

# Farm Water



Goulburn-Murray  
Irrigation District



On-Farm Irrigation  
Efficiency Program

May 2011

## FREQUENTLY ASKED QUESTIONS CONTRACTS (THIRD UPDATE )

Two contracts will be required for each Farm Water Program project. They are:

- an **Infrastructure Works Deed** between the Goulburn Broken CMA and the landowner (the "Works Deed"), and
- a **Deed of Transfer of Water Entitlement** between the Australian Government or NVIRP and the water share ("WEE") owner (the "Water Contract").

These Frequently Asked Questions (FAQ) provide important information about these two contracts and the processes around developing and implementing them.

### Water Contract Questions

**1. Will approval from third parties be required to transfer the water share (WEE)?**

*All third party interests (eg mortgages, limited term transfers etc) will need to be removed prior to settlement of the Water Contract. If anyone has an interest in the WEE being transferred, you must obtain their approval before you enter into the Water Contract. This approval is a condition of funding and one of the program's eligibility criteria.*

**2. My WEE has a mortgage on it and I am selling the whole WEE. What do I do?**

*You must discharge all mortgages on your WEE before settlement.*

**3. My WEE has a mortgage on it and I am only selling part of the WEE. What should I do?**

*You must divide your WEE now and seek a discharge of the mortgage over the part that you are transferring. You cannot use the funds received from the water settlement to discharge your mortgage, they are to be used to pay for the farm works. You should seek advice from your solicitor/ water conveyancer.*

**4. My WEE has NO mortgage on it and I am only selling part of the WEE. What should I do?**

*You do not need to do anything. The division and transfer of the WEE can take place as part of the conveyancing process after the Water Contract is signed.*

**5. I didn't realise there was a mortgage on my Water Share. Is this a problem?**

*When water was unbundled from land in 2007, any mortgages on the land were automatically added to the WEE. Some irrigators may have forgotten that this happened. Any mortgages on the WEE must be discharged before settlement. (See questions 2-4 for more information).*



Australian Government  
Department of the Environment,  
Water, Heritage and the Arts



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NORTH CENTRAL  
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Irrigation Renewal Project

NVIRP

Laser grading  
and riser images  
courtesy of  
Department of  
Primary Industries



Departments of  
Sustainability and Environment  
Primary Industries



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**6. How do I know exactly how much water to transfer?**

*The GB CMA will send a letter to all successful Farm Water Program applicants advising the volume of water to be transferred. There may be some small differences in this figure and the Expression of Intent (EOI) / Application form submitted in May 2010 due to rounding. If in doubt, please contact the GBCMA.*

**7. Do I need to pay all the outstanding G-MW fees on the WEE before it can be transferred?**

*Yes. This means G-MW fees for 2010-11 on the volume to be transferred will need to be paid. Check with G-MW if you aren't sure how much this will be.*

**8. I have sold and transferred some of my WEE since I put my EOI into the Farm Water Program. What must I do now?**

*You will have had new WEEs issued. The new WEE number(s) from which you will transfer the water from will need to be provided to the GB CMA, contact information is at the end of these FAQs. Make sure that the new WEE you provide has sufficient volume available to transfer as per the Water Contract.*

**9. The volume of water on my WEE is more than I need to transfer. Should I divide the WEE now?**

*Under the Water Contract you need to be able to transfer a WEE with a volume matching the volume being sold. The WEE must be unencumbered at settlement. You cannot rely on funds coming from the sale to discharge your mortgage.*

*If you HAVE a mortgage, and the volume on your WEE is more than you are transferring, you should divide the WEE now and discharge the mortgage over the new WEE you are transferring.*

*If you have NO mortgage, and the volume on your WEE is more than you are transferring, you can divide the WEE as part of the conveyancing process (using a Form 3). You must be able to provide a discharge of the mortgage over that new WEE at settlement and you need to be able to pay all amounts owing to discharge the mortgage from you own funds.*

**10. Who pays the water conveyancing costs for water transfers?**

*Each party (the Commonwealth Government, NVIRP and the water share owner) is liable for their own conveyancing costs related to transferring water.*

**11. Will delivery share be taken as well as water share?**

*No. Delivery Share attaches to the land and is not affected by the sale of water share.*

**12. When the WEE is transferred will the allocation on that WEE belong to the irrigator?**

*If the WEE is being transferred to NVIRP, all the seasonal allocation must be transferred to NVIRP. If you have used some of it, you will need to buy allocation to cover the shortfall.*

*If the WEE is being transferred to the Commonwealth Government, the seasonal water allocation announced on or after settlement and before registration of the transfer must be transferred to the Commonwealth Government.*

**13. Will there be GST on the first payment which is for the water? (NEW)**

- *Yes. Advice from the ATO is that all payments to landowners and water share owners are subject to GST (provided the landowners or water share owners are registered for GST). A private ruling on this issue will be available on the ATO website. Irrigators should also seek their own taxation advice.*

**1. Where do I get the forms to divide and transfer my water?**

*Forms are available on the water register website <http://www.waterregister.vic.gov.au/Default.aspx>*

*The most commonly used forms are:*

- *Form 1 (transfer a water share)*
- *Form 3 (divide and transfer a water share)*
- *Form 5 (divide a water share).*

*There are also some FAQs. If you need assistance, seek further advice from your solicitor or water conveyancer.*

**2. Is there a sample Water Contract that I can look over.**

*Yes, there is a sample Water Contract that can be downloaded from the GB CMA website under the Farm Water Program and in the Developing Contracts section. Please note that this contract is not negotiable.*

## **Works Deed Questions**

**3. How long do landowners have to finish farm works?**

*Eighteen months from the day:*

- *the Water Contract between the Commonwealth Government or NVIRP and the landowner, and*

- *the Works Deed between the GBCMA and the landowner have both been signed.*

**4. When can landowners commence works?**

*Landowners can commence works once the Water Contract and the Works Deed have both been signed. However, landowners undertake the works at their own risk until the first payment is received following confirmation of the settlement of the Water Contract.*

**5. Can landowners be paid for retrospective works (ie before the contracts have been signed)?**

*No.*

**6. Will the works be audited?**

*Yes. Works will be inspected when completed to ensure compliance with the Works Deeds. In addition, there will be random audits to ensure expenditure and program expectations are being met.*

**7. Can landowners undertake the farm infrastructure works themselves as part of the Farm Water Program?**

*Yes, provided landowners meet all statutory requirements and responsibilities such as OH&S, Workcover etc and costs are at standard industry rates (check with your DPI contact for standard industry rate information).*

**8. Once an agreed cost for works has been reached in the Works Deed, can the cost and payments change?**

*The Works Deed establishes a ceiling for the cost of the works. If the works end up costing less than is set out in the Works Deed, then the payment made under the Works Deed will be the average cost of the works per megalitre for the water savings retained on farm up to a maximum of the price per megalitre for the river system that supplies the water. The payment will need to be supported by invoices and receipts.*

**9. I have changed the way I want to implement my project. Is this allowable now that the project is approved?**

*If your works are delivering the same activities on the same area, are in line with your Whole Farm Plan, are still delivering 100% best management practice, deliver the same water savings and are the same costs (or you will pay the additional costs) this may be possible, ie pipes and risers instead of open channels and gates. Please check with your DPI officer to*

*confirm whether your proposed changes are acceptable before the Works Deed is signed and works commence.*

**10. I want to completely change the activities in my program eg from lasering to reuse. Is this possible?**

*No. The project activities should be the same as those was outlined in your EOI.*

**11. The costs of my works have altered slightly from the quotes I received in May 2010. Can these costs be changed in the contract?**

*If your new quotes still deliver the same activities, are according to your Whole Farm Plan, are still delivering 100% best management practice, deliver the same water savings and are within the same total costs, this change may be negotiated. However, if your overall works costs are higher than your application, then you will need to cover the difference. If your costs are lower, then the payment made under the Works Deed will be the average cost of the works per megalitre for the water savings retained on farm up to a maximum of the price per megalitre for the river system that supplies the water. The payment will need to be supported by invoices and receipts. Please check with your DPI officer to confirm.*

**12. Does the second payment which is for the works include GST?**

*Yes. Our current advice is that the second payment for the works is a GST supply and will have GST added. Please note that all of the payments in the Works Deed are GST exclusive figures, GST will be added where appropriate to the payments. Irrigators should also seek their own taxation advice.*

**13. Can landowners choose not to go ahead with some of the works they had initially proposed?**

*No. The works should be based on the original application, ie water savings and costs. If the project is scaled down, the water savings will not be achievable.*

**14. Can landowners choose to do the works on a different area of the property, rather than where it was initially proposed?**

*No. The works must be on the original area as proposed.*

**15. Can landowners add extra works into their proposal eg. pipes and risers across the entire property, rather than just one part?**

*Landowners can add additional works at their own cost.*

**16. What happens if landowners have already commenced the works they included in their application?**

*All projects were given a unique Farm Water Program reference number by the GBCMA. Irrigators whose projects were between 105-1-001 and 105-1-098 were clearly advised in writing in June 2010 not to commence works until their contracts were signed. All irrigators from project numbers 105-1-099 to 105-1-152 have been contacted and advised that- if they have commenced any works, they needed to advise the GBCMA in writing outlining what has been done (almost all irrigators had not started any works). The GBCMA will then arrange for an inspection of the works and confirm in writing the outcome of the inspection and any allowances that may be made. It should not be assumed that works done will automatically be allowed.*

**17. Is there a sample Works Deed that I can look over.**

*Yes, there is a sample Works Deed that can be downloaded from the GB CMA website under the Farm Water Program and in the Developing Contracts section. Please note that this contract is not negotiable*

### **Irrigation Scheduling**

**18. Who are the irrigation scheduling service providers?**

*They are listed on the GBCMA website under the Farm Water Program. See the Directory of Irrigation Scheduling Service Providers.*

**19. Is there a sample contract for irrigation scheduling that I can use?**

*Yes, on the website there is a sample contract for irrigation scheduling for irrigators and the service provider. It is strongly recommended that irrigators use this contract to ensure minimum standards are met by service providers.*

**20. The business I want to use for irrigation scheduling services isn't in the Directory. Can I still use them?**

*No. The Directory was developed to ensure that minimum standards and insurance requirements for the irrigation scheduling activities can be met by the service providers. The service providers on the Directory have met these requirements. If the*

*program runs again in round two and this activity is included there is likely to be another call for service providers to be included on the Directory next year.*

### **General Questions**

**21. Is there a simple picture that shows me the main steps in the contract and payment processes?**

*Yes, See the flow diagram at the end of these FAQs.*

**22. What happens to the payments when the landowner and the water share owner are different?**

*In most projects the payment (first) from the water contract are to be used to fund the works. There are some cases where there works cost less than the first and second payment and a residual will be paid to the water share owner.*

**23. What portion of the funding will be up-front and what portion will be paid after the works are completed?**

*The first payment is for the water transferred and will be made on settlement of the Water Contract.*

*The second payment made under the Works Deed will be the average cost of the works per megalitre for the water savings retained on farm up to a maximum of the price per megalitre for the river system that supplies the water. The payment will need to be supported by invoices and receipts.*

**24. What happens if landowners receive the first payment for the water but then don't do the on-farm works?**

*The landowner will be in breach of contract and the contract will be enforced to the fullest extent. The landowner will also be liable for the legal and administration costs of this process.*

**25. What are the tax implications of the two payments?**

*Landowners will need to seek their own advice from a tax accountant, financial adviser or the Australian Tax Office to clarify their particular circumstances.*

**26. Do I need an ABN to be paid?**

*Yes, you have advised an ABN on your application form and this needs to match the names of the parties on the WEE and the land title.*

**27. When is the latest I need to sign the contracts?**

**The latest the contracts can be signed is 31st March 2011.** The offer of funding expires after this date and any projects outstanding will need to be re-submitted through any subsequent funding rounds if they occur and if the project remains eligible (see question 42).

**28. Up until what stage can the landowners and water share owners withdraw from the Farm Water Program?**

Landowners and water share owners can withdraw from the program up until the Water Contract and the Works Deed have been signed. You must advise the GBCMA in writing if you do not want to proceed with your project. Contact details are at the end of these FAQs.

**29. How long will it take to get contracts signed?**

DPI staff are contacting all applicants to see when they would like to start preparing their contracts. This will give us an order to contact irrigators to prepare contracts of: 0-2 months, 3-4 months or 5-6 months. These contracts could be prepared within a couple of weeks if all the information is available, or they may take longer if complicated arrangements need to be worked through.

**30. Who signs the two contracts?**

The Water Share Owner(s) must sign the Water Contract and the Landowner(s) and the Water Share Owner(s) must sign the Works Deed. It is preferred that these documents are signed simultaneously. The Water Contract and Works Deed are dependant and linked to each other and will not be valid until both are signed. Sample copies of the contracts will be on the GBCMA website.

**31. Does it matter who is funding my project?**

There is no difference in the funding process for projects whether they are funded through the Commonwealth Government or NVIRP. There will still be two contracts to be signed for the works and the water. There will be some differences in the content of the contracts, but the delivery process is the same. Sample contracts will be on the GBCMA website to review.

**32. What happens to any funds from approved projects that don't progress?**

Funds will be returned to the Commonwealth Government or NVIRP. Commonwealth Government

funds may be rolled back into Round 2. NVIRP funding is a once off funding source.

**33. Can landowners and water share owners lodge a complaint if the project is not selected or there is a disagreement over the processes?**

If landowners or water share owners think that policies and procedures have not been properly applied, complaints can be lodged with the Chief Executive Officer of the Goulburn Broken Catchment Management Authority. Contact details are at the end of these FAQs.

**34. If I decide not to go ahead with the project can I obtain funding in Round 2 instead?**

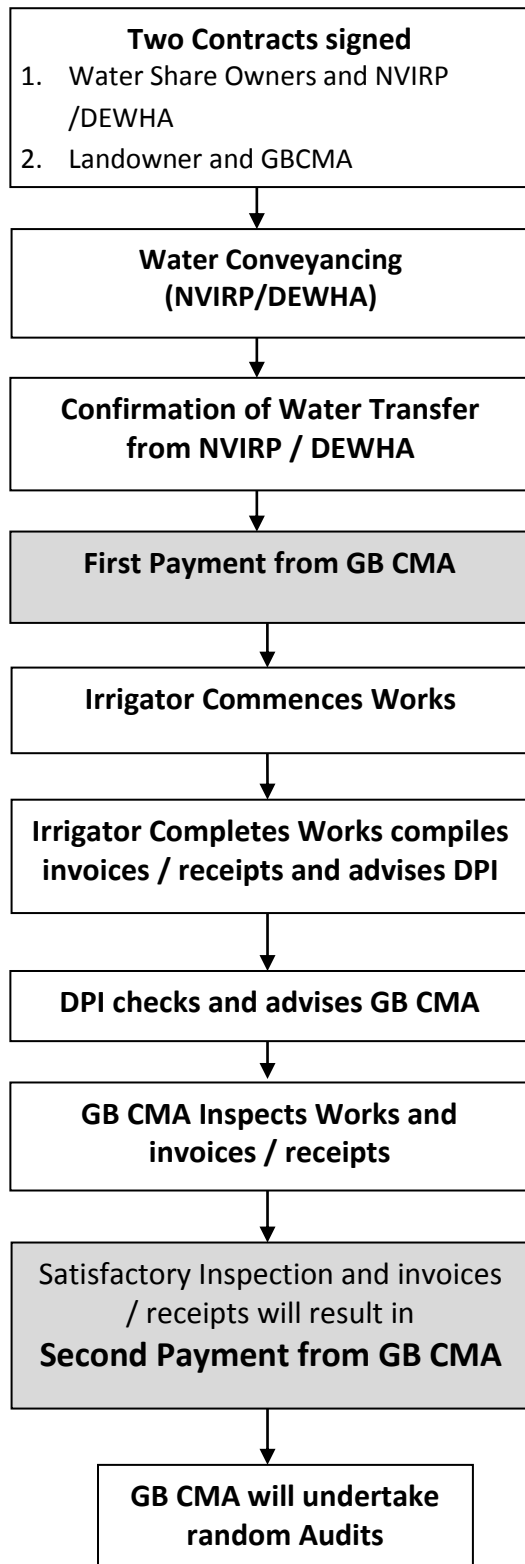
The Commonwealth Government has not announced a further funding round, but indications are that this may happen in late 2010. There is no automatic funding of projects. Applicants will need to reapply for funding in Round 2 should this occur and will be subject to any guidelines and eligibility criteria.

## Checklist

- GB CMA has correct WEE numbers **(required)**
- WEE is unencumbered ie, mortgages and fees discharged **(required)**
- Quotes for works are obtained **(required)**.
- DPI has a copy of the Whole Farm Plan **(required, check with DPI, they may already have a copy)**.
- GB CMA is advised of any changes to land title or WEE information **(required)**.
- Authorised persons who can sign contracts are identified (ie water share owners, land owners company signatories etc). **(required)**
- WEE volume is the same as the volume being transferred **(optional, division can be done as part of the conveyancing process )**.
- Contact your solicitor / water conveyancer to advise of your intentions **(recommended)**.

## Flow Diagram of the Contracts and Payment process

*Irrigators can commence works once the contracts are signed, but the first payment will not be made until the water is transferred.*



### Department of Primary Industries

DPI project officer for your irrigation area:

**Murray Valley Irrigation Area:** Jeremy Patt DPI Tatura 5833 5222

**Central Goulburn Irrigation Area:** Chris Nicholson DPI Tatura 58335932

**Shepparton Irrigation Area:** Rabi Maskey DPI Tatura 58335378

**Rochester-Campaspe Irrigation Area:** Samantha Longley DPI Tatura 58335254

**Torrumbarry & Pyramid-Boort Irrigation Area:** Michelle Slater DPI Kerang 5452 1266, Adam Taylor DPI Kerang 5452 1266

**North East:** Dennis Watson, DPI Rutherglen (02) 6030 4567.

### Goulburn Broken CMA

**(03) 5820 1100**

David Lawler – Contracts and Inspections  
Vicki Mackenzie – Program Support  
Megan McFarlane – Program Manager

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**Complaints should be addressed to:**

Chris Norman  
Chief Executive Officer  
PO Box 1752, Shepparton, 3632

FAQs and other information such as sample contracts are available on the GBCMA website

[www.gbcma.vic.gov.au](http://www.gbcma.vic.gov.au)

