

DRAFT APPROACH PAPER
ON
TRADING IN WATER ENTITLEMENTS

1. INTRODUCTION

1.1 While the term trading has not been specifically defined in the MWRRA Act there are several enabling provisions in the Act relating to trading in Entitlements. These provisions require the Authority to promote a regime which will enable such trading in the interest of increasing overall water use efficiency. The dictionary meaning of trading is buying or selling. Thus trading in Entitlement implies buying or selling of an Entitlement or a part of it by an Entitlement holder.

1.2 The sections in the Act relating to trading are in Chapter III under 'Powers, Functions and Duties of the Authority'. These are

“ 11 (i) to fix the criteria for trading of water Entitlements or Quotas on the annual or seasonal basis by a water Entitlement holder. These criteria shall among others include the following –

(i) Entitlements, except Aggregate Bulk Water Entitlements, are deemed to be usufructuary rights which may be transferred, bartered, bought or sold on annual or seasonal basis within a market system and as regulated and controlled by the Authority as established in the rules of the Authority.

(ii) Quotas of water as determined by the seasonal or annual allocation assigned to an Entitlement shall be volumetric usufructuary rights which may be transferred, bartered, bought or sold on an annual or seasonal basis within a market system as established and controlled by the rules of the Authority.”

1.3 Thus the Authority is required under the Act to establish a regulatory regime for trading in Entitlements. This draft Approach Paper has been prepared to elicit the views / suggestions of experts in the field , NGOs and other stakeholders which might help the Authority in fixing the Criteria as required by section 11(i) above.

2. ENTITLEMENT HOLDER

2.1 Before going into the issue of trading in Entitlement, it is first necessary to identify who an Entitlement holder is as per the Act. Section 2(i) of the

Act defines Entitlement as any authorization by any River Basin Agency to use the water for the purposes of this Act. Section 2(zc) of the Act defines a 'Water User Entity' to mean any Water User Association, Utility, Industrial User's Association, other User's Association or any other group which is authorised to receive and utilize a water Entitlement. Thus only a Water User Association or Entity, which has the right to receive an Entitlement, can trade in Entitlements. By sharing in the O & M cost of the project through payment of water tariff, an Entitlement holder acquires an usufructuary right over the water with attendant rights to trade in the quota assigned to him under the Entitlement. Farmers who receive area based supply and who have not formed a WUA are not legal Entitlement holders and thus cannot engage in trade of water although they also pay for the O & M through area based tariff.

3. SPOT Vs. LONG TERM TRADING

There are two issues to be considered here. Firstly, entitlements and quotas of water are fixed on a volumetric basis. While the formula for fixing entitlements and quotas can be prescribed in advance the actual availability of water depends on the actual storage in the reservoir after the monsoon. Thus the volumetric expression of quotas can only be available for a single October-June period and will change from period to period. This makes long term trading impossible because a trade in entitlement without a corresponding trade in quota is only a paper trade. Secondly, the statute itself is very clear that entitlements and the quotas can only be traded on a seasonal or annual basis and not in the long term. Since the availability of the commodity in the longer term is itself uncertain and the law recognizes this by permitting trading on a seasonal or annual basis it is clear that the regulatory regime can only be created for a spot market at the beginning of the October-June period each year.

4. INTER-SECTORAL VS. INTRA SECTORAL TRADING

Sectoral allocations i.e. allocation of water between the three user categories, viz. agriculture, industry and domestic, is done by the state government. Entitlements within each category of use are issued by the RBAs. A change in the entitlement of a user requires prior permission of the Authority if such change involves a change in the entitlement of

another user. Further, if such change is sought by a user on the grounds that its category carries a higher priority than the application for change will be subject to the provision of section 11 (h) (ii) of the Act and the full procedure has to be followed.

Thus inter-sectoral trading would inevitably lead to changes in the sectoral allocation of a user category which is not within the jurisdiction of the Authority. Sectoral allocations can be highly contentious issues even without the complication of trading. For instance, if an industrial entity using water as raw material offers a high price to a WUA and the WUA finds it more attractive to sell its tradable quota then the cropped area can get impacted which in turn can affect not only agricultural production but also farming as an occupation in the long run. While it can be argued that this can have a beneficial impact on the economy as a whole in the long run it is not practicable to push such drastic changes in the short run because of the possible backlash from others effected by such economic restructuring. Hence, inter-sectoral trading cannot be considered at this stage. This point is elaborated further in para 5.2 below.

5. PROPOSED SCOPE & AMBIT OF TRADING

5.1 Even in intra-sectoral trading although non-irrigation users like municipal bodies and industrial estates who enter into bulk water supply agreements with Project Operators are also Entitlement holders, it is proposed to keep these categories outside the trading regime for the following reasons.

- (a) Volume of water used for non-irrigation purposes is very small (less than 20%) as compared to irrigation (above 80%).
- (b) Additional water requirements of non-irrigation are usually on a long term or permanent basis e.g. a requirement of a Municipality to meet needs of a growing population or a thermal plant or any other water using industry planning expansion. Such demands cannot be met on a year to year or seasonal basis through trading as investment decisions are involved. In irrigation, requirements of crops are on a seasonal or annual basis and this ideally fits into the concept of spot trading.

- (c) Trading is meant for increasing water use efficiency and ensuring improved productivity of water. In agriculture there is marked improvement in productivity, if irrigation is provided as compared to un-irrigated agriculture. Also irrigated cash crops are more productive as compared to irrigated cereals. Shifting of water from low productivity to higher productivity is readily possible in agriculture while such a scope cannot be visualized in non-irrigation.
- 5.2. Tail end farmers have been generally denied their full Entitlement due to mismanagement of canal operation and higher drawals by head reaches. WUAs like other associations of unequals can be susceptible to capture by the head reach farmers closer to the source and consequent unfair treatment of the tail end farmers. Most significantly, trading will give an opportunity to tail-enders to get compensated in cash for the shortfall in supplies.
- 5.3 Irrigation projects are planned with large investments made by the State to increase agricultural production and productivity and this objective will be lost if irrigation users are allowed to sell to non-irrigation users and thus commercialize water wholly as an economic good. Trading should not dissipate the social objectives of an irrigation project but result in 'more crop per drop' Trading will also lead to improvement in water use efficiency as saved water can be traded by farmers for a monetary value. Keeping this in view, it is considered prudent to restrict trading to within the agricultural sector only and not extend it to inter-sector trading or trading by and within non-irrigation uses.

6. TYPE OF IRRIGATION PROJECTS WHERE TRADING IS FEASIBLE

- 6.1 In minor irrigation projects, there is usually only one WUA. Though it is technically possible for the WUA to trade with reservoir lift water entities, such volume of trade will be too small. It is therefore proposed to introduce trading in major and medium irrigation projects or large minor projects with 4 or 5 WUAs where the Entitlement programme is fully operational and system rehabilitation completed and handed over to WUA. A few such projects will be selected on pilot basis to operationalise trading.
- 6.2 Since the Entitlement programme is enforced in rabi & hot weather seasons only, it is proposed to confine trading to these two seasons only

after the Applicable Water Use Entitlement or Quota is determined by the RBAs for each WUA based on actual storage on 15th October.

7. ROLE OF RBAs AND PROPOSED APPROACH

- (i) RBAs will first determine WUA-wise Applicable Water Use Entitlement.
- (ii) WUAs will invite application from members for irrigation passes and depending on demand vis-a-vis the Entitlement, decide on whether it wishes to buy or sell a part of the Entitlement. No WUA will be permitted to sell more than 50% of its Entitlement i.e. at least 50% of Applicable Entitlement has to be used by the WUA for irrigation. This is to ensure that farmers' interests are protected even if they are in a minority and all land in the command of the WUA does not lie fallow.
- (iii) RBAs will collect by 7th November, all relevant information from WUAs who are willing to trade i.e. who wish to buy or sell.

RBAs will implement trading through an open bid process. The process may be either a tender or an auction process. The tender or auction document will give information about Supplier (seller) WUAs and the quantities available for sale. For the tender process, bids will be obtained from WUAs wishing to buy and will be opened in a transparent manner in the presence of all bidders. In the auction process the auctioneer will invite bids in an open auction for each lot of water offered by a selling WUA. . The quota offered for trading by a WUA will stand sold to the highest bidder.

- (iv) Secondary trading will not be allowed but mid season swaps between WUAs may be permitted. This is to prevent speculation in trading and at the same time ensure utilization of water.
- (v) The RBA will satisfy itself before sealing the bid that it is operationally possible to deliver the traded component of the Entitlement to the highest bidder. If there are system constraints for actually delivering the traded component, the second highest bid will next be considered.
- (vi) The RBA will during the bidding inform the volumetric quantity in cubic metres offered for sale. The floor price should not be less

than the volumetric tariff in Rs / m³ fixed by the Authority in its tariff order.

- (vii) 50% of the bid amount should be paid by the successful bidder immediately after the bid to the RBA who will pass on the amount to the concerned WUA after deducting a processing fee of 2%.
- (viii) 50% of the balance amount will be paid immediately after the season/rotations are over when the required Entitlement has been delivered by the RBA.
- (ix) If any participating WUA has defaulted in past tariff payments to RBA, the arrears should first be cleared by the WUA before it is allowed to participate in the bid.
- (x) After the bidding is over, the RBAs will inform the concerned WUAs the revised Applicable Water Use Entitlement consequent upon the changes due to trading of Entitlement. The concerned WUAs will inform the rotation programme accordingly to the RBA.
- (xi) In the trading exercise, the RBA must ensure that the Entitlements of non-participating WUAs is not in any way affected.
- (xii) Any bidder will have the option of utilising the desired quota in rabi or hot weather or partly in both. However, the quantity reserved for hot weather will include evaporation losses which will be borne by the bidder.
- (xiii) Bulk water tariff to WUA will be levied by RBA for quantity actually drawn out of the revised Entitlement.
- (xiv) Any dispute relating to trading of Entitlement will be dealt with under Section 22 of the MWRRA Act first through the Primary Dispute Resolution Officer. Appeals will lie with the MWRRA.