



[lifebloodalliance@gmail.com](mailto:lifebloodalliance@gmail.com)

Director  
Murray-Darling Basin Inquiry  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

## **Submission**

### **Murray-Darling Basin water markets inquiry – interim report**

Lifeblood Alliance (LBA) consists of environmental, First Nations and community groups committed to keeping the rivers, wetlands and aquifers of the Murray-Darling Basin healthy for the benefit of current and future generations.

We welcome the opportunity to provide comment on the ACCC Murray-Darling Basin water markets inquiry interim report.

### **Background**

In the LBA's submission to the ACCC inquiry dated 29<sup>th</sup> November 2019, our key concern related to the water market policy that seeks to appropriately manage the third-party hydrological and environmental impacts of changes in the timing and location of water use that arise from water trading activities.

Under the Commonwealth *Water Act 2007* Schedule 3 restrictions to water trading are required when:

- avoiding environmental impacts
- protecting water quality
- facing delivery constraints
- geographical features are being impacted
- major indigenous, cultural heritage or spiritual significance would be impacted.

Our key concern remain as stated above – that the rules and policy settings that provide the architecture for water trading in the Murray-Darling Basin, fail to adequately restrict water trading to avoid environmental impacts.

## Interim Report

LBA was pleased to read in the summary interim report on page 6 that to be successful a water trading governance framework must be implemented with a Basin-wide perspective, in close connection to the river system's physical characteristics. We agree with the interim report that the significant deficiencies associated with the settings and governance of water trading include:

*...there is a disconnect between the rules of the trading system and the physical characteristics of the river system. For example, on-river delivery capacity scarcity, conveyance losses and adverse environmental impacts are not considered in the processing of trades that change the location of water use, except through some blunt and imprecise rules, such as limits on inter-valley trade/transfers<sup>1</sup>.*

However it was disappointing to discover that the interim report does not continue to elaborate on the failings of the rules and governance structure to restrict trading to avoid environmental impacts, as per schedule 3 of the Water Act 2007.

Starting on page 24 of the interim report, the key elements of market architecture that are discussed in the interim report are outlined. In discussing the physical constraints of the system, the report is focused on the impact to water users, and misses completely the imperative of the water trading structures to limit trade to avoid environmental damage.

LBA is pleased that the interim report states that entitlement traders agreed more than non-traders with the statements:

- 'Most irrigators think increasing environmental water flows is a good thing', 'It is essential to make allocations to the environment otherwise irrigation will not be long-term sustainable'
- 'The Murray–Darling Basin Authority is serious about helping our community to solve our own environmental flow problems'
- 'More money should be spent on water buybacks by the Commonwealth'

The importance of water policy that has the resilience of the riverine ecosystems at its core is generally understood by water licence holders.

Throughout the interim report, how the market architecture deals with the hydrological characteristics of the river system is consistently presented as a challenge in terms of delivering a resource to a customer. What the entitlement traders surveyed and cited in the report understand, is that without environmental protections being given the highest priority in the reform of water management policy, we further risk losing the resilience of the riverine environment in the Murray–Darling Basin, which would mean the end of Basin irrigation and communities.

---

<sup>1</sup> ACCC Murray–Darling Basin water markets inquiry—interim report page 7

14. *Market architecture reform options* on page 475 of the interim report gives a summary of key points that are being considered for reform focus. LBA considers that it is not acceptable that the restriction of trade to protect the environment is missing from this summary of key points, and that ways to incorporate the restriction of trade to protect the environment should be the first point to address.

### **Potential for environmental harm**

The establishment of a water market in the Murray Darling Basin has made it possible for the environment to own water entitlements with the same security as consumptive water users. The risks that water trading pose to the environment, however, are numerous, and without management potentially significant.

Water trade can lead to a concentration of extraction in areas which may already be feeling the impacts of over extraction. Common environmental concerns associated with water trade include that it may result in:

- I. concentrating water extraction in areas suffering from high water tables (NWC 2012);
- II. increased salinity in areas that require minimum irrigation intensities and that have experience water entitlement loss (Khan et al. 2009);
- III. moving water into locations where its' extraction might have a negative impact on river water quality (NWC 2012);
- IV. increases groundwater substitution (Wheeler and Cheesman 2013; Wheeler et al. 2020), and increased groundwater use can lead to increased salinity problems if saline groundwater flows into rivers due to discharge (Haensch et al. 2016);
- V. moving water extraction upstream, thereby resulting in reduced river flow from the new point of extraction to the old point of extraction (NWC 2012); or
- VI. activating previously unused water leaving less water in rivers to support ecosystems (NWC 2012; Loch et al. 2013); (plus of course reducing the amount of water in storages which leads to reduced water allocations in future seasons).<sup>2</sup>

The Goulburn River and particular sections of the Murray are already bearing the environmental brunt of the increased volumes required for irrigating expanded permanent plantings of nut crops with permanent watering requirements.

Far more research needs to be done in this area. Adequate investment in scientific monitoring and measuring of water quality and flows is foundational to any successful market system.

---

<sup>2</sup> Water market literature review and empirical analysis – The University of Adelaide May 2020

## **Desirable criteria for a water market that supports the environment**

Work has been undertaken (Grafton et al. 2011) to assess and compare the elements of water markets around the world that support environmental sustainability:

- adequate scientific data to determine hydrological requirements of water based environmental resources;
- adequate provisions for environmental flows;
- adaptive management of environmental flows, including the capacity to monitor the environment;
- water quality considerations in water planning and markets; and
- complementary basin and catchment level planning.<sup>3</sup>

Responsibility to fix all of these criteria cannot fall solely on the water market. Markets are not equipped to manage environmental and social objectives.

It is vital that there is sufficient mechanism linking different legislative instruments so that if triggers of environmental harm should be met, trade can be restricted.

### **First Nations Concerns**

Interim report P38 asks “What barriers, financial, regulatory or other, do First Nation and Traditional Owner groups currently face to acquiring permanent and temporary water in Basin water markets? Please provide examples of these barriers, as well as evidence of their magnitude, frequency and impact.”

First Nations groups have been largely excluded from the billion dollar water market of the Murray-Darling basin. Making up 9.3% of the population of the Basin, First Nations people own as little as 0.2% of all available surface water entitlements, or 0.1% of the financial value of holdings.<sup>4</sup>

The ongoing legacy of colonisation has led to First Nation groups being in this disadvantaged situation. Native title wasn't acknowledged until 1992, by which time water use had long been assigned under colonial law. Land restitution efforts rarely included land that had water entitlements attached.

The Native Title Act 1993 defined native title to include rights to water for customary purposes and courts are yet to recognise a commercial right to water.<sup>5</sup> There has been no

---

<sup>3</sup> ibid

<sup>4</sup> <https://theconversation.com/australia-has-an-ugly-legacy-of-denying-water-rights-to-aboriginal-people-not-much-has-changed-141743>

<sup>5</sup> ibid

water purchased yet on behalf of First Nations titleholders from the sum of \$40m set aside for this purpose in 2018.<sup>6</sup>

The return of water titles to First Nations control to match the return of land titles that has been occurring for the last few decades would at least give First Nations groups a chance of reclaiming sovereign rights to water ownership.

### **Current Market failures and proposed reforms**

We feel that the ACCC interim report provides a comprehensive analysis of current market failures with regard to imperfect competition.

In this regard we support the measures recommended by the ACCC to:

1. Improve the conduct of market participants through improved regulatory oversight and enforcement and compliance activity with regard to water brokers
2. Improve the quality and timeliness of core market data
3. Legislative change required to establish clear and comprehensive mandates to provide efficient trade services and high quality information to market participants.
4. Introducing the use of digital technologies to streamline trade services, at the same time as improving information quality and availability
5. Reform market architecture with
  - a) improvements to policy transparency and consultation processes,
  - b) alternative approaches for allocation and carryover policies,
  - c) creating formal markets for storage and delivery capacity
  - d) applying transmission loss factors to water deliveries in the southern connected Basin
  - e) Removing the exemption for grandfathered tags or removing entitlement tagging altogether
  - f) Alternative and more dynamic mechanisms to manager inter-valley trades
  - g) Changing all allocation trade to tagged allocation trade
  - h) Improving consistency across Basin States' accounting and metering requirements
6. We believe that improved market governance underpins a successful water market and we support:
  - a) the establishment of clear, independent decision making structures
  - b) Market governance roles being separated from broader water management governance

---

<sup>6</sup>Wheeler, Prof Sarah Ann Water Markets in Australia : Understanding stakeholder participation, benefits and market failures NZARES Conference Friday 28 August 2020

- c) Clarifying fragmented roles
- d) Reducing regulatory gaps by creating and assigning new roles or functions, and
- e) Addressing conflicting roles

**Other comments**

We note also that what Prof Sarah Wheeler has called “information asymmetry” contributes to water market failure. In this regard the Lifeblood Alliance has previously submitted a proposal to the Commonwealth government for an independent, basin-wide audit of diversions (attached). By failing to provide an agreed accounting framework that includes all forms of take (including interception activities and floodplain harvesting) and is consistent across jurisdictions, basin states have again moved away from NWI objectives and outcomes.

Accounting and water planning are both hindered by the complexity of the entitlement framework. There are many different types of water entitlements (more than 150 classes of water entitlement across the Basin) and this is interfering with both the development and implementation of the Basin Plan (i.e. the diversity of licences is an interjurisdictional matter requiring co-operation), and with significant water infrastructure works in states such as NSW (i.e. the diversity of licences is also impeding progress within a jurisdiction).

## Conclusion

As stated above, the key concern of the Lifeblood Alliance is the third-party hydrological and environmental impacts of changes in the timing and location of water use that arise from water trading activities.

The key recommendations we listed in our initial submission from 29<sup>th</sup> November 2019 were not addressed in the interim report, and remain our key recommendations for the final report:

1. Seasonal flow limits must be assigned to rivers at risk similar to the limits on the Barmah Choke.
2. Establish a National Water Trading Exchange to increase transparency and improve capacity to better manage third-party and environmental impacts.
3. Increase Federal responsibility for the alignment of State regulations and policies. Many of the third-party and environmental impacts are the result of, or enhanced by, state divisions and misalignment of policies.

To these we add:

4. The need for market regulations to remove speculators and other non-land using traders who produce no agricultural output but can dramatically drive up water prices for individual bona fide water users.
5. Applying transmission loss factors to water deliveries in the southern connected Basin.

For further information, please contact:

Juliet Le Feuvre

For the Lifeblood Alliance

0428 770 019

[lifebloodalliance@gmail.com](mailto:lifebloodalliance@gmail.com)

25/09/2020

*Member Groups include: Australian Conservation Foundation, NSW Nature Conservation Council, Conservation Council of South Australia, Environment Victoria, Queensland Conservation Council, Murray Lower Darling Rivers Indigenous Nations, Northern Basin Aboriginal Nations, River Lakes and Coorong Action Group, Environmental Farmers Network, Inland Rivers Network, National Parks Association of NSW, Goulburn Valley Environment Group, Healthy Rivers Dubbo and Central West Environment Council.*