourced and professional traders who can take advantage of opportunities such as inter-valley trade/transfer openings*
- *differences in trade processes and water registries between the Basin States prevent participants from gaining a full, timely and accurate picture of water trade, including price, supply and demand*

- *important information, such as allocation policies and river operations policy, which can significantly impact water pricing, are inadequately communicated to the irrigators and traders who rely on these to make business decisions*
- *there is a disconnect between the rules of the trading system and the physical characteristics of the river system. For example, on-river delivery capacity scarcity, conveyance losses and adverse environmental impacts are not considered in the processing of trades that change the location of water use, except through some blunt and imprecise rules, such as limits on inter-valley trade/transfers<sup>2</sup>*
- *overarching governance arrangements, which result in regulatory fragmentation and overlapping of roles of different governing bodies, contribute to many of these problems, or prevent them from being addressed in an effective and timely way.*

### **Water Act 2007 and Basin Plan**

Federal and State Government policy decisions relating to the Water Act 2007 and Basin Plan also have impacts on water markets.

Of the 2750GL Murray Darling Basin Plan, 2289 GL is to be recovered from the Southern Basin.

The Sustainable Diversion Adjustment (650GL) which allows projects to offset buyback have major implications for water availability and property rights of General Security entitlements in the NSW Murray Valley. Political decisions have also meant that of the 458GL downstream shared requirement from NSW to South Australia, 458GL, is largely being borne by NSW Murray and the Lower Darling.

The Murray Darling Basin Authority (MDBA) Regulatory Impact Statement (2012) determined that the mechanism of how water was recovered (eg buyback, PIOP, or through SDL Adjustment projects) offset social and economic impacts. In fact, the MDBA describes in its 2012 report, impacts would be 'modest'. This is not the case.

The Murray Darling Basin Plan will also result in the property rights of water in South Australia becoming more secure with the provision of an additional 2000GL over a three - year rolling average.

The River Murray Agreement currently is allowing also, NSW Murray General Security entitlements to bear the full brunt of a reduction of co contributions from the Darling to meet South Australia's minimum entitlement flow of 1850GL.

Historically the Darling contributed 39% of South Australia's 1850GL minimum entitlement flow. However drought and increased irrigation expansion in the Northern Basin (Qld/NSW) has cause substantial flow decline to Menindee Lakes and connectivity to the Murray.

Water property rights and therefore market implications should be an issue also assessed by the ACCC.

With disproportional impacts in regions occurring because of the Basin Plan, then those industries/businesses reliant on 'water availability' also become disproportionately impacted.

Water scarcity drives up market demand and trade prices. The Basin Plan concentration of water recovery in specific locations therefore has had a direct impact on water markets within regions.

### **Transparency:**

MVPD is concerned that there is insufficient transparency relating to water markets to prevent market distortions or for the public to understand market operations, what is driving policy change/or external influences on market directions.

MVPD encourages:

- a transparent public register of water ownership in each state

### **Property Rights:**

MVPD does not support Market conditions that undermine property rights of land/or water. Water Property rights were enshrined in Government agreements such as the National Water Initiative (NWI) but in reality, water property rights for Murray General Security entitlements has been cumulatively eroded due to Government policy.

While many of these can be linked directly to other aspects of Water policy eg Water Act 2007 and Basin Plan and/or amendments to the Murray River Agreement, the influence of market conditions/decisions are also undermining property rights.

### **Agricultural production diversity:**

Current market policies and Government continuance of objectives to move water to 'high value crops' will have negative short- and long-term ramifications on the diversity of Agricultural production.

Invariably, when Governments seek to influence agricultural production, eg through such things as Managed Investment Schemes or identification of preferences for crop types, minor shifts in production cause major changes to market prices for produce produced. Such influences tend to come and go, but are often accompanied by legacy affects to both the agricultural sector and to taxpayers.

MVPD does not support Government interference in commodity production, including where market trade rules can be fostered by Government policy settings. Such examples can be forecast within the Water Act 2007 and Basin Plan, where Government policies aim to 'remove' constraints.

There are high expectations by new irrigation development zones that the Constraints Management Strategy outlined in the Murray Darling Basin Plan will 'enable' above capacity limitations on natural rivers to be overcome.

There are public perceptions in industry/regions that relaxation of constraints will facilitate movement of water to new irrigation regions downstream of existing ones.

The ACCC is encouraged to ensure:

- Market conditions must abide by natural limitations of river systems
- Market trade must not negatively impact on the property rights of water and property rights of others
- Taxpayers funds should not be used to subsidise the commercial movement of water to new irrigation developments
  - The Basin Plan Sustainable Diversion Limited (SDL) projects proposed aim to create overbank flows
  - Pre Requisite Policy Measures (PPMs) also propose water order opportunities that will not be confined to the entitlements held by the Commonwealth Environmental Water Holder (CEWH)
- Additional losses incurred by movement of water from its historical location (Water transfers High Security or General Security, should not be borne by General Security entitlements either in Victoria or NSW Murray regions

The concept of 'free trade' also has major ramifications for supporting agricultural industries/businesses and communities built around existing industries.

MVPD is not disputing that agricultural industries continue to evolve and change, however where Government policies directly facilitate changes over and above normal events, then this is problematic.

Governments need to revisit its policies that seek to concentrate water use within a concept of 'high value' use and ensure market policies are not disproportionately influencing change.

### **Avoidance of Water Entitlement conditions**

Temporary Trade conditions are enabling additional benefits to accrue to certain entitlement types that would current not be a historical characteristic.

Examples of this can be determined via an assessment of Temporary Trade transfers of High Security entitlements to a General Security entitlement holder.

This mechanism allows High Security (which has no carryover provision) to a short-term window to utilise carryover provisions on a General security entitlement. 'Parking of High Security' can be limited ie weeks, and appears to be a mechanism to bypass high security entitlement conditions.

There is high risk that market and trade distortions can occur

- with individual transfers within states or
- external state transfers to another state

Further this capacity to temporarily park High Security entitlements onto General Security, distorts public understanding of water use and the mechanism is not identified in Water NSW Water allocation statements.

Equally there is growing concern that the capacity of irrigation corporations and/or potentially States, to transfer conveyance entitlements to temporary parking arrangements on General Security in order to access carryover rights has further impacts on water availability (eg to NSW Murray General Security).

Water allocations statements that do not reflect 'temporary parking' on general security entitlements can artificially inflate impressions on water availability.

A further aspect of water market transparency also applies to how allocation and carryover is reported

NSW DPIE and Water NSW have been requested to avoid merging carryover figures with allocation where Government statements then include that 'total water availability is higher than actually is'.

For example NSW DPIE announcement may state

- 17% General Security allocation
- Plus a volume of carryover

This may then public give the impression that the actual General Security allocation exceeds 17%.

- Carryover might be limited to a few individuals, it is incorrect therefore for NSW to give a broader impression that allocation plus carryover = higher allocation
- Carryover might have involved the temporary parking of High Security entitlements on to General Security as a means to bypass normal rules associated with management of high security entitlements

#### **Recommendation:**

- Establishment of sub categories to General Security to ensure that if any trade of High Security is made to an individual's water portfolio, each entitlement type must retain its own characteristics

#### **Market Transparency:**

Water policy decisions and market distortions remain problematic for certain regions.

To ensure public confidence it is essential that market transparency to certain levels is required. This is to assist business understanding of influences on broader Government policy settings as much as how water markets/trades individually occur.

Arguments against market transparency are often based on the need to retain confidentiality. However conversely, the complete lack of transparency can lead to market distortions and/or manipulation.

It is possible to ensure water markets are sufficiently transparent to avoid the risks while maintain a level of privacy.

- Transparency on Water entitlement ownership should be publicly available
- Privacy is maintained for individual water accounts /eg usage – not publicly available
- Water transfers to separate entities (eg buy/sell) should be publicly available post transaction
- A tiered level of reporting of entitlements held should be publicly available that can identify percentage of water markets controlled by individuals/or companies where a threshold level is deemed to require such reporting

#### **Water Brokers:**

- MVPD supports market regulation of brokers to protect the property rights of water entitlements and prevent trade risks

#### **Expansion of trade:**

MVPD is concerned about a continuation of trade of water out of historical irrigation areas

This submission has identified a range of risks and/or influences on Government policy to overcome existing rules and/or system limitations.

As Governments seek to assess the impacts of 'free trade', the following should apply:

- No third -party impacts to land or water property rights of other entities
- Avoidance of existing or further market distortions
- Rectification of market disadvantage in geographically specific areas created by Government interference in the water market through such things as Water Act 2007 and the Murray Darling Basin Plan
- Assurance that any move to amend existing use rights, do not lead to further eroding of property rights:
  - Eg policies that seek to enable new sharing rules to overcome existing natural limitations of rivers and/creeks to accommodate new trade
- Basin Plan -Constraints Management Strategy; Taxpayers funds should not be used to overcome natural river limitations where such investments disadvantaged existing property rights of water and lead to commercial transfers of water via permanent or temporary trade downstream
- Commonwealth Environmental Water Holder transfers must equally respect existing river rules and trade zones
- Trade and market rules respect historical capacities of zones