





Murray-Darling Basin Water Markets Inquiry

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About NSW Farmers

A profitable and sustainable New South Wales farming sector

The NSW Farmers' Association is Australia's largest State farming organisation representing the interests of its farmer members.

Farmers across New South Wales produce more than \$15 billion worth of food and fibre every year, representing around one quarter of Australia's total agricultural output. Our state's unique geography means a wide variety of crops and livestock can be cultivated and nurtured. NSW Farmers is Australia's only state-based farming organisation to represent the interests of farmers of all agricultural commodities – from avocados and tomatoes, apples, bananas and berries, through grains, pulses and lentils to oysters, cattle, dairy, goats, sheep, pigs and chickens.

Our focus is not just on issues affecting particular crops or animals – it extends to the environment, biosecurity, water, economics, trade and rural and regional affairs. We also have an eye on the future of agriculture; we are advocates for innovation in agriculture, striving to give our members access to the latest and greatest innovations in research, development and extension opportunities. Our industrial relations section provides highly specialised advice about labour and workplace matters.

Our regional branch network ensures local voices guide and shape our positions on issues which affect real people in real communities. Members are the final arbiters of the policies of the Association – through our Annual Conference and elected forums such as Executive Council, members can lobby for the issues which matter to them and their community to become Association policy. Our issue- and commodity-specific Advisory Committees are elected by members to provide specialist, practical advice to decision makers on issues affecting the sector. We are proudly apolitical – we put our members' needs first.

In addition, NSW Farmers has partnerships and alliances with like-minded organisations, universities, government agencies and commercial businesses across Australia. We are a proud founding member of the National Farmers' Federation.

Introduction

NSW Farmers Association (NSW Farmers) welcomes the opportunity to provide comment to the Australian Competition and Consumer Commission (ACCC) Murray-Darling Basin Water Markets Inquiry. The Association has been provided with the opportunity to review the submission by National Farmers Federation, and also supports the comments and conclusions reached in that submission.

NSW Farmers have a number of concerns regarding the evolution of the water market. Our members believe there is a lack of transparency in the water market and that the market has matured in a way that was not intended. Emerging market trends are having impacts on water prices, availability, and deliverability and creating third party impacts.

NSW Farmers supports a fair and robust water market that underpins viable and resilient communities throughout the Murray Darling Basin (the Basin). Water trading is a valuable tool for businesses to manage their individual water needs, with water trading in the Basin worth approximately \$2 billion annually.

Under the Murray Darling Basin Plan¹ (the Plan) the objectives for trading in the water market are:

- a) *to facilitate the operation of efficient water markets and the opportunities for trading, within and between Basin States, where water resources are physically shared or hydrologic connections and water supply considerations will permit water trading; and*
- b) *to minimise transaction cost on water trades, including through good information flows in the market and compatible entitlement, registry, regulatory and other arrangements across jurisdictions; and*
- c) *to enable the appropriate mix of water products to develop based on water access entitlements which can be traded either in whole or in part, and either temporarily or permanently, or through lease arrangements or other trading options that may evolve over time; and*
- d) *to recognise and protect the needs of the environment; and*
- e) *to provide appropriate protection of third-party interests¹.*

Additionally, the outcome for trading in the water market is the creation of a more efficient and effective market that:

- a) *facilitates water reaching its most productive use; and*
- b) *enhances the productivity and growth of water -dependent industries; and*
- c) *enables water -dependent industries to:*
 - a. *better manage through extreme events under current climate variability; and*
 - b. *strengthen their capacity to adapt to future climate change¹.*

NSW Farmers supports a well-designed water market that avoids third-party impacts. The water market has provided flexibility to allow farm businesses an input that can be bought or sold and

¹ Basin Plan 2012, https://www.legislation.gov.au/Details/F2018C00451/Html/Text#_Toc519084244

make decisions to manage through variable climates and water availability. It is vital that the water market operate to support the achievement of these objectives. However, as presently designed and operating, the market is instead playing a significant role in the decline of regional communities, irreversible environmental damage, the failure of farming enterprises and ability of the food and fibre industry to reach its potential as a \$100 billion industry.

NSW Farmers welcomes the ACCC review into the Murray Darling Basin Water Markets and seeks recommendations from this review that will improve the transparency and operation of the market and mitigate unintended impacts. Our Association considers that the ACCC should be guided in its recommendations by the findings of the Productivity Commission review of the effectiveness of the implementation of the Murray Darling Plan and water resource plans, which highlighted a range of systemic implementation issues that are now being exacerbated or replicated within the water market. The Productivity Commission report includes specific recommendations regarding the effectiveness of water trading rules, and uncovers the factors that are influencing availability of supply and delivery constraints, all of which are highly relevant to the development of a functional and fair water market. NSW Farmers continues to call for all of the Productivity Commission recommendations to be implemented in full.

Transparency and Information

NSW Farmers believes improvements in the transparency of water trade are urgently required. Readily available information including price, location and volume, provide market participants with the information required to make informed decisions. Without transparency and improved functional capacity, trust in the water market and wider water reforms is being eroded, and the ability of the water market to deliver the social, economic and environmental objectives of the Murray Darling Basin Plan is greatly diminished.

Of concern is the lack of centralisation of water market information which means that market participants must know where to source each piece of information they require. A single source of water market information is required to improve market function, provide market participants the information to make informed decisions in the water market and increase trust in the operation of the market.

The recent Productivity Commission five-yearly assessment into the Murray Darling Basin Plan also highlighted the need for further transparency and accountability of institutional and government arrangements². Additionally, the 2019 Murray Darling Basin Authority (MDBA) audit of water market pricing found that no Basin Government has sufficient arrangements in place to gather comprehensive price information, with some of the data reported by the states and published in consolidated form by the Bureau of Meteorology being incomplete and inaccurate³. Therefore, there is no single point of truth that market participants are able to rely upon to inform their trading

² Australian Government: Productivity Commission, *Murray Darling Basin Plan: five-yearly assessment*, <https://www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan-overview.pdf>

³ Murray Darling Basin Authority, *Audit find reporting of water prices falls short*, <https://www.mdba.gov.au/media/mr/audit-finds-reporting-water-prices-falls-short>

activity. NSW Farmers is calling for all water market information to be provided through a single centralised online portal or trading platform. ACCC should make detailed recommendations to Government about what types and currency of information would best support fair market trades and how this information should be made available to market participants.

Market Participants Practices and Behaviours

NSW Farmers believes that fair and balanced regulation of speculative investment in the water market should be introduced to avoid market distortion and protect the viability of existing irrigation and communities. Policy reforms to separate water from land ownership that have allowed water trading have also facilitated the entrance of new investors in the water market, including those willing to make speculative investments in the water market. NSW Farmers recognises that some speculative investors may be farmers or others associated with farming, such as retired farmers. It is also recognised that out of cycle investment in water markets is essential for a viable market place, and that speculative investment is part of a functional market and provides benefits to modern farming enterprises which are increasingly focussed on risk management.

However, speculative investment must be closely monitored to ensure that it is delivering benefits to the irrigated agriculture sector. In some cases, it appears that professional speculators in the market are influencing market prices (in some cases to a significant extent) by deliberately holding back supply to increase the trading price during periods of water scarcity. While reliable information about this aspect of the market is difficult to ascertain because of the lack of a transparent marketplace for water, if this is correct then this is of very significant concern to our members. The price of water is already such that many farmers are now priced out of the water market, causing farm businesses to fail and destroying regional communities. ACCC should move immediately to create market rules that discourage the participation of professional speculators and limit the opportunities for market distortion, especially during periods of drought.

Similar concerns have been raised about the participation of Government in the temporary water market. Government's significant resources enable it to engage in trading activity in a way that is not possible for most farming businesses. In order to avoid market distortions that would undermine the achievement of the social and economic objectives of the Murray Darling Basin Plan, Government investment should be subject to strict trading rules that align its trading activity with Plan objectives.

Also of concern is the capacity of many farmers to participate in a market that is so complex, especially where reliable market information is scarce and difficult to find. The level of expertise and experience required to navigate the complexity of the water market unfairly advantages professional and institutional investors, notwithstanding that all farmers who rely on regulated water sources must participate in the market. Managing the risks associated with any commodity market is inherently difficult. The ACCC must ensure that changes to the market are implemented to ensure that market information is readily available in accessible forms, that there are market products available to meet the needs of all types of water users and that rules are fair and well designed, so

that effective participation in the market and good risk management is fairly available to all farmers who rely on the resource. Additionally, water brokers should be licenced and required to comply with best practice standards that are applicable to other commodity brokers, to maintain the integrity of all trading and to ensure that vulnerable market participants are not disadvantaged.

Regulation and Institutional Settings

Since the establishment of the water market there has been a movement to more water intensive production in the Southern Basin, and a significant expansion of land under irrigation resulting in increased demand for water.

The movement of water allocations to new irrigation development areas (water use 'hot spots') is causing both environmental and socio-economic impacts throughout Basin communities. Where trading of water between valleys and within valleys is permitted, it is essential that this does not adversely affect the rights of existing irrigation development. Although total water consumption of surface water and groundwater may remain constant, trading rules are contributing to significant adverse consequences for users outside the hotspots as water use is moving to a limited range of high value crops, with other established users locked out of the water market.

One example is the trade of water to support the rapid development of permanent plantings in the Lower Murray, which has placed increased pressure on the Barmah Choke to deliver water downstream to meet growing demand from expanded irrigation areas, especially as these permanent plantings mature. This increased demand pressure is already resulting in flood inundation of farms and conservation areas in the Barmah Forest region causing significant damage to farms, infrastructure and the environment as water is pushed beyond river constraints to meet downstream demand. The erosion of the river banks along the Barmah Choke caused by increased flows have reduced the flow capacity of the Barmah Choke and caused detrimental environmental outcomes for the riparian environment.

NSW Farmers is seeking a halt in the approval of all new irrigation developments downstream of the Barmah Choke until there is evidence that the water can be delivered without third party impacts. Supply and reliability issues experienced by upstream farmers because of the current drought are being exacerbated because many of the new permanent plantings in the recently expanded irrigation areas do not have high security water entitlements and rely upon general security and temporary water entitlements. The business model and the water needs of these plantations require them to be very active participants in the water market. The activity of these large water users in the water market and increased competition for water resources has increased trading prices, often pricing long-established family agricultural businesses out of the water market. NSW Farmers does not believe that such a result aligns with the objectives of the Murray Darling Basin Plan or the establishment of the water market. It is also unclear as to whether Prerequisite Policy Measures (PPM) that allows the 'piggybacking' of held environmental water could be used to benefit future water traders to deliver water through constraints points. The use of PPMs to benefit water trading would be an unintended use of the measure and could also cause significant flooding impacts to riparian landholders. Another example is of water trading creating "hot spots" in valleys where permanent or temporary transfers have aggregated in a particular reach. In the case of

groundwater, increased pumping is causing loss of stock and domestic supply [S324 Namoi R. upstream of Narrabri], and similarly surface water extractions resulting in extractions and works approvals that create stream and floodplain dysfunction. This trading is seemingly conducted with no recourse offered to the social and environmental impact of the activity.

The Productivity Commission's five-yearly assessment into the implementation of the Murray-Darling Basin Plan highlighted that the growth of trade has increased demands on delivery capacity and put pressure on delivery constraints in some parts of the Basin⁴. The review recommended that the Basin States should undertake work to describe how delivery capacity issues and third party effects associated with changes in water use and trade will be investigated and managed. NSW Farmers understands that the Murray Darling Basin Authority is conducting work to resolve the risk of water delivery shortfall on the River Murray, with additional modelling and analysis undertaken by December 2019 to further investigate compounding factors such as the role of Inter Valley Trade, the Barmah Choke's capacity and climate extremes⁵. This work must be expedited and its findings must inform the development of more nuanced and effective trading rules for trading between connected valleys and trades between river sectors that protect existing property rights and overcome the deliverability and reliability issues that are currently affecting market participants.

NSW Farmers strongly recommends that the current market regulations and trade rules be reviewed throughout the Murray Darling Basin and redrafted to make them more responsive to increased risks associated with changes in crop type, changes in land use and increased water demand downstream of constraints. Changes in trade rules are supported where they align with the objectives of the water market to protect property rights in water, protect the environment and avoid third-party impacts.

Conclusion

Water trading throughout the Basin is a useful tool for farm businesses to manage their water requirements. However, NSW Farmers is concerned that the confidence of market participants is being eroded by the lack of a transparent, well-regulated market place. As currently operating, the water market is not maturing to support and achieve the objectives of the Murray Darling Basin plan. Instead of promoting fair and sustainable access to vital water resources, flaws in market design and trading rules are further limiting the ability of many farmers to access water on a reliable basis in reasonable quantities.

There are very significant defects in the current design and operation of the water market. Of most concern is a lack of access to crucial market information, which is encouraging the participation of speculative investment at the expense of farmers who rely on the water resource. Lack of availability of reliable access to water at a fair price has meant that many farmers are now locked out from access to this crucial resource. This is having a profound impact not only on the personal health and well-being of affected farmers, but also on the viability of regional communities, food security and the viability of the agriculture sector.

⁴ Ibid.

⁵ Murray Darling Basin Authority, *Murray Darling Basin Ministerial Council: 4 August 2019*, <https://www.mdba.gov.au/media/mr/murray-darling-ministerial-council-4-august-2019>

NSW Farmers supports a well-designed water market that is designed to promote all of the objectives of the Murray Darling Basin Plan. For this reason, the Association is calling for a root and branch redesign of the water market to ensure that farmers have fair access to this vital resource.

Key features of a fair market include:

- Comprehensive market information to be readily accessible from a single online source
- A trustworthy, well-regulated marketplace with fair market rules
- Market rules that limit the opportunity of speculative investment to distort the market and impede the objectives of the Murray Darling Basin Plan
- Regulations and trade rules that respond to changes in water demand and the associated deliverability and environmental risks

NSW Farmers looks forward to the ACCC's review of the Murray-Darling Basin Water Market and recommendations to improve the transparency and operation of the market.