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MURRAY–DARLING BASIN AUTHORITY

Compliance Audit – Irrigation Infrastructure Operators

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Acknowledgement of the Traditional Owners of the Murray–Darling Basin
The Murray−Darling Basin Authority pays respect to the Traditional Owners and their Nations of the Murray−Darling Basin. We acknowledge their deep cultural, social, environmental, spiritual and economic connection to their lands and waters.

The guidance and support received from the Murray Lower Darling Rivers Indigenous Nations, the Northern Basin Aboriginal Nations and our many Traditional Owner friends and colleagues is very much valued and appreciated.

Aboriginal people should be aware that this publication may contain images, names or quotations of deceased persons.

Background

As part of its 2020–21 audit program, the Murray–Darling Basin Authority (MDBA) undertook this audit to assess compliance by Irrigation Infrastructure Operators (IIOs) with their obligation under the *Basin Plan 2012* (Basin Plan), with regards to restricting trade of water delivery rights. The audit was undertaken in accordance with s13.10 of the Basin Plan, which provides for the MDBA to undertake audits to assess compliance with the Basin Plan.

Many irrigators in the Basin operate within private irrigation areas that use the services of an infrastructure operator to deliver water to their property from a watercourse extraction or offtake point. There are 21 medium to large IIOs in the Basin, and a number of smaller IIOs such as New South Wales private irrigation trusts and districts. Private IIOs in New South Wales and South Australia are among the largest holders of water access entitlements within the consumptive pool for the Southern Connected Basin. Murrumbidgee Irrigation Limited (MI), for example, has over 2,700 customers and held over 1,086 GL in company water licenses in 2018–19[1].

In 2018–19, IIOs held 72%, 22% and 25% of high security water access entitlements (WAEs) on issue in the Murrumbidgee, New South Wales Murray and South Australian Murray respectively, and 50% and 67% of general security WAE on issue in the Murrumbidgee and New South Wales Murray.[2]

Irrigators within an IIO network have a contractual and / or statutory right of access to the operator's infrastructure, which typically includes the right to the delivery of water through the infrastructure (a water delivery right). A water delivery right may be measured in a number of different ways, including by volume or number of delivery entitlements (where a delivery entitlement may entitle the irrigator to the delivery of a particular volume of water in ML/day, or as a share of capacity of the network).

If an irrigator decides they no longer require water to be delivered to their property (for example, as a result of changing crops or switching to dryland farming), they have the option of trading their delivery right to another irrigator within the network. The Basin Plan water trading rules (Basin Plan sections 12.28 and 12.29) prohibit IIOs from unreasonably restricting the trade of delivery rights within their networks.

[1] 2020 Annual Report Murrumbidgee Irrigation
[2] Final report | ACCC

What we did

The MDBA approached six IIOs within the Basin to examine whether they were compliant with Basin Plan requirements around restrictions of trade of delivery rights. Five of the six IIOs advised the MDBA that they had not restricted any trade of a delivery right within the previous two water years (2018/19, and 2019/20)[3]. As a result, only Murrumbidgee Irrigation was selected for further testing.

Subsequently, MI were asked to provide the MDBA with the details of the trades of delivery rights that had been restricted during the 2018–19 and 2019–20 water years. This included the reasons given for restricting the trade, with accompanying evidence that both parties to the trade had been advised of the decision in writing.

The following sections of the Basin Plan were used as the basis for testing compliance:

- s12.28 – states that "*An irrigation infrastructure operator must not unreasonably restrict the trade of a water delivery right*".
- s12.29 – provides a list of factors to be taken into account in deciding whether a restriction is reasonable, which include but are not limited to issues such as network capacity and connectivity, water volumes, costs and fees.
- s12.30 – provides that if an IIO decides to restrict a trade, they must notify each party to the trade in writing of the decision (including the reasons for the decision) as soon as practicable (but within 30 days in any case).

Why is this important?

The Basin Plan water trading rules, introduced in 2014, aim to reduce restrictions on trade; improve transparency; and improve market confidence through a more effective water market. It is important that water is accessed where it is wanted most to put it to its most productive use. However, the rules also reflect that there are sometimes genuine reasons why trade cannot occur – for example, for ensuring environmental protection, or as a result of infrastructure constraints.

While trade involving IIOs accounts for a large proportion of trade within the Basin, there is minimal publicly available data on trade that occurs within IIO networks. The MDBA considers this audit an important step in increasing transparency and oversight of trade activity within IIO networks.

If an irrigator within an IIO network decides to reduce or relinquish their delivery right, they must pay a corresponding termination fee. Alternatively, they may be able to trade their delivery right to another irrigator within the network. If such a trade is unreasonably restricted, an irrigator would be left with the options of either maintaining their unused delivery right, or relinquishing that right and

[3] The five IIOs that were approached to be included in the audit, but which advised that they had not restricted the trade of any delivery rights within the past two water years were: Coleambally Irrigation Co-operative Limited; Murray Irrigation Limited; Renmark Irrigation Trust; Western Murray Irrigation Limited; and The trustee for Central Irrigation Trust

paying a termination fee. The ability for an irrigator to trade a water delivery right to another irrigator within their IIO network provides irrigators with genuine options around managing water and is a much less costly alternative to termination.

However, the Basin Plan also recognises that there are valid reasons why an IIO may restrict the trade of a delivery right. Section 12.29 of the Basin Plan provides a list of possible factors an IIO should take into account in deciding whether a restriction is reasonable, including such things as infrastructure capacity, connectivity or other constraints.

What did we find?

MI received 35 delivery right transfer applications during the 2018/19 water year, and 75 during 2019/20. Of these 110 applications, two were refused.

Both of the restricted trade requests were analysed by the MDBA to assess compliance with Basin Plan sections 12.28 and 12.30 (as described above).

In both instances, MI had:

- Advised each party of the decision to refuse the trade request in writing and within 30 days of making that decision; and
- Set out the reasons why the trade request was refused.

For both delivery right trade applications, the reason given for the refusal concerned infrastructure limitations within the network, meaning the additional water delivery volume applied for could not be delivered to the party seeking to acquire the additional delivery rights. This kind of infrastructure capacity constraint appears consistent with the factors to be considered when determining whether a restriction of trade is reasonable (as set out in s12.29 of the Basin Plan), and as such, the MDBA considers the refusal of these two trade requests to have been conducted in accordance with Basin Plan requirements.

Overall, this audit has highlighted that the restriction delivery right trades within IIO networks does not appear to be a common occurrence. As noted above, the MDBA approached six of the largest private IIOs with the Basin for this audit, and only one of those IIOs reported restricting the trade of delivery rights within the previous two water years.

The results of this audit give the MDBA reasonable assurance that MI has been compliant with their obligations under the Basin Plan with respect to restricting the trade of water delivery rights.

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