Public submission to water market rules issues paper by the Queensland Department of Natural Resources & Water

It is understood that this issues paper is focussed on water market rules and that the Australian Competition and Consumer Commission (ACCC) intends to release further papers for discussion on water trading and water charge rules.

As a general comment, given the water market rules apply to irrigation infrastructure operators in the context of ensuring that the water rights of irrigators are in fact tradeable, this does not present significant issues for the Department of Natural Resources and Water (NRW). The water planning and allocation framework in Queensland results in the end water users being granted the tradeable water entitlements.

The ACCC may publish this submission on its website.

OVERVIEW OF THE WATER ENTITLEMENT AND TRADING SYSTEM

Water Act 2000

Administered by NRW, the Queensland *Water Act 2000* and *Water Regulation 2002* (Qld) establish the overarching legislative and regulatory framework for water planning, allocation, management and regulation in Queensland.

Queensland's water market

Permanent

Water markets across Queensland continue to expand as statutory planning process are finalised. Over 8,000 tradeable water allocations[1] with a combined annual volume of over 1.65 million megalitres have been established in Queensland since the separation of water from land in June 2003. In a clear demonstration of the markets effectiveness, since that time approximately 1,000 water access entitlements with a total annual volume of over 115,000 megalitres have been permanently traded separately to land. This represents a market turnover of almost seven per cent by volume, with a total value close to $50 million. Prices paid for traded water vary across the state, with prices typically ranging from $600 to more than $2,000 per megalitre. The market will expand as more planning processes are finalised in other areas of the State, and more tradeable water access entitlements are established.

Temporary

For each of the last five years there has been an average of 1,900 supplemented seasonal water assignments (commonly referred to as temporary trades), with a combined annual volume of some 180,000 megalitres.

The Murray-Darling Basin

Within the Queensland part of the Murray-Darling Basin , water planning process have now been completed for three catchments:

- Border Rivers (March 2008)
- Moonie (January 2006)
- Warrego/Paroo/Bulloo/Nebine (January 2006)

The draft Condamine-Balonne Resource Operations Plan, released in July 2007, is yet to be finalised.

In the Queensland section of the Murray Darling Basin, only the Border Rivers and Condamine Balonne catchments have significant volumes of water entitlements. In these catchments water trading has only just commenced or is yet to commence.

[1] In Queensland, water allocations are water access entitlements.

Water Planning Process

The *Water Act 2000* requires the preparation of water resource plans (WRPs) and resource operations plans (ROPs). Through these water planning processes water access entitlements are specified in ways that protect the flows needed to support the environmental values in watercourses and aquifers.

Water resource plans

WRPs made under the *Water Act 2000* are subordinate legislation. They are strategic plans that measure a catchment's water resources and detail how Queensland's rivers and wetlands will have sufficient water at the right times to protect the environment's health and how water is properly shared by water users. WRPs specify:

- environmental flow objectives (EFOs). These are the statistical measures of flows required to maintain ecological health. Decisions cannot be made that are inconsistent with the attainment of the EFOs[2];
- water allocation security objectives (WASOs). These are performance indicators relating to the security and reliability that water users can expect from their water allocations[3];
- outcomes for water use such as the needs of towns, agriculture and industry;
- strategies to achieve water use efficiency; and
- monitoring and reporting requirements to ensure that plans are working.

Resource operations plans

ROPs sets out the operational mechanisms that implement the broader management provisions specified by the WRP. In delivering the objects and outcomes of a WRP, a ROP may contain:

- operating and management rules for water infrastructure;
- water trading rules;
- water sharing rules;
- monitoring and reporting on water use and ecosystems; and
- details about granting and converting existing entitlements into tradeable water allocations.

Water allocations

On the day a ROP commences, existing entitlements that are to be converted to water allocations under the ROP expire, and water allocations are granted to the holders of the expired water entitlements. These water allocations are recorded on the Water Allocations Register (WAR). On commencement of a ROP, the registrar is required to record on the WAR the attributes of each water allocation granted.

Water allocations are essentially entitlements to take a volumetric share of the water resource available for consumption. They are separate from land title, tradeable and clearly specified in terms of the holder(s), location; nominal volume; and other registered attributes.

The planning process may also identify further 'unallocated' water that is available for consumptive use. However, the release of such water is only made after the opportunity for maximising the benefits of existing supplies has been fully explored.

Water Allocations Register

Water allocations are registered on the Water Allocations Register (WAR). The WAR is an accurate and secure, torrens-based register that centrally records ownership and other

[2] For example, the WRP could specify that the mean annual stream flow at a particular point must be maintained at or above 75% of the mean annual flow that would occur in the absence of all development.

[3] A measure of performance of a water allocation is stated in a WRP. It is a measure, for a group of water allocations, of the probability of being able to take water under the water allocations. For example, a WASO may be expressed as the percentage of months in a period for which 100% of the water user's monthly water requirements can be delivered.

information on water allocations in a similar way to which details of land ownership and dealings are recorded on the land registry. The register is publicly searchable.

Water allocations are recorded on the WAR following approval of a ROP. Documents, including titles forms and dealing approval certificate, are lodged for registration to give effect to dealings, such as transfers and/or changes of location. That is to say, the WAR is not updated; dealings have legal effect following registration.

The performance of the WAR in relation to time between lodgement and registration of dealings is currently running at 12-48 hours (with most dealings registered within 24 hours).

Water account information

Queensland's WAR does not link with water account information for either supplemented or unsupplemented water allocations. NRW's Water Management System contains water use information and SunWater has an online web-based system which allows users to readily access account information.

Third party interests

The WAR records the registered holder(s) of the water allocation, the location, the nominal volume and various attributes, depending on whether the allocation is supplemented[4] or unsupplemented[5]. The WAR also allows for the recording of interests in water allocations, in the same way as interests may be recorded in land. Accordingly, a third party with an interest in a water allocation may register instruments such as encumbrances and interests e.g. a mortgage or caveat, over the water allocation.

Identifying whether a water allocation has a registered encumbrance is undertaken in the same way as for land that is necessary searches during the conveyance process will highlight all encumbrances, interests, administrative advices etc. Anyone may search the WAR and associated dealings.

Trading

In Queensland, water trading consists of permanent trading of water allocations (including leasing) and seasonal water assignments (temporary trades).

Permanent

Permanent water trading in Queensland is possible where a ROP has been finalised and water entitlements are adequately defined. That is to say, not all entitlements within a ROP area are tradeable water allocations; there may still be some water entitlements e.g. for groundwater, which remain attached to the land.

Permanent trading will involve a transfer of ownership or lease, but it may also involve a change, amalgamation or subdivision of the water allocation itself.

Rules

The ROP contains trading rules that detail permitted and prohibited changes to water allocations. In general the water trading approval process requires 'testing' proposed trades against trading rules contained in the relevant ROP, to ensure trades comply with water allocation security and environmental flow objectives. The rules may also prohibit changes to water allocations of types that would require significant amendments to the ROP.

NRW approval processes scrutinise applications which would the affect the natural resource attributes of the water allocation (e.g. location, volume, purpose, priority, etc.) and these are assessed according to trading rules contained in the relevant ROP. The approval time for these applications is dependant upon the ROP trading rules (that is whether or not the

[4] situations where water supply is enhanced by releases from water storage infrastructure.

[5] opportunistic take from a river following a flow event where supply is not enhanced by releases from water storage infrastructure.

changes have been pre-tested). For pre-tested applications, approval times are typically less than 15 business days (Nb. this time frame includes delays when further information has been requested from applicants; the actual time for issuing an approval is significantly less).

A 'change' to a water allocation involves an amendment to the registered resource attributes (such as the 'location' from where water may be taken; or the 'priority' of the allocation); which is separate to a 'transfer' of ownership. To change a water allocation, the holder must apply to NRW to assess the change against the ROP trading rules. The resulting dealing certificate must be lodged with the registrar to record the change on the WAR.

Temporary

The temporary market involves seasonally assigning to another person (or place), all or part of, the water available under a water entitlement in a particular water year. Known in Queensland as the seasonal water assignments (SWA) market, temporary trade is used by water users to respond to season variability in rainfall, commodity prices, etc.

SWAs rules are contained within a ROP and can be further governed by the *Water Regulation 2002*. The holder of a resource operations licence is responsible for approval of SWAs of supplemented water. NRW is responsible for approving all unsupplemented SWAs.

Trading rules

Under the *Water Act 2000* all WRPs that provide for the establishment of tradeable water allocations are required to include performance indicators that are relevant to environmental health and environmental flow objectives for those indicators. WRPs require that any decision made under the plan be consistent with the environmental flow objectives and the trading rules included within a ROP are developed accordingly. Consequently, any trading of water allocations must ensure that for certain volumes to shift from one trading zone to another, the environmental and third party security outcomes will not be affected.

The ROP trading rules allow water users to readily identify trades that are permitted (through pre-testing the most commonly envisaged trades) or prohibited. Trades beyond these pre-tested limits may also be allowed, but only after an assessment determines that the trade will not breach the outcomes specified in a WRP.

Constraints on trade for physical, social or ecological reasons

Legitimate and necessary constraints, as set out in ROP trading rules, are based on:

- the physical (that is hydrological) limitations of the catchment – while water taken from a watercourse may be piped or otherwise relocated elsewhere for use, there are physical limitations on where water may be traded. For example, water taken from one catchment cannot be traded to another catchment where there is no hydrological connection between the two; and
- the impacts on EFOs and WASOs, that is protecting environmental needs and ensuring that there are no negative impacts on the reliability of entitlements held by other water users.

Trading rules are set out in the ROP for each basin. The water resource may be broken into zones—based on hydrological considerations. Generally speaking, a water allocation will specify the location as being anywhere in a specific zone. This allows the holder to take water from anywhere within the specified zone. As a result allows the water allocation can be sold to another water user within the zone without the need to 'change' the allocation[6].

If the water is to be traded to someone in a different zone, then the allocation may be changed in accordance with the rules in the ROP. The plan will usually include pre-tested volumes of water that may be traded from zone to zone, without impacting on reliability of

[6] Before using water taken under a water allocation for the purposes of irrigation, a Land and Water Management Plan must be obtained.

supply and the achievement of environmental flow objectives. If the change can be made within these limits then the change will be approved. If the change would cause the limits to be exceeded, then an individual assessment is required that may be more complex. Applicants bear the cost of such investigations. These requirements ensure that third party impacts are avoided.

To have legal effect, any permanent dealing with a water allocation must be registered on the WAR. There are two main types of dealings:
1. those that do not require the prior approval of NRW (such as transfers and leases) before registration on the WAR; and
2. those involving a change to the resource-related attributes of a water allocation and that therefore require the prior approval of NRW (such as changes, subdivisions and amalgamations) before registration on the WAR.

There are no restrictions on the transfer of ownership of water allocations. Any entity that is legally competent to hold a water title may buy, sell, lease, etc., water allocations in accordance with standard conveyancing procedures and if necessary, relevant approval process.

No NRW approval is required for transfers or leases. These are a private conveyance arrangements between parties and are analogous to land dealings e.g. lodgement of transfer documents and if necessary, mortgage release forms. Notwithstanding, parties transferring unsupplemented water allocations are required to notify NRW of their intended action before registration on the WAR. This requirement is only for the purposes of collecting water accounting information and does not constitute an approval (although it does form part of the conveyance process). In supplemented systems, the Registrar will not register transfers or changes without a notification from the ROL holder that a 'supply contract' exists (see below).

Resource Operations Licence
In systems where water is delivered from a dam and/or other water storage infrastructure (termed 'supplemented systems'), system operators (such as SunWater and local governments) must hold a resource operations licence[7] (ROL) and comply with the relevant ROP.

In Queensland, delivery of water is supported by a contract with the water storage infrastructure operator, that is the holder of the ROL. The delivery contract with the ROL holder (generally SunWater) defines the service standards and delivery conditions as well as the rights and payment obligations of the holder.

<u>ROL holder</u>
Although a ROL holder is not an approving authority for permanent trades, transfers and changes cannot be registered on the WAR without a *Notice of the Existence of a Supply Contract*. This is a notice issued by ROL holder to inform the Registrar of water allocations that a supply contract exists between the water allocation holder and the ROL holder. These supply contracts are commercial arrangements that establish water accounts and detail water ordering delivery, and payment arrangements

<u>SunWater</u>
SunWater, a company government-owned corporation, is the state's largest water service provider. It supplies nearly half of all the water consumed in Queensland with customers including irrigators, mines, power generators and local government. This is mostly bulk water supplied to 27 irrigation schemes, which provide 40 per cent of all water used for irrigation.

[7] A ROL is a licence granted under a ROP to the operator of water storage infrastructure and addresses the operating rules for infrastructure and management of water.

As a registered water service provider[8] (WSP), SunWater delivers water to irrigators within the Queensland part of the MDB. Within the MDB, the Border Rivers Commission, Local Boards and Local Councils are also WSPs.

SunWater can hold entitlements that are yet to be sold to individuals or entities. Like other water allocation holders, SunWater can hold and trade those water allocations in the permanent or temporary market. Much of these water allocations are granted for the purpose of allowing SunWater to manage distribution loss in their delivery systems.

SunWater approves seasonal water assignments of supplemented water, within any constraints set in the relevant ROP. In conducting this role, SunWater:

- does not discriminate between seasonal assignments involving customers and seasonal assignments involving SunWater; and
- decide approvals in accordance the relevant ROP (or sometimes under the Water Regulation 2002) and with published temporary trade criteria contained in forms published on SunWater's website[9].

SunWater has developed a Water Trading Framework to ensure its trading activities comply with their Code of Conduct and are conducted with the same market information constraints as other market participants.

Under the Framework, individual scheme strategies are prepared each year by SunWater and published on their website. These strategies detail SunWater's trading intentions for the coming year, including the available mechanisms of trade, and have been adopted to help ensure their trading practices are independent and transparent.

For example, SunWater engages a third party as the primary means of seasonal assigning any available water it holds, to ensure that the trades are independent of SunWater's water supply activities, and that they are transparent to the market.

Annual reports must be provided by SunWater to NRW for each ROL which detail the number and volume of SWAs.

Distribution network obligations

Some supplemented water allocations, in addition to having a supply contract linking them with the ROL holder (that is the operator of water storage infrastructure), may also receive water from the holder of a distributions operations licence (DOL), who authorises the distribution of water.

In such systems there is the risk that the trade of water allocations may tend to move allocations away from an entities distribution area. This could lead to a reduction in the number of customers in a distribution area (a reduced customer base), which in turn would result in increased costs for remaining water users. At its extreme, where the majority of allocations are traded away from an area, the distribution assets could become 'stranded'; leading to a situation where there are not enough users to maintain the viability of the distribution scheme.

In this case, although not strictly a resource management issue, it is important to ensure there is a means for water trades to take account of certain costs associated with the distribution works in such a distribution area.

To deal with this issue, in Queensland there is an obligation on the holder(s) of allocations to pay the DOL holder a charge relating to the distribution works. This arrangement is reflected in the licence holder's distribution arrangements with the allocation holder.

[8] A person who controls the operation of water supply works and provides water for a charge.
[9] SunWater – Water Trading Code of Conduct.

A water allocation managed under a DOL will have an administrative advice[10] recorded on its title stating that the allocation is one to which a DOL applies. This makes it known (to the allocation holder and the market generally) that the DOL holder can require a charge of holder(s) of the water allocation.

This charge allows the DOL holder to account for their ongoing costs even where a water allocation is traded and/or moved to a part of the catchment where the DOL holder does not distribute water.

It is implicit in the provision that the obligation to pay the charge will apply where there is a transfer of ownership of the allocation. The obligation continues until the DOL holder agrees that the obligation has been satisfied. Where the DOL holder agrees that the obligation has been satisfied, the administrative advice may then be removed from the water allocation title. As with the other such arrangements, these DOL charges are subject to price oversight the Queensland Competition Authority under the Queensland *Competition Authority Act 1997*.

Transformation arrangements
It is the policy of the Queensland Govt to grant water allocations to the end user to the extent that it practicable to do so. ROL holders and water service providers do not hold water entitlements on behalf of individual irrigators within their districts. Although SunWater may hold some water allocations, this is not done on behalf of the end users.

Market information
Monthly permanent water trading reports are available on the NRW website which display summary price information for each type of water product in each catchment. The reports include information on the number and volume of transfers and leases. Access to this information is free.

Annual reports required from ROL holders contain the number and volume of temporary trades which have occurred during the water year, but there is currently no head of power to capture or report price information for SWAs. NRW is investigating options to enable this data capture.

The NRW website provides dynamic data with regard to the current location of water in each basin as well as the corresponding minimum and maximum volumes for each zone as specified in the ROP trading rules (as discussed in an earlier section). This allows water users to readily identify whether a permitted change can be approved simply.

Access to raw sales data for individual trades is also available via an over-the-counter Queensland Valuations and Sales' (QVAS) service, just as for land sales and with the same fee structure.

A Water Sales Data Product is available for purchase from NRW which provides sales information for all water allocation transfers. Current rates for this product are:

- whole of state, once off supply – $125.30;
- whole of state initial once-off supply with monthly updates; fee per annum – $1,127.70

The attachment lists current application and lodgement fees for permanent trading in Queensland.

[10] An administrative advice (AA) is a type of dealing that is recorded on a Title to advise the holder (or interested parties) that a matter authorised under relevant legislation is in existence. The entry of the AA may or may not prevent further dealings with the subject water allocation. This is determined by the legislation authorising the entry of the AA.

Other approvals
There are no restrictions based on either the possible use of traded water or sale to non-landholders/non water users, by operators or NRW. The only 'constraint' for operators is in relation to a physical ability to deliver water to a customer.

There is a requirement to have a land and water management plan approved by NRW before irrigating land with water taken under a purchased water allocation. However, this approval is not linked to, and does not prevent, the purchase of a water allocation.

Water allocation applications

Item	Price
• Application to amalgamate water allocations or subdivide a water allocation	**$89.10**
• Application to change a water allocation if the application is made with an application to amalgamate water allocations or subdivide a water allocation	**nil**
• Single application to change a water allocation	**$89.10**
• Additional applications to change a water allocation made at the same time as the initial application	**$17.75**
• Application by water allocation holder for seasonal water assignment	**$118.80**

Water allocation searches

Item	Price
• Computer print-out of a title for a water allocation generated within the water allocations register	**$12.25**
• Computer print-out of the historical details of a title generated within the water allocations register	**$18.50**
• Image of a title for a water allocation generated within the water allocations register	**$12.25**
• Image of a title for a water allocation generated of another instrument lodged or deposited in the water allocations register	**$24.75**
• Search, in the water allocations register, of a statement of a registered dealing or administrative advice against a title	**$2.45**

Property valuation and sales searches

Item	Price
• Property sales matrix report for each additional report ordered on the same request as the report for first town/suburb/locality	**$7.20**
• For particulars contained in a notice under s81 of the *Valuation of Land Act 1944* given in an abbreviated form for each item	**$6.20**
• Searching for particulars contained in a notice under s81 of the *Valuation of Land Act 1944* held on the current valuation roll at an office of the department	**$12.25**

Water allocation registration

Item	Price
• Creating, on request, a title or a separate title for a water allocation, other than under ss121 or 122 of the *Water Act 2000* - for each title created	**$49.65**
• Lodging an instrument that changes ownership of a water allocation or an interest in a water allocation if lodgement is with an instrument changing ownership of a lot or an interest in a lot for each water	**$24.50**

allocation	
• Lodging in the water allocations register an instrument that changes ownership of a water allocation or an interest in a water allocation - for 1 water allocation	**$115.00**
• Lodging in the water allocations register an instrument that changes ownership of a water allocation or an interest in a water allocation - for each additional water allocation	**$24.50**
• Lodging in the water allocations register a certificate approving amalgamation of water allocations or subdivision of a water allocation under ss148(2)(d) and 128A(7) of the *Water Act 2000*	**$115.00**
• Lodging in the water allocations register a certificate about a change to a water allocation under ss148(2)(d), 129(6) and 135(1) of the *Water Act 2000*	**$115.00**
• Lodging in the water allocations register a cancellation, discharge or satisfaction of a writ of execution under ss148(2)(d) and 150(1) of the *Water Act 2000*	**$24.50**
• Lodging in the water allocations register an instrument received through the post, by courier service or by document exchange service under ss148(2)(d) and 150(1) of *the Water Act 2000* - additional fee for each instrument	**$24.50**
• Lodging a standard terms document in the water allocations register under ss148(2)(d) and 150(1) of the *Water Act 2000*	**nil**
• Lodging in the water allocations register a request to remove from the title of a water allocation a lease that has expired or otherwise ended under ss148(2)(d) and 150(1) of the *Water Act 2000*	**nil**
• Lodging in the water allocations register a request to note the lapsing of a caveat under ss148(2)(d) and 150(1) of the *Water Act 2000*	**nil**
• Lodging any other instrument in the water allocations register under ss148(2)(d) and 150(1) of the *Water Act 2000*	**$115.00**
• Depositing in, or withdrawing from, the water allocations register a settlement notice under ss148(2)(d) and 150(1) of the *Water Act 2000*	**$24.50**
• Depositing in, or removing from, the water allocations register an administrative advice under ss148(2)(d) and 150(1) of the *Water Act 2000*	**$12.20**
• Preparing and serving, by the water allocations register, of a caveat notice under ss148(2)(d) & 150(1) of the *Water Act 2000*	**$24.60**
• Certifying, by the registrar, of a copy of the title of a water allocation or a registered instrument under s148(2)(d) of the *Water Act 2000*	**$24.75**
• Requisitioning a document lodged for registration under s148(2)(d) of the *Water Act 2000*	**$30.95**

* Prices effective as at April 2008