



National
Irrigators'
Council

**Position Statement: Water Markets &
Deliverability
July 2019**

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Background

Water markets were created by Governments in the early 2000s, with the aim of allowing water resources to move to the agricultural areas and uses that were considered to produce the best return.

Market creation has enabled the expansion of crops in a number of areas; has enhanced the value of irrigated agriculture; and has proven to be an effective drought mitigation tool in certain circumstances.

The underpinning structure of Australia's water markets (i.e. the resource tends to move to the highest bidder), has also formed the backbone of the Federal Government's ability to purchase water for the environment thus facilitating the environmental objectives of the Murray Darling Basin Plan (Basin Plan).

The reduction in the volume of water available for consumptive use as a result of the Basin Plan, combined with the making of the Water Market Rules (2007) *Cth* and the Basin Plan Water Trade Rules in 2012, have fundamentally changed the business environment facing the irrigation sector and water markets (both water entitlement and allocation markets¹) are key elements of this change.

The developing market has also seen the creation of new products, including longer term water entitlement leases and forward and deferred water allocation purchase/sales contracts that have assisted some irrigators to better manage their balance sheet exposures, water supply risk, cashflow and commodity forward sales.

Not surprisingly the operation of water markets has resulted in a substantial shift in the ownership and holding of water entitlements and use of allocation across the Murray-Darling Basin, and in the Southern Basin particularly. This has been positive for some regions and negative for others. It is recognised that impacts are uneven.

NIC recognises that the operation of the market and the movement of water to highest value use can also affect environmental outcomes and have socio-economic impacts. While these factors are not part of this policy document, NIC acknowledges that they must be considered as part of the overall outcome of enacting the current water market policy. It is also reasonable to ensure that the market reflects the intent of Government and that arrangements adequately deal with collateral impacts such as river operations and riparian issues.

NIC has raised issues around transparency and operation of water markets for some time, noting that deliverability of water allocations is emerging as a critical issue in some areas of the Murray River in particular. The compounding effects of water supply and river operations, due to changing use patterns, will see deliverability emerging as a critical issue in some areas.

With environmental water holders now a large holder of water entitlements and inclined to move their water allocations around in their portfolios to suit delivery

¹ For an explanation of entitlement and allocation see the MDBA's outline of water markets <https://www.mdba.gov.au/managing-water/water-markets-and-trade>

requirements, it is no longer clear that all registered water trade data is reflecting the actual traded market.

NIC recognises that the Southern Murray-Darling Basin connected water market is the most developed and most active. While in the longer term we would like to see similar standards and principles nationwide, at this stage it is appropriate that the focus for any improvements be based on the Southern Basin.

In 2019 responding to issues resulting from drought, elevated annual market prices and trade volumes, increased holdings of water entitlements by institutional investors and transfer of water, the Federal Government initiated an ACCC inquiry into the water market.

NIC policy context

NIC has a number of key principles established previously by members. These include to 'protect or enhance water as a property right'. Our strategic plan explains this as:

Water entitlement reform was a fundamental building block of the 2004 National Water Initiative. The agreement established a property right to water which is a share of the available resource. It required governments to improve the security and commercial certainty of entitlements by documenting how water users would bear the risks of reduced entitlements if water became scarce.

When water users have a legally-defined share of water that is safe from government interference, illegal take and arbitrary change, it becomes a financial asset. This can be used in much the same way as land held as a financial asset; it can be bought and sold, borrowed against and used to invest.

The principle of water as a property right must be upheld. Water property rights provide our members with authority over their asset, allowing them exclusive access to the asset and the right to exclude others from accessing this right. Water property rights provide an important underpinning in support of business investment and form part of the assets of a business enterprise.

The existence of property rights in water is considered a necessary precondition to water trading. Property rights are recognised as being stable, secure and flexible and are capable of sustaining a water market.

Policy objectives for the water market

1. All entitlement of the same category continues to have the same characteristics regardless of who owns it and continues to be treated in the same way as any property right.
2. Trade restrictions are based on real physical constraint, avoidance of third party impacts on the water rights of those not party to the trade and backed by transparent expert analysis of system capacity.

3. Reform to the water market should enhance simplicity, transparency and consistency of information without adding administrative burden or additional cost to farmers and irrigation operators.
4. Ensure the water market is easily accessible for all potential participants including small entitlement holders.
5. Basin Governments should improve the consistency, transparency and timeliness of water market information across State Government registries, including confidence in the accuracy of price disclosure and extent of price disclosure. Market information is improved by including clearer and timelier information on water supply, demand, delivery constraints, allocation and use.
6. State based water registry information – particularly in the Southern Murray Darling Basin - is brought together in a consistent platform providing timely information on the market, trades and water availability along with historical usage information.
7. Within particular markets, the holders of significant shares of water entitlement or those engaged in the trade of significant volumes of allocation, notify their positions in a similar way to the ASX.
8. ACCC takes a continuing role in monitoring and acting, if necessary, to ensure no anti-competitive behaviour or market manipulation in the water market, particularly focusing on periods of low supply.
9. Ensure that codes of conduct for water brokers are adequate to ensure market participants' rights are protected.
10. Consider whether any further regulation is required for provision of financial type advice relating to the water market.
11. Governments move toward standardised requirements for positive account balances along the Southern connected system.
12. As a significant water owner, Government environmental water holders should provide transparent, advance information about intention to engage in particular markets and undertake to minimise impact on the market, including third party impacts on other market participants.

ACCC inquiry into water markets

Background:

During the 2019 federal election campaign the Government announced that it would ask the ACCC to conduct an inquiry into the operation of the water market in the Southern Murray Darling Basin.

Issues for ACCC inquiry

1. Is the water market delivering its objectives?
2. How could information about water markets be made more transparent, timely and accessible to enable a greater level of knowledge about the state of the

market, size of the market, depth of the market and potential impacts on the market?

3. The water market has multiple registries with inconsistent information collected and a lack of transparency particularly across systems. Can a consistent system of information be put in place enabling cross jurisdictional information? Can a single information point or registry be put in place for the Southern Basin and possibly in the future nationally?
4. What additional information needs to be provided to enable market participants and observers better information. Should information on supply, demand, water use, water availability etc be included in a single location (eg. A central portal?)?
5. Within each water product and market, what level of ownership constitutes a 'significant' level of ownership potentially able to influence the market or impact competition?
6. Should there be an ASX style system of disclosure of significant ownership to the market? Taking into account legitimate potential competition impacts of too much disclosure (eg a seller knowing when a producer has no water), what would be the appropriate form of a disclosure and at what level?
7. Are current laws appropriate to deal with competition issues in the water market? Should there be power to prevent acquisition or require divestment in extreme cases?
8. Are codes of conduct for water brokers adequate to ensure market participants' rights are protected?
9. Consider whether further regulation is required for provision of financial type of advice in regard to the water market.
10. Should Governments move towards standardised requirements for positive account balances along the Southern connected system?
11. Recognising that the Commonwealth Environmental Water Holder (CEWH) is the biggest owner of entitlement in the Murray Darling Basin, what obligations should that body have to act in a way which does not affect water prices or produce other third party impacts resulting from market dealings?

Constraints on delivery

Background

NIC raised with the MDBA at our meeting in February 2018, the issue of concerns about capacity to deliver allocation to commercial users. At the time, the MDBA indicated it was not an issue. By later 2018 the MDBA was telling the Basin Water Ministers (MinCo) it was a major problem. At their December 2018 meeting, MinCo asked the MDBA to undertake work into the problem and report.

At NIC's June 2019 meeting the MDBA indicated the importance of the issue and the need for reform.

The issue of delivery constraint has become more pronounced over the past year where nil inflows from below choke tributaries (including the Darling) have seen the MDBA running the upper Murray at high levels, damaging the river environment in those areas and causing major losses. At the same time, it has created major concern for permanent plantings downstream of the Choke.

NIC is concerned that there has been a lack of consultation and transparency over sharing arrangements dealing with deliverability.

NIC notes that previous Government decisions have created a system where IIOs were forced to unbundle delivery and entitlement, specifically to enable trade, while other parts of the system have an implicit delivery right included.

At the NIC meeting in February 2019 at Swan Hill, there was discussion about the potential methods to deal with the problem, including a very preliminary discussion of a system of delivery rights. It was agreed further work on the issue was necessary.

A policy agenda for Ministers via MinCo

1. NIC calls on Ministers to address issues of delivery constraints (particularly impacting the Murray below the Choke), by:
 - a. Consulting with the irrigation sector to ensure there is confidence that water can be delivered without impacting reliability overall;
 - b. Developing a strong and well researched understanding of physical constraints under stressed scenarios including impacts on river losses deliverability risks.;
 - c. Ensuring that trade rules reflect genuine constraints;
 - d. Considering the interaction of the CEWH's operations in stressed scenarios and formalising existing 'good neighbour' arrangements;
 - e. Considering developing different models for river management (and interstate water sharing arrangements) depending on whether water is available from the Darling River and how to reasonably share losses from river operations, taking into account contemporary patterns of use, and tributary inflow scenarios;
 - f. Ministers providing a timetable for dealing with this issue and a commitment to consulting with the irrigation sector in the process;
 - g. In the interim, NSW, Victoria and South Australia agree a mechanism to temporarily halt (put a moratorium on) new greenfields irrigation developments on the Murray below the Choke.

2. That the NIC continue to work with members to develop a preferred option for a mechanism to ensure reliability for existing irrigators is not compromised by delivery constraints in the Murray.

Contact:

Steve Whan

Chief Executive Officer

Email: ceo@irrigators.org.au

Mobile: 0429780883

Phone: 02 62733637

NFF House

14-16 Brisbane Ave

Barton ACT 2600



Web: www.irrigators.org.au

Twitter: @Nat_Irrigators