



National Farmers' Federation

Public Submission to ACCC water trading rules position paper

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Member Organisations



**Corporate
Agricultural Group**



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1. The National Farmers' Federation

The National Farmers' Federation (NFF) was established in 1979 and is the peak national body representing farmers, and more broadly agriculture across Australia.

The NFF's membership comprises of all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations collectively form the NFF.

Each of these state farm organisations and commodity council's deal with state-based 'grass roots' issues or commodity specific issues, respectively, while the NFF represents the agreed imperatives of all at the national and international level.

2. Introduction

The NFF welcomes the opportunity to make a submission on the ACCC Water Trading Rules Position Paper (the Position Paper). This submission will make comment where the NFF position is inherently divergent from the ACCC position. Moreover, as a high level principle, the NFF supports the inclusion of Trading Rules that can be shown to be appropriate across most jurisdictions. Where particular issues relate to only one or two jurisdictions, it is more appropriate that these issues are dealt with via state governments.

3. Water Access Rights: General Matters

Ownership Restrictions: 3-A

The ACCC position that there should be no restrictions based on ownership is supported.

The NFF notes that since the draft of the Position Paper, the NSW embargo of water sales to the Commonwealth has been lifted and that the assent of Victorian legislation to remove the 10% non-landholder limit either pending or given.

Regarding Foreign acquisition of water, the NFF notes the role of the Foreign Investment Review Board (FIRB). However, NFF draws the attention of the ACCC to the \$100 million trigger for assessment by FIRB. NFF understands that the position of the Commonwealth Government is that where an Australian can acquire assets, so to can foreign investors.

However, it may be prudent to apply similar restrictions that apply to companies, i.e. if more than 15% of the shares in a company are acquired by foreign investors, FIRB approval is required. This may also be a relevant trigger for water, i.e. where more than 15% of water in a water resource area is acquired by foreign investors that further sales ought to be approved or rejected by FIRB.

Ownership Restrictions: 3-B

Regarding restrictions due to individuals who may contravene legislation or who owe money for water charges, the NFF notes that these "offences" were not detailed but proposes that there may be alternative mechanisms that could apply. The remedy would depend on the act that has resulted in non-compliance with legislation. If for example, the offence relates to theft of water,

options may include locking the pump/meter and/or refusing to deliver water and/or fines and/or the requirement to forego X times the water stolen. For unpaid water charges, it is the usual practice of Governments to withhold the supply of water until such time as these charges have been paid. This should suffice rather than further restricting trade.

NFF suggests that the ACCC analyses other state legislation and regulations to see how these “offences” have been resolved before finalising its advice.

However, the NFF notes that in extraordinary times (e.g. recent drought where many irrigators have paid significant fixed charges and received little or no water), there must be some concessions to irrigators for money owed for water charges, particularly in the face of Government market intervention by means of embargoes and suspending water.

Where the individual owes money, NFF suggests that the State legislation could be amended to require that these fees are paid through the settlement process for the water sale – particularly where the offender is selling the water. NFF acknowledges that this resolution may be more difficult for the buyer of water.

It is the position of NFF that such issues are perhaps best dealt with via state management of water rather than included in the Basin Plan Trading Rules.

Restrictions Based on the Intended Use of Water: 3-G

The NFF supports the position of the ACCC regarding trade to urban use should not be restricted. However, NFF does not support that Governments also enact other policy options – such as suspending water sharing plans and taking carry over water to supply urban water use.

Governments have long supported the market and using other policy or regulatory options to interfere with the market will not be tolerated. If carry over or allocation water is available from irrigators, urban water supply authorities are welcome to enter the market to purchase additional allocation supplies to underpin urban water use in any one year. To do otherwise encourages market failure.

In an era of scarce resources, fully developed systems, stressed systems and a focus on water efficiency, NFF supports that all urban water supply authorities implement water efficiency measures prior to entering the market to obtain additional water supplies. This will ensure that all water users are utilising best management practices.

The NFF supports there are some limits to the tradability of water rights that underpin critical human needs. This will most likely be a minimum proportion of the right owned by individual urban water authorities. It may be that this is the portion that is untradeable. Alternatively, the urban water authority may underpin their water requirements with a robust drought plan approved by the relevant Minister. Water surplus to requirements could be sold on an annual basis.

NFF does not support the permanent sale of urban water entitlements. The premise is that urban water authorities can go back to the Minister to have additional water rights granted (including on the grounds of forecast population increases). This comes at the impact to other entitlements holders (i.e. third party rights). Where urban authorities require additional rights (for critical human needs or population forecasts), urban water authorities ought to be required to enter the permanent market to acquire these requirements. The largesse of the Minister must be removed as a power.

Stock and Domestic Water Use: 3-I and 3-J

The NFF Members Council will be meeting on the 18 November 2009. The issue of stock and domestic water will be addressed by this meeting. NFF will advise the ACCC of the outcome shortly thereafter.

In the interim, as a high level principle, NFF supports trade of water right providing there are no third party impacts to existing entitlement holders. If the ACCC approach is to recommend that stock and domestic water supplies are converted to entitlements and made tradeable, this fundamental principle must be applied. Where this cannot be guaranteed, then the tradability of stock and domestic (or other) water cannot be supported.

In particular, the NFF supports that any new and/or additional stock and domestic water requirements (e.g. as a result of subdivisions) must be acquired from the market.

Trade into and out of the MDB: 3-K

NFF supports the position of the ACCC providing the water permanently traded is tagged.

Carry Over: 3-A

The NFF notes that it is a deficiency of water access entitlements that carry over water does not have a legal property right status. Its precarious nature can be demonstrated by State Governments suspending this water and using it to underpin critical human and other water needs.

The NFF notes that carry over is not a water product but a policy tool. Carry over is not recognised in legislation or in water plans and does not, as a result, have a property right. However, irrigators have access to the water held in their “account” for trade and or use – this collectively includes purchased water, allocation assignments and water carried over. As such, all this water is “tradeable” as allocation or annual trade. Therefore, the premise that carry over water is tradeable is a misnomer.

Carry Over: 3-S

NFF supports the position of the ACCC regarding carry over availability. However, the word “available” should be replaced by “deliverable”. It should NOT be assumed that water carried over in individual water accounts is available to other users to underpin critical human needs. Other arrangements are being put in place to deal with this, particularly in the Southern Basin.

Water carried over should be afforded the highest property right definition as this is physically water in the dam (not allocations based on projected inflows). To this end, irrigators rely and plan on the use of this water. It may be that this water is the only income available to the property. If Governments were to have access to this water through suspension or other mechanisms, then irrigation farm businesses will have their viability undermined. The important issue here is that if Government wish to have access to this water for critical human needs, then the market is the available mechanism.

More appropriately, irrigators who physically wish to use the water for production need to have clearly identified information on when and how (e.g. triggers) this water will be made available to them.

NFF suggest that it may be appropriate for there to be an annual audit of the deliverability of carry over water, based on hydraulic issues. As an example, a warmer than expected winter may see increased evaporation and seepage from dams and less water held than expected. In such cases, it may be appropriate to apply a loss factor to this water. This was a previous position in NSW but ceased. It may be appropriate to explore such options again.

Spillable Water Accounts: 3-R

NFF supports the position of the ACCC in principle. However, this must be subject to modelling to ensure that there are no third party impacts to other irrigators and to the allocation of water between the Southern States according to the MDB Agreement (enshrined as Schedule 1, Water Act 2007).

Metering: 3-T and 3-U

NFF does not support the position of the ACCC that the buyer and seller of water access right should have an approved meter installed. This is a constraint on the trade of a property right and will impact the market.

The NFF position is based on a couple of premises. The precondition of a meter may be better attached to the use of the water, i.e. through the water use approval. The basis for metering is to better manage the resource. To this end, it makes reasonable sense for the meter to be applied to the use approval.

Secondly, the concern about metering is also about whether the seller of an allocation (not entitlement) has the water in their water account. There have been circumstances when a sell order has been placed, perhaps at a higher price to the market, and the sale of water does not occur for some time (or maybe even months). In such circumstances, it is likely that the seller may be physically used the water (and forgotten to withdraw his sale) or perhaps place the sale with several agents or brokers. A meter reading may be necessary to ensure that the water is still available for sale.

Alternatively, rules could be avoided or replaced by monetary and/or water fines that the seller incurs for selling water allocations that he no longer has. These arrangements are already in place in a number of jurisdictions for using/selling more water that was available. The irrigator is required to “make good” the water.

Thirdly, where there are a number of programs targeting metering (mainly through the State Priority Projects), it does not make sense to require metering as a precondition for sale. The irrigator may be waiting for the program implementation (which may take several years). Installation of a meter costing tens of thousands of dollars, only to find out that this is the wrong meter for the IIO, is a considerable waste of time and money.

And lastly, where the water is being sold within an IIO who has a compliant offtake meter, incorrect metering then becomes an equity issue between members. NFF understands that this is also the position of COAG regarding metering within an IIO. Again, similar comments to the previous paragraph about investment prior to a metering program being rolled out (e.g. via modernisation programs) is a perverse outcome.

While NFF has some sympathy for the premise behind the ACCC position, this is not the appropriate place to resolve this issue.

4. The 4% limit: 4A to 4-C

The NFF supports a consistent application of rules across all jurisdictions are a pre-requisite to competitive neutrality. NFF has made numerous comments to ACCC rules about this issue and will continue to raise this amongst all jurisdictions regarding the market, water charging and Government actions that affect market participation.

5. Water Access Rights – Approval Processes

Approval Times: 5-A

NFF does not support the ACCC position regarding entitlement trade. Mandated approval times must be put in place to give confidence on decisions for market participants. NFF has been lobbied on this issue particularly by irrigators participating in a bureaucratic Commonwealth approval process for Commonwealth acquisitions.

Role of Water Market Intermediaries: 5-H

NFF disagrees with the ACCC position and supports a regulation of water intermediaries in line with other businesses managing large amounts of client's funds. The first major fraud or failure by market intermediaries to adequately cover likely risks will result in a significant loss of market confidence in all intermediaries and Governments for their failure to act in a timely manner.

Approval Authorities' Other Activities: 5-I

NFF supports the position of the ACCC but would reiterate that this is a pre-requisite to ensure competitive neutrality.

6. Water Access Rights – Location Matters

Trade in Regulated Systems: 6-C

NFF supports the position of the ACCC in principle. However, as an observation, for the Murray River, there has been a long outstanding issue that is to be resolved prior to the issue of delivery shares. That is, NSW and Victoria must agree to the State shares of the channel capacity prior to individual delivery shares being issued. This is long overdue and its resolution has been requested a number of years ago.

Trade in Regulated Systems: 6-H

NFF supports this position in principle, and notes that this may require more work prior to being implemented.

Trade in Unregulated Systems: 6-I

Trade in intermittently connected systems may be possible in principle. However, NFF would only support this position providing third party impacts to other water entitlements or rights are avoided.

Trade in Unregulated Systems: 6-K and 6-L

NFF agrees in principle but urges caution. Development of trading must be underpinned by water resource plans.

Trade between Regulated and Unregulated Systems: 6-N

While agreed in principle, NFF notes that these may be more appropriate in the relevant water resource plan rather than the Basin Plan.

Farm Dams: 6-T

It is the initial position of the NFF to disagree with this ACCC position. The administrative costs of individual assessments may very well be cost prohibitive. Likewise, transmission losses will be significant. Further, it will increase water use within individual catchments unless provisions can be made to bypass the original dam.

Farm dams are considered one of the major interception issues in the Basin. Allowing trade between farm dams will exacerbate rather than ameliorate this issue. Furthermore, where State Governments have legislated voluntary compliance measures, the ability to effectively govern such trade will be non-existent and place more pressure on already constrained resources.

NFF notes that there may also be issues around such as allowing trade only from legally compliant farm dams (and how to efficiently monitor compliance). Furthermore, if trade is to be permitted between farm dams, a cap must be applied to allow trade. To do otherwise will result in third party impacts due to the significant risk of increased interception.

7. Water Delivery Rights: 7-C

While NFF initially supports the ACCC position, trade in delivery rights is already supported by rules about termination fees. Therefore, the position of payment for the previous and future water access fees and other relevant charges is not warranted here – primarily because the termination fees have provided for security to underwrite the payment of fees owed to the IIO.

Neither is the position of the amount of delivery rights that would reasonably be required to irrigate a property. This may change from year to year or from commodity to commodity. Providing the remaining issues are agreed (the most important of which are network capacity), the number of water delivery rights held by an irrigator ought not be restricted.

8. Irrigation Rights: 8-C

While the preliminary of the position of the ACCC may well be correct, it is unfortunately that irrigators, who do not, may be forced to transform to enact full property rights. NFF supports further rules that will assist smaller IIO's comply to enable trade.

9. Conclusion

The NFF has provided its initial response to the ACCC position paper for Trading Rules, both in this formal submission and previously in face to face meetings with ACCC. Of concern is that

a number of the preliminary positions of the ACCC are not about the Trading Rules but about State Governments being required to take actions. NFF are concerned about the ability for this to occur and whether this should rightly sit within the Trading Rules or outside via an Intergovernmental Agreement.

It seems that there are a number of unresolved issues regarding the Murray-Darling Basin reform agenda that might warrant such an approach. This includes the actions outlined in this position paper, but could reasonable include provisions regarding the ACCC rules for water charges applying to all irrigators in the Basin, not just where a state applies that charge.

Finally, the ACCC have not addressed issues around cap (or the new sustainable diversion limit) management regarding trade. This is an issue around where the accounting occurs for water traded from one water source to another. NFF notes that this is perhaps something to be flagged for the Murray-Darling Basin Authority or perhaps the current review of the MDB Agreement.

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