

Peel Valley Water Users Association Inc

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

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Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

30th April 2015

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

Dear Sir/Madam

Re: Water NSW - Draft Decision - Annual Review of Regulated Charges 2015 - 16

For the second time in less than 12 months, we are objecting to a decision by the ACCC, because the decision is unfair, inequitable, and discriminatory against the Peel Valley and the City of Tamworth.

The end result from the ACCC's draft decision is that in the next financial year, the Peel Valley will be charged \$52.48 per ML for water usage while the Murrumbidgee will be charged \$4.31 and every other valley in the Murray Darling Basin will be charged varying amounts that are all less than \$20 per ML.

This is a grossly unfair and inequitable pricing outcome from the nation's principal regulator, and it impacts on 55,000 residents in the City of Tamworth, as well as all of the businesses and irrigators in Tamworth and the surrounding district.

We therefore object to the ACCC's draft decision because we contend that the ACCC has abrogated its responsibilities to promote competition and fair trading. Our objection is based on the following grounds, as detailed in the attached pages:

1. The ACCC has now breached the 10% price cap for the Peel Valley, which the ACCC itself implemented less than 12 months ago
2. The ACCC should not be "constrained" by arbitrary rules that are set by another bureaucracy
3. The ACCC's decision is probably in breach of the law of the Commonwealth of Australia
4. A number of other reasons, as previously submitted, and contained in our submissions to the ACCC dated 26/10/13 and 16/4/14

We therefore respectfully request that the ACCC reconsiders its position in regard to the proposed water usage charges in the Peel Valley. Representatives of this Association, and probably also Tamworth Regional Council, are available to provide any additional information that may be required by the ACCC in the process of reconsidering the draft decision and arriving at a Final Decision.

Yours faithfully

Ildu Monticone
President
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Cc The Hon Barnaby Joyce, MP, Member for New England
Tamworth Regional Council

1. The ACCC has now breached the 10% price cap for the Peel Valley, which the ACCC itself implemented less than 12 months ago

The Draft Decision by the ACCC is to increase the water usage charges in the Peel Valley from \$45.56 per ML in 2014/15 to \$52.48 per ML in 2015/16. This represents an increase of 15.2% in one year.

However, in the Final Decision which was handed down on by the ACCC on Thursday 26th June 2014 – just 10 months ago, the ACCC was at pains to cap the increase in water usage charges in the Peel Valley at 10% per annum - for the 3 year period of the review - up to and including the 2016/17 financial year.

Reproduced below is some text from Page 11 of the ACCC's Final Decision - which in this section alone - makes 6 references to a cap of 10% for the 3 year review period.

It is therefore untenable that about 10 months after that decision was delivered, in the Draft Decision which is currently under review, the ACCC is now proposing to breach the cap which the ACCC itself determined in June last year.

What is the point of the ACCC setting a 10% cap for 3 years, when the cap is breached by the ACCC within the first year?

This makes a mockery of the ACCC's ability to set a pricing determination and then adhere to it for a 3 year review period.

'Charges for Peel valley

The ACCC received 36 submissions on its draft decision on charges for the Peel valley, which incorporated a 10% cap on annual price increases over the 2014-17 regulatory period. The cap was proposed to mitigate a price shock that would occur if charges moved to full cost recovery as proposed by State Water over the 2014-17 regulatory period.

State Water's proposal would have resulted in high and general security entitlement charges in the Peel valley increasing by up to 169 per cent and 264 per cent respectively, and usage charges increasing by up to 79 per cent, in 2014-17 compared to current charges. The ACCC considered that State Water's proposal would result in a perverse pricing outcome and would not meet the Basin water charging objectives and principles (BWCOPs).

Currently, charges in the Peel valley recover around 88 per cent of State Water's cost of providing services in that valley. The costs to service the Peel valley are spread over a relatively small number of water entitlements for irrigators and other users compared to other NSW MDB valleys. This results in a higher cost per megalitre of entitlement to service the Peel valley compared to other NSW MDB valleys.⁴

⁴ The number of water entitlements available in the Peel valley is not set by the ACCC. Water entitlements in the Peel valley are determined by the Water Sharing Plan for the Peel Valley Regulated, Unregulated, Alluvium and Fractured Rock Water Sources 2010, which is approved by the Minister responsible for water in NSW.

As discussed in the draft decision, the ACCC considered whether it would be possible to reduce charges in the Peel Valley. It considered applying an alternative methodology for forecasting water extractions based on the potential for the Chaffey Dam extension to increase water extractions in the 2014-17 regulatory period. However, further analysis showed that this is unlikely to have a material impact in this period. Notwithstanding this, the ACCC's assessment of State Water's cost forecast for the Peel valley is that the efficient level of costs to service the valley is around 21 per cent lower than the costs proposed by State Water over the 2014-17 period.

IPART has applied valley specific charges to MDB valleys since its first determination of bulk water prices in 1996, with charges reflecting valley specific costs of providing services in all MDB valleys except the Peel. The ACCC's draft decision was to continue the 10% cap on annual price increases 12 ACCC Final decision on State Water Pricing Application: 2014-15 – 2016-17. currently applied by IPART to the Peel valley and recommend that the NSW Government give consideration to continuing its subsidy for the Peel valley in the 2014-17 regulatory period.

Submissions on the ACCC's draft decision on charges in the Peel valley generally referred to equity issues, comparing the price of water in the Peel valley with other MDB valleys serviced by State Water. The alternatives to the ACCC's draft decision raised by stakeholders in submissions included postage stamp pricing across all MDB valleys and the merger of the Namoi and Peel and potentially other valleys for pricing purposes. These alternatives and variations thereof were raised with the ACCC in submissions and in discussions with ACCC staff prior to the ACCC's draft decision. A range

of regulatory and policy options to implement these alternatives were canvassed in submissions, including cross subsidies between NSW MDB valleys, direct government subsidies and legislation to determine postage stamp pricing across all MDB valleys.

State Water's submission noted that the ACCC should explain how its approach to charges in the Peel valley is more consistent with the Basin water charging objectives and principles compared to alternative approaches.

The ACCC has considered the submissions it received in response to its draft decision. As noted in the ACCC's draft decision, options involving cross-subsidies between valleys, such as combining valleys for pricing purposes, would result in price increases in other valleys and charges being less cost reflective and transparent at the valley level. Having considered submissions the ACCC maintains its support for valley based cost reflective pricing in this final decision. The ACCC considers that **continuing a cap** on annual price increases in the Peel valley, and a NSW Government subsidy to support this, would best meet the Basin water charging objectives and principles. This approach averts a price shock and the perverse pricing outcome that would occur if prices moved immediately to full cost recovery over the 2014-17 period, and recognises the need for community service obligations (subsidies) where full cost recovery is unlikely to be achieved, as set out in the BWCOPs. The ACCC's final decision is to implement a **10% cap** on annual price increases in the Peel valley over the 2014-17 regulatory period consistent with its draft decision.

State Water's charges in the Peel valley did not fully recover its costs of providing services in that valley in the 2006-10 or the 2010-14 regulatory periods and IPART capped annual price increases in the Peel valley at 15 per cent and **10 per cent** in these periods, respectively. Consistent with IPART's 2010-14 determination, the NSW Government provided an operating subsidy to State Water for the Peel valley over the 2010-14 regulatory period.

State Water advised the ACCC on 30 May 2014 that it understood the NSW Government would not be providing an operating subsidy in the Peel valley over the 2014-17 period to cover the shortfall in revenue caused by the ACCC's **10 per cent cap** on prices, and that the NSW Minister for Water would be writing separately to the ACCC on this matter.

At the time of this final decision the NSW Minister for Water had not confirmed with the ACCC whether the NSW Government would be providing a subsidy for the Peel Valley over the 2014-17 regulatory period. The ACCC maintains that the NSW Government should give consideration to the continuation of a subsidy for the Peel Valley in the 2014-17 regulatory period. Such a subsidy would be consistent with the BWCOP's recognition of the need for community service obligations (subsidies) where full cost recovery is unlikely to be achieved.⁵

⁵ The subsidy to State Water's operating costs would be around \$350,000 (\$2013-14) over 2014-17. ACCC Final decision on State Water Pricing Application: 2014-15 – 2016-17 13 ' As discussed above, the ACCC engaged Deloitte to consider State Water's submission that the ACCC's tariff design and unders and overs mechanism would place undue financial risk on State Water. Deloitte's analysis assumed that real price increases in the Peel valley would be capped at 10 per cent annually consistent with the ACCC's draft decision. Deloitte concluded that it is unlikely that State Water's financial viability over the 2014-17 regulatory period would be placed at risk by the ACCC's tariff design, unders and overs mechanism or its **10% cap** on annual price increases in the Peel valley.

2. The ACCC should not be "constrained" by arbitrary rules that are set by another bureaucracy

On page 1 of the Draft Decision, the following statement is made – 'However, the ACCC is constrained by the tests in the WCIR'.

It is unbelievable that the principal regulatory authority in Australia believes that it has to be to be 'constrained' by rules or regulations that have been established by any other government bureaucracy.

The ACCC ought to be free to make decisions that are unfettered by other government bureaucracies. Where the ACCC believes that 'constraints' impact on their ability to make proper and equitable decisions, then the ACCC ought to have the authority to have those 'constraints' removed or rectified.

3. The ACCC's decision is probably in breach of the law of the Commonwealth of Australia

Schedule 2, Part 2 of the Commonwealth Water Act (2007) prohibits the imposition of water charges that produce a 'perverse pricing outcome'.

We believe that the following pricing structure is 'perverse' with regard to the prices in the Peel Valley, compared to every other valley in the Murray Darling Basin –

<u>Valley</u>	<u>2015/16 Usage charge (\$/ML)</u>
Peel	52.48
Namoi	19.90
Lachlan	19.36
Macquarie	15.94
Gwydir	11.90
Border	10.26
Murray	6.65
Murrumbidgee	4.31

The ACCC is obviously of the opinion that this is not a 'perverse pricing outcome' with respect to the Peel Valley.

We now request that the ACCC provides us with the definition for a 'perverse pricing outcome' that the ACCC has used to determine that this pricing structure is not 'perverse' in the case of the Peel Valley.

Unless the ACCC is able to provide us with such a definition, we maintain that the ACCC's draft decision is probably in breach of the Commonwealth Water Act 2007.

4. A number of other reasons, as previously submitted, and contained in our submissions to the ACCC dated 26/10/13 and 16/4/14

- (a) Water usage charge: No other commodity is priced on such an unfair, inequitable and discriminatory basis in NSW. We have often quoted the comparison between water pricing and petrol pricing - if petrol was priced in NSW on the same basis as water, the ACCC would pursue the petrol company until somebody was put behind bars forever. Why then, does the ACCC allow a Government owned monopoly to charge an absurdly wide range of prices for the same basic quantity of water?
- (b) Water usage charge: On page 3 of the ACCC's draft Decision, reference is made to a CPI of 1.7%. Given that rate for CPI, how can the principal regulator in Australia possibly justify an increase of 15.2% in water usage charges in the Peel Valley from 2014/15 to 2015/16?
- (c) General Security entitlement charge: The Peel Valley has the most unreliable access to water in the entire Murray-Darling Basin, and any increase in the fixed General Security entitlement charge is unwarranted.

In the Peel Valley, the General Security Available Water Determination in 2013/14 was 45%, in 2014/15 it was 0, and in 2015/16 it will again be 0 – unless there is a massive amount of rain in the catchment area. Therefore, an increase in the General Security Entitlement charges is unjustifiable in the Peel Valley.

How can the ACCC possibly justify any increase at all in the fixed General Security charges for water in the Peel Valley when Water NSW is unable to provide any General Security water?

- (d) High Security entitlement charge: Whilst the High Security entitlement charge mainly affects Tamworth Regional Council (and we are not authorised to comment on their behalf), there are a few High Security irrigation Licence holders in the Peel Valley. The ACCC should reflect on the following table of High Security entitlement charges, and provide a justification for the wide range of fixed charges – particularly since the Peel Valley is again the standout with the highest charges in the Murray-Darling Basin.

It is unacceptable that the ACCC permits such a wide range of charges, and it is unacceptable that the Peel Valley is charged more than double almost every other valley in the Murray-Darling Basin - and almost 9 times more than the valley with the lowest High Security charge.

<u>Valley</u>	<u>2015/16 High Security Entitlement Charge (\$/ML)</u>
Peel	31.77
Namoi	16.89
Lachlan	14.87
Macquarie	14.39
Gwydir	14.01
Border	11.28
Murray	4.97
Murrumbidgee	3.65

- (e) Increases in water usage charges: The following table demonstrates the inconsistent approach that has been adopted again by the ACCC in determining the increases in water usage charges –

Valley	2014-15	2015-16	Increase \$/ML
Peel	45.56	52.48	6.92
Macquarie	13.99	15.94	1.95
Border	6.37	10.26	3.89
Lachlan	17.89	19.36	1.47
Murrumbidgee	3.40	4.31	0.91
Murray	2.49	6.65	4.16
Namoi	19.37	19.90	0.53
Gwydir	11.80	11.90	0.10

From this table, it is obvious that there is no consistency in the dollar amount of the increase applied by the ACCC. It is unacceptable that the Peel Valley, which is already paying the highest usage charges in the Murray-Darling Basin, has once again had the highest price increases in the Murray-Darling Basin inflicted on them by the ACCC.

- (f) Information missing from the ACCC Draft Decision: In Attachment B of the ACCC's draft Decision, Tables B1, B2, and B3 all show 'Factors contributing to price changes' for all valleys excepting the Peel Valley.

Will the ACCC please either explain why the Peel Valley has been excluded, or alternatively will the ACCC please provide the relevant information for the Peel Valley to us?