

Key Water submission to ACC Water Markets enquiry Issues Paper

Introduction

Key Water is a small, private water-broking business based in Griffith, NSW which commenced in May 2017.

Key Water's business is based mostly in the Murrumbidgee system plus the Lachlan and Murray but has clients throughout the Murray-Darling Basin and beyond. This includes surface and groundwater systems and sources.

Key Water provides clients with the opportunity to buy and sell allocation (temporary water), entitlements (permanent water/licences) and transact other products such as leases, inter- and intra-season forwards, intervalley transfers, acquiring licences, registering changes to licences and approvals, etc. Key Water's clients range from small irrigators through to large family farms, corporates and Government environmental water holders.

Anthony McCloskey (founder of Key Water) is a member of the Australian Water Brokers' Association, as well as being a member of the AWBA Executive Committee. As a member, Key Water maintains the required standards and abodes by the Code of Conduct and associated policies. These include minimum Professional Indemnity insurance of \$5 million and a separate account for holding client funds. More on these can be found at: awba.org.au/about

Neither Key Water or its employees own any water entitlements, nor does it intend to do so

Key Water welcomes the ACCC enquiry and is optimistic that the findings and recommendations will improve the water markets for all participants. Should the ACCC wish to request further information regarding anything in this submission, please do not hesitate to contact Key Water.

Issue 1 – Market trends and drivers

The ACCC welcomes your feedback on any of the following issues. Where possible, please include supporting information and specific examples in your responses.

How water availability and demand are changing over time, the reasons for these changes and the impact they are having on water markets.

- ◆ Availability changes with weather, i.e. drought = less available water. Lower supply means higher prices, wet years with good supply means lower prices
- ◆ Entitlement return to Government/environment has reduced consumptive pool. Lower supply means higher prices
- ◆ Increased development of horticulture means entitlement demand has increased. Increased demand for less entitlement means higher prices, especially for high security/reliability and safe carryover options
- ◆ Maturation of horticulture orchards has meant allocation from entitlements held by those growers in increasingly being used instead of being made available in the temporary market. Reduced availability means higher prices and a less elastic allocation market

The factors that have been driving movements in prices for water access entitlements and allocations over time.

- ◆ Increased climate variability has increased demand for more reliable entitlements, which as the effect of pushing up the price
- ◆ Entitlement return to Government/environment has reduced consumptive pool. Lower supply means higher prices
- ◆ Increased development of horticulture means entitlement demand has increased. Increased demand for less entitlement means higher prices, especially for high security/reliability and safe carryover options
- ◆ Maturation of horticulture orchards has meant allocation from entitlements held by those growers in increasingly being used instead of being made available in the temporary market. Reduced availability means higher prices and a less elastic allocation market

Changes to the number, diversity and behaviour of water market participants over time, and how this is affecting water markets.

- ◆ The number and diversity of participants has increased, including irrigators becoming more familiar and comfortable with trading water, and investors participating
- ◆ Irrigators returning entitlement to the Government/environment logically more involved in allocation market
- ◆ Almost all participants are more educated regarding water markets and trading, meaning markets able to offer more products (leases, forwards, etc.)

Changes to the number, diversity and amount of trading activity of water market products on offer over time, and how this is affecting water markets.

- ◆ An increase in the number and diversity of products has made the market more complex, however this is in line with increased capability of most market participants
- ◆ The small overall size of the southern connected water market (~\$1.5 billion per annum, Aither) should limit the number of products that could become available in the future

In providing your comments in response to Issue 1, you may want to consider the following (where possible, please provide specific examples to support your comment):

How your activity in water markets has changed over time.

- ◆ As a broker, my observations are about my clients and are reflected above – great variety, from small farmers to large family farms, large corporate farms, investment companies and even Government environmental water holders with increasingly greater education and awareness. This had led to the clients asking for specific and detailed information in regard to their water trading options

How changes to industries, regions and technologies are affecting water markets and water use.

- ◆ Horticulture, especially almonds, is a significant factor. Continued optimistic outlooks for the commodity and plentiful suitable land has led to a remarkable increase in plantings. Disconnects between Federal, State and local governments are an issue – local governments approving developments that may benefit their region do not always ask (or care) if the development actually has secured water for the future – this means the disproportionate area developed below the

- Barmah Choke in comparison with the systems ability to deliver the water (both in terms of volume and timing) is already causing problems. This problem will continue to grow into the future.
- Changes to the number and diversity of water market products on offer over time.
 - The availability and impact of new and emerging water market products such as leases, forward contracts, options and carryover parking.
 - How and why you and other market participants use carryover arrangements, including trading and parking of carryover allocations.
 - ◆ Clients are using carryover characteristics of entitlement to secure future production and reduce risk of exposure to an expensive allocation market. Carryover also enables producers to secure forward allocation water for their crops, as well as it being purchased from high security/reliability licences, which are becoming more frequently utilised.
 - Whether and how the rules around carryover are having an impact on trading patterns and drivers in water markets or related industries.
 - ◆ The rules around carryover are helping to provide certainty for both sellers and buyers in the market, as well as producers
 - How you forecast price movements for tradeable water rights over the short and long term.
 - ◆ Forecasting is done by looking at weather, commodities and total available pools of entitlement and allocation
 - Changes to the availability of tradeable water rights and other water market products, and the levels of trading activity, in different water markets.
 - ◆ High security/reliability entitlements are becoming more difficult to source and more expensive to purchase in all water markets
 - ◆ General security entitlement trading is more variable, usually according to the amount of allocation available (less allocation = lower value)
 - ◆ Leases, multi-year allocation forwards, inter & intra-season forwards are becoming more common in an attempt to manage risk

Issue 2 – Market transparency and information

The ACCC welcomes your feedback on any of the following issues. Where possible, please include supporting information and specific examples in your responses.

- Your use of market information, including the types and sources of information you currently access, the information you would like to access and the methods and tools you use to access it (including whether you get information through public sources, such as state water registers, or private sources, such as through water brokers, and the reasons for using your preferred sources).
 - ◆ Market information sourced includes:
 - Allocation and entitlement pricing on other broker markets
 - Allocation and entitlement pricing on State registers
 - Storage levels, inflows and releases
 - Allocation announcements
 - IVT, Choke and other constraint balances
 - Environmental water updates and marketing intentions
 - Water authority outlooks
 - BOM weather and climate outlooks
 - Client trading intentions
 - ◆ Methods and tools used:
 - Email mailing lists with relevant bodies/authorities
 - Phone calls to clients, brokers, authorities
 - Internet searches
 - ◆ Other information that Key Water would like to access:
 - More specific data on environmental holdings, balances and usage
- Whether and, if so, how the availability, accessibility, accuracy, consistency and timeliness of water market information affects your trading decisions or markets more generally.
 - ◆ The better the information the better the decisions that can be made
 - ◆ Overall market information is reasonably good and readily accessible to those willing to look for it
 - ◆ Registers are extremely useful but are limited to approved trades so can be days to weeks out of date

- ◆ Searching a variety of market information sources helps participants form a better view of the market
- Your views on the types of water market information that should and should not be publicly available.
 - ◆ Should be available:
 - Date, volume and price for allocation trades
 - Explanation of \$0 or non-market price allocation trades (e.g. forward, lease, transfer between licences held by same owner, carryover trade on and off, allocation trades following an entitlement trade)
 - Entitlement trades should identify if any allocation was part of the transfer (none, part or full)
 - ◆ Should NOT be available:
 - Balance of individual licences to non-authorised parties
 - Should be no discrimination between small, large or corporate licence holders as to the information available to be disclosed
- How much you rely on the information and knowledge possessed by water market intermediaries, such as brokers, exchanges and advisors.
 - ◆ Key Water is a water market intermediary, but still gathers information from many other sources to ensure clients are provided with the best possible range of options
- What avenues you are aware of to increase or improve your knowledge of water markets, and any suggestions on additional information and information delivery methods you would like to see made available.
 - ◆ Most State water authorities provide information on trading rules plus links to brokers and markets plus give basic information on trading
 - ◆ MDBA also gives information on trading and trading rules
 - ◆ Direct or indirect contact with other brokers
 - ◆ Membership of Australian Water Brokers Association

In providing your comments in response to Issue 2, you may want to consider the following (where possible, please provide specific examples to support your comment):

- The types of water market information you access, how you access it, whether you access it from public (such as state water registers) or private (such as information supplied by water brokers) sources, how often you access it, and what it costs to access.
- How you use this information and why it matters for your business/decisions.
- The frequency and timeliness with which information is made available. How does this help or hinder you to make decisions?
- Whether you are able to access all of the water market information you require, and if so, can you get it from one source, or do you use multiple sources.
- Any difficulties you encounter when accessing, interpreting and applying market information. Who do you contact when you encounter these difficulties?
- Whether any difficulties accessing, interpreting and applying market information reduce your, or other market participants', ability to enter or exit water markets.
- What other types of water market information you would like to access and why that information would be helpful or important.
- The extent to which you can confidently make water trading decisions based on the information you have available.
- The extent to which you rely on the information and knowledge held by water exchanges and water brokers to make decisions.
- Your views on the types of water markets information that should and should not be publicly available.
- Whether differences in information reporting across states or agencies is impacting your participation in the market and market competition.
- Whether information on the following is easy to access and understand:
 - o trade prices and volumes
 - ◆ Yes to both
 - o trading rules and operation of constraints
 - ◆ Yes to both
 - o the characteristics of water access entitlements and other products
 - ◆ Yes to both
 - o carryover provisions / arrangements (including those relating to trading and parking carryover)
 - ◆ Yes to both
 - o water ownership structures

- ◆ Easy enough once the system is understood
 - o water availability
 - ◆ Reasonably – always opportunity for State authorities to improve
 - o river operations
 - ◆ Yes to both
 - o weather and climate
 - ◆ Yes to both
 - o water use
 - ◆ Reasonably easy to access but often not up to date (can be more than 3 months lag)
 - o environmental water ownership and use, including trade.
 - ◆ Reasonably easy – Victorian register best for this
- Whether some market participants may have access to more timely and better quality information than others and, if so, how this advantages them.
 - ◆ Some participants may monitor information sources more closely than others, but this is not illegal. This may enable them to make quicker and better decisions, however this is no different to a farmer employing a more informed agronomist and receiving those rewards.
- Whether some market participants have a better understanding of the operation of water markets than others and, if so, the reasons for this and the impact this is having.
 - ◆ Obviously some water market participants have better understanding than others. This may be through experience, employing the services of an advisor, consultant or broker or natural ability, or a combination of all these factors. As pointed out in the previous response, this is not illegal. Like in any market, the better informed and prepared participants generally achieve better outcomes.

Issue 3 – Regulation and institutional settings

The ACCC welcomes your feedback on any of the following issues. Where possible, please include supporting information and specific examples in your responses.

- Whether regulation and institutional settings for Murray-Darling Basin water markets are effective and appropriate.
 - ◆ Australian Consumer Law and Fair Trading Practices apply to those involved in water trading
 - ◆ The AWBA has been looking for a pathway to self-regulation for some time, however lack of funding is a major obstacle
 - ◆ There is no compulsion for brokers to join the AWBA, although it would be ideal if they did so
 - ◆ Registration of brokers with State authorities seems the simplest and cheapest solution, despite possible duplication.
 - ◆ What then would the State authorities do about the solicitors/lawyers, private irrigation operators, real estate agents and farmers who also undertake transactions in the water market?
 - ◆ There is certainly room for improvement, and the AWBA is very much willing to assist in the process
- Whether and how regulatory and policy differences between states, Basin catchments and trading zones impact competition, efficiency and access to water markets.
 - ◆ There are certainly efficiency issues with different authorities, as well as a wide variation in fees
 - ◆ The AWBA has been looking to provide a standardised contract system for both allocation and entitlement trading
 - ◆ As previously stated, those who have taken the time to understand the market(s) and the systems do not suffer any great hinderance
 - ◆ Examples of situations that could be improved are:
 - o South Australia allocation trade processing (2-3 weeks)
 - o The disparity in the ease of allocation trading between the Victorian system (on-line, approx. 30 secs for approval) compared to the manual system in NSW for processing trades, especially in regard to moving water through the Barmah Choke – NSW users are a significant disadvantage
 - o The Murrumbidgee-Murray IVT – very low transparency and high complexity for such an important market constraint
- The extent to which market settings, such as trading rules and management of constraints, are positively or negatively impacting efficient and equitable water market activity.
 - ◆ See previous comments about educated participants as well as situations for improvement

- The extent to which regulatory functions, settings and actions are clear and understood.
- ◆ See previous comments about educated participants
- In providing your comments in response to Issue 3, you may want to consider the following (where possible, please provide specific examples to support your comment):
- How well do you understand each government agency's roles and responsibilities? Are they clear and well communicated?
- Whether and why the roles and responsibilities of the different water market regulators, as well as irrigation infrastructure operators, work well, or do not work well, in managing water markets.
- Whether current approaches and frameworks for metering and monitoring of water use are effective and appropriate.
- How water trading interacts with your requirements for delivery of water.
- Whether and how differences between states and trading zones (such as access to carryover) impact market outcomes.
- Whether the trading rules are appropriate to facilitate an efficient and competitive market.
- Whether regulations create inappropriate barriers to you or other market participants entering or exiting water markets.
- Whether and how carryover mechanisms are impacting allocation and entitlement markets.
- The processes for water supply and allocation announcements and how effectively they are managed and communicated.
- The effectiveness of trading rules and other means of managing physical system constraints.
- Whether physical constraints, such as the Goulburn and Murrumbidgee Inter-Valley Trade Limits and the Barmah Choke, affect or limit participation in water markets and how this impacts commercial operations.
- Whether current approaches to managing constraints and river channel and delivery network congestion allows equitable access to water trade opportunities.
- Whether the level of regulation of water exchanges, water brokers or other market intermediaries is appropriate.
- Whether different administration practices, systems, and rules between Basin states affect the effective and equitable access to trade or the transaction costs of undertaking trades.

Issue 4 – Market participant practices and behaviours

The ACCC welcomes your feedback on any of the following issues. Where possible, please include supporting information and specific examples in your responses.

- How you use water markets, and your understanding and experience of how other market participants use water markets.
- ◆ Key Water is involved in water markets constantly as a broker. Our clients understanding and use of the markets covers the entire spectrum from little/no understanding through to highly sophisticated participants.
- How the practices and behaviours of different water market participants are positively or negatively impacting water market access, transparency, efficiency, and competition.
- ◆ Most water market participants have little to no influence on these factors – only the Authorities and governments can truly do so. Despite popular opinion, there are no participants large enough to genuinely manipulate the water markets, other than the Governmental environmental water holders and policy/law makers.
- Whether and, if so, how large market participants have influenced water markets (for example, by changing water availability or prices) through their trading strategies.
- ◆ What is a “large” water market participant?
 - ◆ It would be very difficult for even large corporates to produce any significant influence on water markets.
- How you use different water market products (including carryover, leases, options and forward contracts) and services provided by water market intermediaries.
- ◆ Key Water clients utilise all of these products as well as the services of the brokerage to get the best result from their water holdings, including research into different entitlement types, transfers to different markets, etc.

In providing your comments in response to Issue 4, you may want to consider the following (where possible, please provide specific examples to support your comment):

- How you participate in water markets.

- ◆ As a water broker
 - Whether you use brokers, exchanges or advisors in your water trading.
 - ◆ Key Water occasionally works with other brokers to secure a result for clients
 - Any barriers you have experienced when trading or otherwise interacting with water markets.
 - The behaviours and practices you have witnessed by others in water markets, including:
 - o irrigation farmers
 - o investors
 - o water brokers
 - o water exchanges
 - o water registries
 - o other service providers facilitating the trading of water
 - o environmental water holders
 - o urban water authorities
 - o irrigation infrastructure operators
 - o market advisors and analysts
 - o market regulators.
 - Whether you are aware of possible conflicts of interest involving water market participants, how conflicts of interest may impact market participant behaviour and how conflicts are dealt with.
 - Whether and how the operation of environmental water holders in buying, selling or moving water is impacting water markets and your, or other market participants' trading behaviour.
 - Are you aware of instances where large market participants have used trading strategies which have influenced water availability or prices? Please provide details, including whether this changes depending on the season and overall water availability.
 - ◆ No instances of this behaviour have been observed
 - Use of different water market products, including carryover, leases, options and forward contracts, and how they affect your business.
 - Whether and how the use of carryover arrangements (including trading and parking) is impacting water markets.
 - Whether and how trade processing fees or timeframes, broker fees and other water charges impact your decisions to trade.
 - ◆ Different processing times and authority fees form part of the information provided to clients in assisting them with their marketing decisions
 - Whether you consider fees for trade processing, broker fees, or other water charges to be sufficiently transparent.
 - ◆ For trade processing, no. For broker fees, a client simply asks and can also negotiate

Issue 5 – Competition and market outcomes

The ACCC welcomes your feedback on any of the following issues. Where possible, please include supporting information and specific examples in your responses.

- The extent to which the objectives of water markets have been achieved and any unintended consequences that may have resulted.
- Whether and how competition and efficiency in water markets have changed over time.
- ◆ Competition has increased and efficiency has improved over time as participants become more educated and have access to more options and products
- The extent to which water markets are currently operating efficiently.
- ◆ The current highly-segmented market is an excellent example of a market operating as it would be expected – in higher supply, lower demand regions the price is lower, while in higher demand, lower supply areas the price is higher.
- How the outcomes of water markets vary between different industries, locations and individuals.

In providing your comments in response to Issue 5, you may want to consider the following (where possible, please provide specific examples to support your comment):

- Your view on how competition works in water markets, and how competition and efficiency in water markets have changed over time.
- ◆ Competition is extremely important in water markets, ensuring all participants have sufficient opportunity get a range of prices and options before making a decision
- Whether water markets are operating efficiently, and where changes to improve efficiency can be made.

- Whether current approaches and frameworks for metering and monitoring of water use are impacting water market outcomes, including efficiency, equitability and confidence in the market.
- Whether water markets are affecting the entry and exit trends of different water market participants, including indigenous communities / traditional owners, and industry segments.
- Whether and, if so, why some market participants and industries are better able to enter, access or exit water markets than others.
- Whether and, if so, why some market participants and industries have been better able to adjust to changes in water markets than others.
- Whether the volumes of tradeable water rights and other water market products available within and between seasons means water trading is a 'thin' market, and if so, whether this impacts the ability of some traders to influence the market.
- The extent to which the objectives of water markets have been achieved.
- Whether unintended outcomes, beyond the intended objectives of water markets have occurred.

Potential solutions

The ACCC has been asked to recommend options to enhance markets for tradeable water rights, including options to enhance these markets' operations, transparency, regulation, competitiveness and efficiency.

The ACCC invites your views and ideas regarding potential solutions to any problems you may have raised in your submission. Please briefly summarise the problem, describe your proposed solution and give your reasons for proposing it.

- ◆ As previously mentioned, there are some “low hanging fruit” that would quickly and easily increase the transparency of and confidence in the water market. These include:
 - State authorities working together to simplify trading processes
 - State authorities simplifying access to trade information/history
 - State authorities improving information capture during the transfer application process, especially in regard to “zero dollar” trades
 - Federal and State funding assistance to the AWBA to facilitate and fast-track self-regulation