

Peel Valley Water Users Association Inc

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

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Review of the Water Charge Rules
Australian Competition and Consumer Commission
GPO Box 520
Melbourne Vic 3001

1st March 2016

By electronic mail to: waterchargerules@acc.gov.au

Dear Commissioners

Re: Submission in response to the ACCC's Draft Advice on the review of the Water Charge Rules

Thank you for the opportunity to comment on the Review of Water Charge Rules Draft Advice.

As you are probably aware, irrigators in the Peel Valley who are represented by this organisation are not satisfied with the findings of the ACCC's review of water charge rules, for the reasons that are explained in the attached summary.

It is our view that the ACCC has not fully discharged its obligations as an independent regulator, and has also not fulfilled its obligations to 'promote competition and fair trading and regulate national infrastructure to make markets work for everyone'.

Given the information that we have previously presented to the ACCC in our earlier submissions, and to the ACCC's Public Forum in Tamworth on 24th August 2015, and to ACCC staff in a teleconference on 18th February 2016, we would have expected that the ACCC would have had sufficient grounds to warrant taking a wider view of the impact of the existing water charge rules on irrigators in some of the valleys in the Murray Darling Basin, including in particular the Peel Valley.

In our opinion, it appears that the ACCC is more concerned with finding reasons to justify the status quo with water charge rules, rather than focusing on identifying solutions to what is an obvious problem of undeniably inequitable and unfair pricing outcomes which are imposed on the Peel Valley by flawed rules developed by Government owned monopolies.

We remain keen to work with the ACCC and with other agencies to have the problem of inequitable and unfair water usage charges in the Peel Valley rectified.

Yours sincerely

Jannine Miles
Joint President

Tom Woolaston
Joint President

Cc: Kevin Anderson, MP; The Hon Barnaby Joyce, MP, Member for New England; Bruce Logan, Tamworth Regional Council.

Reasons why the Peel Valley Water Users Association is disappointed in the findings of the ACCC's Draft Advice on the review of water charge rules

1 Definition of the main problem

The problem is that the Regulated River General Security water usage charges in the Peel Valley are excessive, inequitable and anti-competitive compared to other valleys in the Murray-Darling Basin.

Regardless of the grounds on which the ACCC attempts to justify the following charges, the fact remains that it is the acknowledged role of the ACCC to prevent inequitable charges such as those that are currently being charged in the Peel Valley by Government owned monopolies.

If these inequitable outcomes are a result of the rules that produce them being deficient, then we believe that it is the responsibility of the ACCC to implement a process to modify the rules - so that fair and equitable pricing outcomes are achieved within the one Basin.

The following table highlights the problem –

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

We again invite the ACCC to explain to us in writing, how the above charges in the Peel Valley can be justified as being either fair or equitable, compared to any other valley in the Murray Darling Basin.

Whilst we accept that the above charges may actually comply with the existing water charge rules, we would have anticipated that in its review of those very same rules, the ACCC would have paused to consider that if the pricing outcomes that are produced by the rules are inequitable, then there is good cause to amend the rules.

Regrettably, the ACCC did not arrive at that conclusion, and instead appears to have simply concluded that that the pricing outcomes comply with the existing rules, and therefore the pricing outcomes must be good enough.

2 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 – which are doggedly linked to a 'valley based pricing' methodology, and do not reflect a 'user pays' methodology.

The total user share of the costs in the Peel Valley are no higher than in other valleys, so the water charges in the Peel Valley also ought to be no higher than in other valleys, and consequently 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 Government-owned monopolies, and are being supported by their regulators.

3 The ACCC appears not to have given consideration to future water charges in the Peel Valley

The pricing differential between the Peel Valley and every other valley in the Murray-Darling Basin will soon get worse.

While most other valleys in the Murray-Darling Basin are already at 'full cost recovery' levels, the Peel Valley is still at only around 66% of 'full cost recovery'.

Therefore, over the next few years the water usage charges in the Peel Valley will increase by at least a further 50% from where they are today.

At 'full cost recovery', water usage charges in the Peel Valley will be around \$88 /ML compared to \$5.27 /ML in the Murrumbidgee.

It appears that in its review of the rules, the ACCC has accepted that even at those levels, the future charges in the Peel Valley will be satisfactory, simply because they will comply with the existing rules.

Once again, we invite the ACCC to explain to us in writing, how charges of around \$88 in the Peel Valley can be justified as being either fair or equitable, compared to any other valley in the Murray Darling Basin, whose charges will not increase by more than CPI from the figures shown in the table on page 1 of this document.

3 Has the ACCC properly considered the intent of the Commonwealth Water Act?

Both of the regulators which are involved with reviewing the prices that are set by Government 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.

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).

Whilst we acknowledge that this matter was briefly referred to in the Draft Advice under Recommendation 4-A, we believe that it did not receive the level of importance that it deserves.

Recommendation 4-A states - *'The ACCC will review its guidance materials and work with Basin State regulators and other industry stakeholders to develop more practical and detailed guidance on the interpretation of, and the interaction between, the basin Water Charging Objectives and Principles. This will include: interpretation of key terms such as "perverse or unintended pricing outcomes"....'*

Unfortunately, we consider that under the circumstances, this statement is too vague to be helpful.

If Government owned monopolies are currently in breach of the Commonwealth Water Act, and if they have possibly been in breach of the Act for some time, then we would have expected that the Regulator and the reviewer of the water charge rules would have taken prompt action to have the breach rectified.

Similarly, if a private sector monopoly (or other entity) was in breach of a Commonwealth Act, then we would expect that the ACCC would waste no time in having the breach remedied.

It is simply farcical that the Regulator and the reviewer of the water charge rules can continue to approve rules which produce charging outcomes which clearly appear to be in blatant breach of the Commonwealth Water Act 2007, yet they cannot provide the criteria on which they rely in reaching their decision.

4 '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 highly inappropriate that the Peel Valley water users are charged 100% of the user share of costs in return for access to only 5% of the available water.

If the objective of the National Water Initiative is to introduce a fair 'user pays' system for water, then the accounting methodology that has been adopted by the two Government-owned monopolies clearly does not achieve that objective.

5 Has the ACCC 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 Government-owned monopolies, because it clearly produces a ‘perverse outcome’ for the environment.

It is not clear whether the ACCC has adequately considered this outcome in its review of the water charge rules

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		

6 Tamworth Regional Council is a major stakeholder

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.