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WATER SHEPHERDING POLICY

100311

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Introduction

NSW Irrigators' Council (NSWIC) represents more than 12,000 irrigation farmers across NSW. These irrigators are on regulated, unregulated and groundwater systems. Our Members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries.

This document represents the views of the members of NSWIC. However each Member reserves the right to independent policy on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

Executive Summary

Water shepherding involves the movement of parcels of water through unregulated systems to the benefit of a single user. The potential introduction of water shepherding is of significant interest to NSWIC.

Protecting a parcel of water for delivery to another extraction point without affecting other users is both nigh impossible and, if only available to environmental users, will fundamentally alter the characteristics of those entitlements.

NSWIC has long maintained – and the Commonwealth have provided commitments that – the characteristics of entitlements will not alter when purchased for environmental use¹.

This policy document was created to ensure stakeholders are aware of the details involved in water shepherding and the potential consequences of such action. It was developed in response to negotiations between the State of NSW and the Commonwealth agreed in 2009 and continue in 2010².

NSWIC believes that shepherding is inappropriate as it will advantage one class of user over another and potentially result in disadvantages to some users. NSWIC recognises the need for water to move from unregulated to regulated systems as part of sustainability measures Basin-wide. We believe that this will be best accommodated by developed a trading system, if possible, within unregulated systems and between unregulated and regulated systems that all users can access.

¹ DEWHA – Review of the 2007-08 Water Entitlement Purchases – section 1.4.2.

DWE Proposal to enable environmental water entitlements acquired in the Darling River at Toorale Station, to be diverted downstream of the Menindee Lakes – March 2009 (page 9).

DEWHA – Commonwealth Environmental Water Holder 2009-10 Business Plan

Water Act 2007 – Schedule 3 – Basin water market and trading objectives and principles

² MoU in relation to water for the environment signed 22 Sept 09 The Honourable Julia Gillard MP (Acting PM at the time) and 23 Sept 09 The Honourable Nathan Rees MP

Background

NSWIC expressed concern when a “trial” shepherding arrangement was agreed to by the NSW Office of Water (NOW) (Department of Water and Energy at the time) and the Commonwealth to move unregulated water from Toorale in the Northern Darling to South Australia for environmental purposes in 2009.

The NSW and Commonwealth Governments have now entered into a Memorandum of Understanding (MoU) in relation to water for the environment to negotiate a bilateral agreement for consideration by Ministers which includes a section on shepherding of environmental water.

Toorale Shepherding Details

The Toorale arrangement involved the issuing of a “zero entitlement share Water Access Licence” in the NSW Murray water source. This licence meant it had no access to general or high security allocation but instead had an amount of water (11,400 ML) credited to it. This volume was calculated on assumptions as to what volume Toorale would have extracted in the operating conditions that prevailed prior to the Commonwealth purchase of the property. NOW then facilitated delivery of the water (minus calculated and later readjusted system losses) for environmental purposes in the Murray Valley or transfer a designated volume as determined by the Commonwealth Environmental Water Holder (CEWH).³

This event was identified as a test and was only possible due to a range of localised and unique factors, including:

- no active licences located between Toorale and the Menindee Lakes; and
- the ability for NOW to control the release from Menindee Lakes so as not to trigger licences between Menindee and the NSW – VIC border.

The unique conditions which allowed this shepherding event to take place still required certain special arrangements to complete it. Of note is the issuing of a zero share licence in a system which is variously recognised as “over allocated” or at full allocation and the exclusion of the water that entered the Menindee system from the interstate water sharing agreement.

Although the process appears to have been accurately implemented, the concern is the precedent that this has now set. If water from Queensland was to be sent through NSW for delivery to South Australia it would have to comply with WSP through the areas it passed. A shepherding arrangement such as the one for Toorale would bypass these regulations and therefore affect entitlement holders in each area.

Flow Rate Thresholds

³ Information from DWE Proposal to enable environmental water entitlements acquired in the Darling River at Toorale Station, to be diverted downstream of the Menindee Lakes – March 2009.

The nature of an unregulated river system is the lack of structures to control the river flow. WAL holders access their entitlement when certain flow rates (water quantum or river height) are met. Water is then extracted and used immediately or stored in on-farm in dams until needed.

Flow-rate thresholds are set at various levels in unregulated rivers depending on the river system and the location of the entitlement on it. WAL holders have a specific maximum daily volume allowed or possibly a maximum storage volume limit⁴. In some systems there are multiple thresholds on an individual licence, each threshold specifying a different volume and commencement threshold depending on the levels. Announcements are made daily when an event occurs.

Due to the irregularity of these events, a water shepherding arrangement with sufficient volume could trigger such threshold levels. The arrangements required to then protect this water from extraction would be immense and must necessarily have third party impacts.

Memorandum of Understanding

A MoU was signed between NSW and the Commonwealth Government and has agreed to the following⁵:

31. The parties agree that the benefits of investing in water for the environment can only be fully realised if water rights can be used in an optimal way to meet priority needs.

32. To implement the commitment made by their respective water ministers to negotiate a bilateral agreement to ensure that all water for the environment can be protected from access by downstream consumptive users, the Commonwealth and New South Wales agree that:

- a. A joint taskforce comprising officials from NSW and the Commonwealth, funded by the Commonwealth, will develop a draft bilateral agreement for consideration by Ministers by 30 November, which provides for water shepherding in NSW.
- b. The bilateral agreement will establish principles for water shepherding and its implementation including:
 - i. Scope, terms of reference and resourcing for the ongoing work of the joint task force.
 - ii. Provisions for shepherding throughout NSW and from the Queensland border, for environmental water held by the Commonwealth;
- c. The objective of the agreement is to optimise the use of all water for the environment, to provide the capacity to deliver water to high priority environmental assets, and, in the case of in-stream environmental

⁴ Flood Plain Harvesting Licenses under development by NSW Government.

⁵ MoU in relation to water for the environment signed 22 Sept 09 The Honourable Julia Gillard MP (Acting PM at the time) and 23 Sept 09 The Honourable Nathan Rees MP

watering, to provide protection for environmental flows to pass through the system as far as transmission losses allow.

- d. NSW undertakes to implement the agreed water shepherding strategy subject to;
 - i. Commonwealth funding of costs associated with implementation (including costs arising from modelling, monitoring, operational, licensing or compliance issues), in excess of those incurred by NSW in meeting its statutory obligation to manage water in NSW; and implementing existing commitments under the NWI and the Intergovernmental Agreement on Murray-Darling Basin Reform
 - ii. Entitlements and allocations held by water users in NSW will not be enhanced nor diminished as a result of environmental watering actions and shepherding for environmental watering.

- e. In the period before permanent arrangements are agreed:
 - i. NSW will endeavour to shepherd Commonwealth holdings for environmental watering acquired by purchase or investment in infrastructure by the Commonwealth; and
 - ii. The Commonwealth will fund the costs associated with this shepherding (including costs arising from modelling, monitoring, operational, licensing or compliance issues), in excess of those incurred by NSW in meeting its statutory obligations to manage water in NSW; and implementing existing commitments under the NWI and the Intergovernmental Agreement on Murray-Darling Basin Reform.

At the time of writing no bilateral agreements are in place.

Conclusion

We understand that water purchased for the environment needs to be moved to assets which will be identified in the Basin Plan. We cannot agree with arrangements that impact on other entitlement holders and changes the characteristics of a licence.

Any water shepherding arrangements that are applicable only on the basis of whom the holder is, is fundamentally a change in the characteristics. The ACCC Water Trading Rules (draft advice)⁶ won't allow negative discrimination based on the identity of the entitlement holder, so it would be improper for positive discrimination based on the holder to be mandated.

NSWIC may not oppose shepherding or, more specifically, trade within unregulated and between unregulated and regulated systems, if two preconditions are met:

1. It is available to all holders;
2. There is no negative impact on any third party (physical, financial or otherwise); and
3. There is no change to the entitlement and the conditions attached to it.

Related motions which coincide with this Water Shepherding Policy

From a motion passed at our 05 November 2009 Council meeting –

“That NSWIC develop a policy in respect of environmental water shepherding for consideration at our March 2010 meeting.”

⁶ Water trading rules draft advice – <http://www.accc.gov.au/content/index.phtml/itemId/906693>