

Submission

To the interim report of the ACCC inquiry into water markets in the Murray Darling Basin

October 2020

Thank you for the opportunity of making this submission in relation to the interim report on water markets and water trading in the Murray Darling Basin.

The Murray River Group of Councils (MRGC) is generally supportive of the findings of the interim report. In particular, the Group supports the interim conclusion that: *"the governance, regulatory and operational frameworks supporting water markets have not developed to accommodate a market of this scale, and are no longer adequate"*.

This finding reflects the experience of our communities which have consistently expressed concern about the lack of transparency in the water market and the impact of speculative activity.

The MRGC has long advocated for improvements to the consistency and transparency of the water markets. As was set out in our November 2019 submission to this inquiry, real-time information on price and the amount of water available as well as clarity around the type of water right being traded, is essential to improve the efficiency of the market and to ensure trust.

Conduct of market participants

The MRGC concurs with the ACCC interim report finding that regulatory oversight in water markets is insufficient, particularly in relation to water brokers and investors.

MRGC supports the identified option to introduce a government backed licencing scheme for water brokers. Licencing would provide brokers with a unique identifier and would increase the transparency of broker's roles in transactions. Of concern to MRGC members is the potential for conflict of interest and information imbalances within the water market; for example where water brokers may act as participants in a water trade they are brokering or large scale investors who have significantly more resources than family run farms.

Any such licencing scheme must be consistent and inter-operable between states, in the same way as other nationally consistent registration schemes operate.

Another significant issue of concern for MRGC is the impact of speculative trading on water price and availability. While there are market benefits of investor participation such as liquidity and product innovation, speculative activity has negative effects on those water uses which are of primary importance: food and fibre production and environmental health.

MRGC urges the ACCC to assess the potential for a mechanism that would enable water trading to be limited as far as possible to support production or other critical uses.

Map 1 – Southern Connected Basin (source: MDBA)



Regulation of water market participants is critical to restoring trust. Rules need to be consistent between states, certainly across the Southern Connected Basin at a minimum, and should be overseen by independent regulatory bodies. Any such regulations should include:

- 1) measures that ensure water brokers cannot participate in transactions they are brokering
- 2) a mechanism that requires water owners, including investors, to have a water use licence and an actual associated consumptive use as a prerequisite for trade

Improving trade processes and market transparency

MRGC supports the ACCC's findings that current trade processes are too fractured and that market information needs to be of higher quality and available in real time.

MRGC supports the suite of practical changes identified in the interim report required to achieve a consistent and comprehensive trade processing and market reporting framework. Trade data validation and quality checking, consistent trade forms that capture more detailed trade information and consistent nomenclature and data structures across State registers are all high priorities.

MRGC also supports the finding that there is *"a need to establish clear and comprehensive trade processing and market reporting framework governing all entities who process trades"* (p35).

A further area of concern to our communities around transparency is in relation to large holdings of entitlement or allocation water rights. ACCC may wish to give consideration to recommending additional disclosure rules for investors or other holders of water rights (including Environmental Water Holders) where they own disproportionality large water holdings in a region.

To comprehensively address these issues, MRGC recommends that the ACCC give consideration to a Water Market Trade Repository - a single transparent

trade repository for the Southern Connected Basin. Such a Trade Repository would receive, match and publish the details of every trade.

Water rights contacts and derivatives contracts based on or related to those rights would only be valid once the details of the trade had been submitted, matched and published on the Trade Repository.

Unique identifiers would need to be adopted for such a system to work¹. ABNs (which many or most farmers would already have) or Legal Entity Identifiers could be used to identify market participants and Unique Product Identifiers or UPIs assigned to each transaction product which participants wish to trade. A Unique Transaction Identifier (UTI) would be assigned to each transaction.

A Trade Repository would match and publish each trade provided the ABN / LEI, UPI and UTI were consistent.

Trade Repositories operate for OTC derivatives currently in other markets. The difference between those and this proposal is that the water markets Trade Repository would be transparent and open to all.

A Trade Repository, like many of the options explored in the interim report, would require legislative or regulatory changes and agreement between all Basin governments to adopt a consistent system.

Specifically this proposal would require legislative changes to provide that contacts are not valid therefore may not be settled nor assets exchanged unless and until it's matched (all parties to the trade have lodged and the IDs are the same) and published in the Trade Repository.

A Trade Repository would be a relatively low cost digital solution to the fragmented nature of the current system.

Such a system is likely to limit market makers – those who are simply engaged in speculative trading, and while we recognise that this may have liquidity implications for the market, limiting speculative activity is of critical interest and importance to our communities.

Other advantages of such a system include that it is a relatively less expensive and a more transparent system than a fully developed ASX style single

¹ International standards are in development for UPI and UTI ([ISO20022 TC68](#)) and that these could be used to support a water markets Trade Repository.

exchange. ASIC is already the Australian regulator for OTC derivative trade repositories and would be able to provide oversight to a Water Market Trade Repository.

MRGC encourages ACCC to give such a system thorough consideration.

Improving market architecture

MRGC is supportive of some of the proposals in the interim report for changing the market architecture. Specifically, MRGC supports improvements to policy transparency, and consultation processes as well as improving consistency across Basin States' accounting and metering requirements and improving the consistency and timeliness of allocation announcements.

Changes to market architecture that better align the operation of basin water markets to the physical system and river operations would be of benefit to irrigators, the environment and communities.

Consistent and metering and compliance across the Basin is a key goal and is supported by the MRGC.

While in general supportive of harmonisation of market rules, rules that govern water management across the Southern Connected Basin, such as allocation and carryover policies, need to be responsive to local and regional conditions. Agricultural industries and allocation policies have developed together over many years. As the recent Interim Inspector General's report into the water sharing agreement found:

- Victorian High Reliability water share entitlements have higher reliability because Victoria decided on a water management approach that limited how many entitlements are issued and enacts conservative reserve policies. These decisions were made by the Victorian government to better suit the reliability demands of irrigators in that state, where reliability is important for permanent plantings.
- NSW made decisions to issue greater volumes of General Security entitlements with less reliability. These decisions were guided by the preferences of irrigators and aligned with prevalent agriculture (such as rice and cotton) and conditions (including rainfall patterns)

Source: IIG²

² Interim Inspector General of Murray-Darling Basin Water Resources, March 2020, *Impact of lower inflows on state shares under the Murray-Darling Basin Agreement*, P 11

Victorian allocation policies have been developed and reformed over time with the aim of being able to provide at least some allocation even in dry and very dry conditions. Similarly the Victorian carryover rules have been developed to support the particular irrigated agricultural industries that predominate in Victoria – especially permanent horticultural plantings and dairy.

While this reliability has led to Victorian High Reliability Water Share (HWRS) being preferred by environmental water holders – and therefore targeted during the buy-back phase of water recovery – it nevertheless continues to underpin irrigated agriculture in Victoria and provide certainty to irrigators.

MRGC would be concerned at changes that limit the ability of those policies to be tailored to the needs of different regions and agricultural industries.

We believe that there is room to improve consistency of carryover rules and introduce limits on investors' abilities to utilise carryover to reduce market activity that increases allocation prices – especially in dry conditions.

Changes to market governance

The interim report clearly sets out the difficulties in relation to the governance of Basin water markets. MRGC is of the view that this reflects a larger issue; that of the complexity of governance of the Basin Plan and water resources in the Basin more generally.

MRGC would support proposed reforms of market governance that improved the transparency of decision making and accountability of decision makers.

MRGC also supports measures that would increase the transparency of decision making by the Murray Darling Basin Ministerial Council and the accountability of the Ministerial Council and subsidiary bodies such as the Basin Officials Committee.

Conclusion

Thank you for the opportunity to provide further input into this important review. MRGC would like to acknowledge the enormous effort and work that has gone into the review and producing this interim report.

MRGC would be happy to expand on discuss or clarify any of the issues contained within this submission. To do so, please contact Executive Officer Geoff Turner at gturner@mrgc.com.au or 0419030314

