

INQUIRY INTO WATER AUGMENTATION

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Date received: 22 June 2016

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The only organisation that represents the Irrigation Industry in the Peel Valley

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Submission to the

'INQUIRY INTO THE AUGMENTATION OF WATER SUPPLY FOR RURAL AND REGIONAL NEW SOUTH WALES'

General Purpose Standing Committee No. 5 – Legislative Council – Parliament of NSW – June 2016

1. Introduction

The Peel Valley is located in the district surrounding Tamworth, New South Wales. The main products of irrigated agriculture in the region are hay production (predominantly lucerne hay) and dairying. This submission has been prepared on behalf of the Peel Valley Water Users Association, whose members include irrigators and a number of irrigation-dependent businesses in the Tamworth district.

The main focus of this submission is on the huge divergence of water usage charges within the Murray-Darling Basin in NSW, and the grossly excessive water usage charges which apply in the Peel Valley. Other related concerns with water charges more generally are also included as part of this submission.

We believe that our submission falls within the committee's consideration of the 'social, economic and environmental aspects of water management in New South Wales'. Alternatively, we believe that our submission would fall within category 1 (i) of the Terms of reference, which specifies that the General Purpose Standing Committee No. 5 will inquire into (i) any other related matter.

2. Definition of the main problem

General Security Regulated River water usage charges in the Peel Valley are \$58.83 compared to \$5.27 in the Murrumbidgee (per Megalitre). These water usage charges in the Peel Valley are clearly excessive, inequitable and anti-competitive when compared to other valleys in the Murray-Darling Basin, as highlighted in the following table -

River/Valley	Prices determined by ACCC for WaterNSW 2015/16 year	Prices proposed by DPI Water in 2020/21	Total General Security Water usage Charges (per ML)
	Usage Charge (per ML)	Usage 'Water Take' Charge (per ML)	
Peel	\$52.27	\$6.56	\$58.83
Namoi	\$19.80	\$1.89	\$21.69
Lachlan	\$19.33	\$2.10	\$21.43
Macquarie	\$15.89	\$1.88	\$17.77
Gwydir	\$11.89	\$1.53	\$13.42
Border	\$10.18	\$1.86	\$12.04
Murray	\$6.40	\$1.15	\$7.55
Murrumbidgee	\$4.28	\$0.99	\$5.27

The problem will continue to get worse for the Peel Valley, because although most other valleys in the Murray Darling Basin are at the level of 'full cost recovery', the Peel Valley is still not yet at 'full cost recovery', and therefore further increases in water usage prices in the Peel Valley are imminent. On 18th April 2016 WaterNSW issued a draft pricing document which indicates that WaterNSW is seeking water usage charges in the Peel Valley in 2020/21 of \$71.03, at which time the total water usage charge will be \$77.59 per megalitre (\$71.03 for WaterNSW and \$6.56 for DPI Water) – plus CPI increases in the interim.

All that the irrigators in the Peel Valley have ever sought is a 'fair go' in terms of equitable water charges. The previous table of water usage charges is the absolute opposite of a 'fair go', or a 'level playing field', or the promotion of competition and fair trading, or the adoption of equitable pricing policies by State owned monopolies.

This Association has repeatedly lodged submissions (and also appeared at various Public Hearings) to Water NSW, DPI Water, the ACCC, IPART, and met with numerous politicians in both the NSW State and Commonwealth Governments. To date, no individual who is currently in any of the organisations mentioned has ever made a genuine attempt to rectify this grossly unfair pricing regime. To date, we have not made any progress towards having a more equitable system of water charging introduced for the Peel Valley.

The members of this Association simply cannot understand how such grossly inequitable water usage charges in the Peel Valley are allowed to exist, let alone how the charges are allowed to continue to escalate.

3. The role of the Regulators

Until recently, there have been two regulators involved – the ACCC was responsible for the regulation of the charges levied by WaterNSW, and IPART regulated the charges levied by DPI Water.

We would have reasonably expected that there was no way that either the ACCC or IPART would have approved such excessive, inequitable, unfair and anti-competitive pricing in the Peel Valley.

This view is based on the following facts:

- (a) Both of the regulators involved with reviewing the prices that are set by State owned monopolies (the ACCC and IPART) have continued to approve prices that are not only discriminatory and inequitable, but they are also possibly illegal.

The Commonwealth Water Act 2007 states that 'the water charging objectives are to avoid perverse or unintended pricing outcomes'. We believe that the existing water usage charges in the Peel Valley are in fact 'perverse', and therefore in breach of the Commonwealth Water Act 2007, and therefore illegal.

Neither the ACCC nor IPART (nor anyone else) will provide us with the definition of what constitutes a 'perverse' pricing outcome, nor is the term defined in the Act (although we sought the inclusion of a definition in a recent review of the Act).

- (b) 'Valley based pricing' does not equate to 'user pays pricing' - the total combined water usage in the Peel Valley by both Tamworth Regional Council and the Peel River irrigators is only 5% of the long term average annual end of stream flow in the Peel River. Therefore, 95% of the water in the Peel River flows downstream to the Namoi Valley.

Given that under the Peel Water Sharing Plan, the two major stakeholders in the Peel Valley can collectively only access 5% of the average annual end of stream flow, it is absurd that the Peel Valley water users are compelled to pay 100% of the user share of costs in return for access to only 5% of the available water.

Is it really an objective of the National Water Initiative to introduce a fair ‘user pays’ system for water? If so, then the accounting methodology that has been adopted by the two State-owned monopolies does not achieve that objective.

- (c) The water usage charges do not reflect the actual cost - Clearly it doesn’t cost about eleven times more to supply water in the Peel Valley than it costs in the Murrumbidgee (nor almost 3 times more than the Namoi Valley).

The simple fact is that there are fewer irrigators in the Peel Valley than there are in other valleys, and therefore there are fewer irrigators to share the cost burden in the Peel Valley.

But therein lies a fundamental flaw in the existing water charge rules. The rules are doggedly linked to a ‘valley based pricing’ methodology, which clearly does not result in a ‘user pays’ methodology.

The total user share of the costs in the Peel Valley are no higher than in other valleys, so correspondingly the water charges in the Peel Valley also ought to be no higher than in other valleys. And therefore the Peel Valley water users should not be charged the excessive and inequitable water usage charges that are currently in place.

The Peel Valley water users should not continue to be punished by flawed rules, which are being imposed by State-owned monopolies, and are being tacitly supported by their regulators.

- (d) Have the regulators considered the environmental consequences of the existing water charge rules? The following table shows the actual water usage in the 2013/14 water year, and in general terms, the valleys with the highest water usage – and therefore the highest ‘environmental footprint’ – are the valleys that pay the lowest charges for their water usage.

Conversely, the Peel Valley - which has the lowest water usage, and therefore has the lowest ‘environmental footprint’ - pays the highest water charges in NSW.

This is ought not to be the outcome of the pricing methodology that has been adopted by two State-owned monopolies, because it clearly produces a ‘perverse outcome’ for the environment.

It is doubtful whether the regulators have adequately considered this outcome in their review of the water charges.

Valley	Actual water usage 2013/14	% Of total Water Usage	General Security Water Usage Charges (\$/ML)
Murray	2,056,031	39.22%	7.55
Murrumbidgee	1,782,634	34.00%	5.27
Gwydir	407,295	7.77%	13.42
Namoi	270,507	5.16%	21.69
Macquarie	268,934	5.13%	17.77
Lachlan	242,067	4.62%	21.43
Border	197,437	3.77%	12.04
Peel	17,307	0.33%	58.83
Total usage	5,242,211		

- (e) Water usage charges do not reflect the reliability of access to water – The Peel Valley general security water usage charges are the highest in the Murray Darling Basin, yet the Peel Valley has the lowest reliability of access to water of any valley in the Murray Darling Basin.

The Available Water Determination in the Peel Valley in the 2015/2016 water year was 17%, in the previous year it was zero, and (at the date of preparing this submission) it will also be zero in the 2016/2017 water year.

It is incongruous that the valley with the lowest reliability of access to water should be paying the highest water usage charges in the Murray Darling Basin.

- (f) The ‘reasonable person test’ - The foundation of legal judgements in the British legal system is the ‘reasonable person test’.

Applying the ‘reasonable person test’ to the water charging rules would ask the question ‘what would a reasonable person consider is fair’?

We do not believe that rules which produce a pricing outcome for the same product that ranges from \$5.27 to \$58.83 per ML would pass the ‘reasonable person test’.

The fact that this range of charges is levied on the same commodity, across the same state of Australia by the same two State-owned monopolies, and approved by the same regulators simply beggars belief.

4. Other related concerns with water charges:

(a) Tamworth Regional Council

Tamworth Regional Council is a major stakeholder in the debate about the excessive water usage charges that are levied in the Peel Valley, because the Council pays both High Security Entitlement and Usage charges on the water which they draw from the Peel River, and which they then supply to the 55,000 residents in the Tamworth area.

This Association is not authorised to comment on the Council’s position in regard to water charges in the Peel Valley, but the Council’s opinion is vitally important in this long running and as yet unresolved debate.

(b) The system of charging for water in NSW is an abomination

There are two State-owned monopolies that separately levy charges for water – Water NSW and DPI Water. The obvious duplication of costs is an unnecessary burden which falls on water users. Added to that duplication of costs is the ever growing population of bureaucrats, which is accompanied by no apparent increase in service levels to the water users, and whenever there is a contentious issue each organisation points the finger of responsibility at the other.

There are also two separate regulators – the ACCC regulates WaterNSW, while IPART regulates DPI Water. Recently, the ACCC subcontracted IPART to complete its future regulatory responsibilities in regard to WaterNSW, but the effectiveness of that arrangement has not yet been tested in practice.

Why on earth is there a requirement for two separate state-owned monopolies (and their regulators) to be involved with charging for water in NSW?

Both of the government owned monopolies levy a two-tiered fee structure – an entitlement charge which is levied on the whole entitlement regardless of whether any water is used (or available), and a usage charge which is levied on the volume of water actually used. Both state-owned monopolies are strenuously arguing for a higher entitlement charge, which is being strenuously resisted by most of the water user groups across NSW.

In the Peel Valley, the main current argument is with the inequity of the water usage charges. While there are also concerns with the entitlement charges in the Peel Valley, they are of a secondary nature at this stage.

(c) The bureaucrats have overcooked the complexity of calculating water charges

Members of the inquiry might like to seriously consider whether ‘one-upmanship’ in both of the state-owned monopolies and their regulators has allowed self indulgent bureaucrats to excessively and unnecessarily complicate the calculation of bulk water charges. If required, examples of the unnecessary complexity are available on request from this Association.

Clearly, the excessive complexity does not produce a fair and equitable charging outcome for the Peel Valley.

We believe that simpler water charging rules would produce a much more equitable outcome.

(d) Anomalies with the Peel Water Sharing Plan

The Peel Water Sharing Plan was rushed through in order to meet an arbitrary completion deadline, and it contains a number of glaring errors which ought to be corrected. For example –

- An Environmental Contingency Allowance (ECA) now provides 5,000 ML of water from Chaffey Dam to the environment annually. However, the water that is provided by this arrangement is only treated as ‘environmental water’ while it is in the Peel River – once it joins the Namoi River it is no longer treated as ‘environmental water’ and it is available for pumping by Namoi Valley irrigators.

This is a gross anomaly for at least two reasons – first, there is no justification for such a large ECA, given that the Peel Valley already provides 95% of the long term annual average end of stream flow to the environment and downstream irrigators in the Namoi Valley, and second, it is grossly unfair that the water users in the Peel Valley must pay the full charges on the ECA when they cannot access it and it is gifted to the Namoi Valley.

- The irrigators are restricted by the Water Sharing Plan to a Long Term Average Annual Extraction Limit of only 6,100ML per year, compared to the total entitlement of all licences held of 31,000 ML. The fact that irrigators pay entitlement fees on the full total of 31,000 ML is a glaring anomaly, and it means that the effective entitlement charges in the Peel Valley are around five times higher per ML than the entitlement charges that are set by the state owned monopolies.

(e) Minister Blair’s impending announcement on water usage charges in the Peel Valley

The NSW Minister for Water (The Hon. Niall Blair, MLC) indicated that within 6 to 8 weeks from a previous meeting on 26th February 2016, representatives from his office would visit Tamworth to announce a ‘solution’ to the problem of excessive water charges in the Peel Valley. At the date of preparing this submission, 14 weeks have passed since the previous meeting on 26th February, and despite several requests there is no indication as to when a follow-up meeting will be held.

5. Conclusion

This Association submits that producers in the Peel Valley are being significantly economically disadvantaged compared to producers in other valleys by the inequitable and unfair pricing policies that have been implemented by State-owned monopolies.

This Association also submits that the two regulators who have held the responsibility for regulating the State-owned monopolies have been ineffective in so far as they have not ensured that the prices that are charged by the state owned monopolies are either equitable, or promote competition and fair trading across NSW.

It appears that a complete overhaul of the method of charging for water in NSW is now the only way to rectify the problem of inequitable water charges in the Peel Valley, because none of the current state or Commonwealth politicians or the bureaucrats in DPI Water, or WaterNSW, or the ACCC or IPART is prepared to tackle the issue.

One of the fundamental obstacles to resolving the problem is the fact that there is a large industry of bureaucrats which has developed around water charging and related matters, and that industry is ever-growing (but non-productive). The bureaucrats are fiercely defensive of their jobs and conditions, and the water users are forced to pay ever increasing charges for no appreciable improvement in service levels.

For the Peel Valley, this is an unsustainable business model that will inevitably end badly unless the required remedial action is taken very soon. Due to the inequitable water usage charges, it is already cheaper to import hay to the Tamworth region (from Gatton, Cowra and Scone) than to produce it locally. Previous State and Commonwealth Governments joined with the Tamworth Regional Council to fund an equine industry around Tamworth, centred on the Australian Equine and Livestock Events Centre. It is a tragedy that the fundamentally flawed water pricing policies adopted by state-owned monopolies will close down the hay production industry in the Tamworth region.

It is also a tragedy that none of our elected political representatives appear to have the slightest interest in fixing what is a well understood, long standing and obvious inequity that has been imposed upon the Peel Valley by state-owned monopolies for several years.

Therefore, because of a combination of the arrogant attitude of many senior bureaucrats and the ongoing lack of action by our elected representatives, a number of the members of this Association have reached the conclusion that the only solution to the inequitable water charges in the Peel Valley is a legal challenge to the validity of the grossly inequitable water charges in the Peel Valley, thereby forcing a complete overhaul of the water charging system in rural NSW.

We sincerely hope that this Upper House Inquiry will trigger the necessary action to rectify the problem of inequitable water pricing in the Peel Valley, and that legal action will therefore not be necessary.

CC Kevin Anderson, MP; The Hon Barnaby Joyce, MP, Member for New England; Commissioner Mick Keogh, ACCC; Bruce Logan, Tamworth Regional Council.