



10 November, 2008

Water Branch
Draft Water market rules advice to the Minister – response
Australian Competition and Consumer Commission
GPO Box 520
Melbourne Vic 3001

Dear Sir/Madam

Southern Riverina Irrigators and the Ricegrowers' Association of Australia welcome the opportunity to comment on the ACCC Water Market Draft Rules and we attach a submission for your consideration.

Yours sincerely

A handwritten signature in blue ink, appearing to read "T Hatty".

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Response to ACCC Draft Water Market Rules

1. Summary

Transformation is an unjustified imposition on the businesses of the NSW Irrigation Corporations. The ACCC should be bold in its advice to the Minister and proclaim where transformation is not required. It is clear that transformation will cause unnecessary costs and create confusion where trade already exists. In these cases transformation will cause perverse outcomes in the water market.

Transformation may be a suitable tool for enhancing water trade in the myriad of small operators. The ACCC should advise the Minister of the need for special action and support for this sector of the irrigation industry.

We recommend that if transformation must be applied to the New South Wales Irrigation Corporations (NSWICs) then the Federal Government should fund all of the implementation costs.

2. Overview

Ricegrowers Association of Australia (RGA) and Southern Riverina Irrigators (SRI) support a free and open water market. We note that Victoria has been consistently recalcitrant in its approach to the water market. We note that these draft rules will essentially only affect the private operators in NSW and SA. Whilst they form a sizeable part of a potential water market, they remain but a fraction of the total water market. We request that the ACCC inform the Minister of the enormous work being put into this fraction and that it must be replicated in other sections of the water market. In particular, the ACCC should advise the Minister on the impediments to the water market in Victoria.

The draft rules on transformation appear to overlook the water (access) entitlements held by the irrigators within the NSW Irrigation Corporations. Transformation has no place in irrigation infrastructure operator businesses that already have water (access) entitlements and allow trade.

RGA/SRI wishes to emphasise to the ACCC that a transformed water (access) entitlement from a NSW IC will involve a process to a WAL. Whilst the ACCC may choose to call this a transformation, it is in fact a TRADE. The transformed water (access) entitlement will be off the operators licence and on its own WAL; as such it will be subject to all sorts of different rules from both State Government and the corporation.

We note that the ACCC preliminary position paper on Water charge rules (September 2008) recommends a 3 tier approach which recognises there are differences between IIOs. We are at a loss to understand why a similar approach would not be considered for transformation.

RGA/SRI believe the present arrangements within NSW ICs are well defined and already meet the requirements of Section 97 of the Water Act 2007 in that there is no evidence of delays in water trades. In fact the evidence is to the contrary; it is government instrumentalities that provide the delays.

We further contend that it is likely the draft rules will in fact cause confusion, possible legal dispute and will most likely have a perverse effect on the water market.

We understand that an operator which does not presently have water access entitlements issued to its irrigators is the target of these rules. We do not understand why the ACCC has not distinguished between those operators and the corporations that have issued water (access) entitlements.

RGA/SRI believes the ACCC in these draft rules has failed to meet the Basin water charging objectives and principles. The complications surrounding the application of the draft rules would do nothing to “promote the economically efficient and sustainable use of water infrastructure assets” of the NSW ICs. The draft rules enhance the opportunity for “perverse or unintended pricing outcomes”. The draft rules provide for an unnecessary impost of activity and costs on the NSW ICs. This can only confuse the operation of the existing efficient system for no real purpose.

We believe it would be most ironic if the transformation option being foisted on the NSW ICs only serves to impede water trading and increase costs to irrigators within these corporations.

We would like to discuss further with the ACCC the impact these rules will have on our irrigator members.

We do not understand why the ACCC does not recognise that the water (access) entitlements issued by these corporations under contract law are legitimate. We see the difference between state jurisdictional water access entitlements as being similar to the difference between NSW WALs and the water (access) entitlements issued by NSW ICs. We are certain the vast majority of irrigators within these corporations are happy with the present arrangements.

3. Special Comments

Page ix, Para 5, seeks to summarise the basin water market and trading objectives and principles. We contend that the draft rules as they relate to NSW ICs fail on all the dot points for the following reasons:

- Facilitate efficient water markets – transformation will merely complicate the transfer process, causing inefficiencies. This is not a case of MAY have perverse effects, but WILL have perverse effects.
- Minimise transaction costs – the complications of transformation will simply increase transaction costs.
- Enable a mix of water products to develop – the ACCC has failed to recognise the mix of products which already exists. Transformation will diminish the value of the water (access) entitlements within NSW ICs.
- Recognise and protect the needs of the environment – the ACCC has failed to recognise the role of LWMPs and environmental or pollution licences within NSW ICs. Transformation will make protection of the environment more difficult within NSW ICs.
- Provide appropriate protection of third parties – the protections within the draft rules all appear to be aimed at the transformers. Third parties such as other irrigators within NSW ICs appear to have their protections diminished.

Page xii, we suggest that it may be helpful if the definition for water access entitlements read as follows:

Open ended or perpetual access to a share of the water resource that is available for consumption as specified in a water plan and expressed as **nominal** megalitres or kilolitres.

This may help clarify several issues such as expected yield from an entitlement. It may help in the situation such as CIT not needing to balance the number of entitlements on its licence with the number of entitlements held by its members.

Page 34, first paragraph after the dot points - we welcome the clarification that the irrigation right of irrigators within MIL does not extend to that part of their MIL water entitlements that relate to the conveyance loss portion of the corporation's license.

Page 51, 52, we believe the rules should specify that the transformer must provide details of the receiving WAL. Not having this as part of the rules may suggest that this is not information reasonably necessary for the proposed transformation arrangements.

Page 60, we welcome the discussion that transformation cannot occur until debts are cleared.

Page 66, paragraph 4, seems to imply there would be a relationship between the WAL and the original landholding. We are unsure how this would work.

4. Security for future payment of access fees

SRI/RGA members are principally supplied by MIL, CICL and MI. We do not have access to commercial information from these corporations but wish to make the following comments:

- The ongoing financial viability of the corporations is essential for the farm businesses of our members
- Allowing up to 80% trade or transformation before termination fees apply appears to be exceptionally generous to those wishing to move entitlements off licence
- The nature of our businesses is water and the entitlements. It is therefore appropriate that water entitlements remain as the only form of security required and that this should be of sufficient volume to protect the viability of operators and irrigators
- It is inappropriate for the irrigation industry to be forced into a less secure form of debt recovery. It is unfair to impose conditions that could result in remaining irrigators carrying increased bad debts on top of increased overhead costs
- The beneficiaries of a trade or transformation must bear all of the costs. That should not be restricted to the ongoing costs but **must include implementation costs and provision for increased bad debts**

5. Implementation

SRI/RGA believes the implementation process for NSW ICs would be far more complex than envisaged by the ACCC. Constitutional changes represent only the tip of the iceberg. There will be far reaching changes to the way corporations do business. The reconfiguration of a whole range of contracts, pricing and charging arrangements, internal policies and the way in which corporations handle licensing requirements is not the small task the ACCC suggests.

From an irrigator's point of view, there is likely to be much angst against those who chose to remove some or all of their entitlements from the corporations whilst those that remain feel they are left to shoulder the burden.

Page 82, we strongly dispute that only ongoing costs of transformation may be directly recovered from transforming customers. **It is unconscionable that all irrigators should be burdened with the overhead costs of implementation of transformation.** We would welcome government offering to pay these implementation costs which will extend well beyond a handbook of draft guidelines. The legal costs alone for the corporations will be large and it is unfair in the extreme that these costs should be foisted on irrigators through their corporations.

Page 90, we note the ACCC's aim at a cooperative approach to reporting and monitoring compliance. We are concerned about the potential for vexatious complaints.