



**Office
of Water**

Mr James Cox
Chief Executive Officer
Independent Pricing and Regulatory Tribunal of NSW
Level 8, 1 Market Street
SYDNEY NSW 2000

File ref: CW09/12

Dear Mr Cox

DELAY IN NOW'S SUBMISSION FOR 2010 BULK WATER PRICE REVIEW

I am writing to advise you that a series of significant institutional changes to water management are underway at the Commonwealth level. These changes will have flow-on impacts on the NSW Office of Water's (NOW) future water management activities and the costs for undertaking those activities over the proposed Determination period.

The NSW Government is currently in negotiations with the Commonwealth Government on many of these issues. However, the outcome of these negotiations, and therefore their impacts on NOW's future costs is not yet clear.

The result of this uncertainty is that the forecasts NOW has currently prepared of its required expenditure over the 2010 Determination period are not sufficiently robust to provide a satisfactory basis for the Determination. I believe NOW will be better placed to provide more robust cost estimates when these negotiations are further progressed. Therefore I propose to provide the NOW submission to IPART on 1 December 2009, rather than 11 September as previously proposed.

Some of the areas of uncertainty that could have a substantial impact on NOW's activities, and how much of these are attributable to NSW water users, are discussed below.

Commonwealth's Water Market Rules.

On 16 June 2009 the Commonwealth Minister for Climate Change and Water signed the Water Market rules and Water Charge (termination fee) rules that were recommended by the Australian Competition and Consumer Commission (ACCC). The rules apply from 1 January 2010 and 1 September 2009 respectively. Both have transition periods to allow affected parties time to adjust.

The Water Market rules could potentially have a significant impact on NOW as the rules will enable individual farmers within an Irrigation Infrastructure Operator to apply to 'transform' water held as a share of a group licence into an individual statutory entitlement that can be more freely traded. The transformation of these licences will result in extra activities for NOW, especially in terms of compliance related activities.

Department of
Environment, Climate Change and Water NSW



Given the large number of licences that are held within Irrigation Infrastructure Operators in NSW (especially in the Murray and Murrumbidgee valleys) this change could potentially result in a significant impact on NOW's activities, depending on how the Commonwealth chooses to define an Irrigation Infrastructure Operator.

Further advice from the Commonwealth on this issue is expected in the coming months, and this will help NOW to estimate the likely quantum of cost increases.

The NSW Contribution to the Murray-Darling Basin Authority (MDBA).

The NSW Government is obligated to fund the MDBA \$29 million per year for the next two water years. This contribution is passed on to NSW water users in accordance with the appropriate user shares for the relevant activities that are funded. Negotiations are underway with the Commonwealth as to appropriate funding arrangements after that period, given that the MDBA is now a statutory Commonwealth authority.

Further clarity on NSW's contributions to the MDBA is expected in the coming months and this could have a significant impact on NOW's cost base.

The Basin Plan.

The Commonwealth *Water Act 2007* envisages the introduction of a Basin Plan with which the NSW Water Sharing Plans will need to comply. This could result in additional services and activities that would be required to be undertaken by NOW (such as increased monitoring of river systems to meet standards set by the Basin Plan). A draft Basin Plan is expected to be available in July 2010.

Discussions on the processes for developing the Basin Plan and its direction are currently underway in the Basin Officials Committee, on which NSW is represented by NOW. It is expected that these discussions, and progress towards the draft Plan over the next few months, will provide greater guidance on the potential additional activities that may be required to be undertaken by NOW.

Murray Darling Basin Reform – no net costs

On 3 July 2008 the Commonwealth and NSW Governments agreed, that any additional activities required to be undertaken by the States as a result of implementing the *Water Act 2007* and accelerating the Water Reform Agenda would be funded by the Commonwealth Government. This is known as the No Net Cost Agreement, and is part of the Intergovernmental Agreement on Murray Darling Basin Reform (the IGA). It specifies that additional activities imposed by the Commonwealth are to result in 'no net cost' to the States.

However, in recent months considerable uncertainty regarding the interpretation of what constitutes 'additional' activities has developed. There is now potential for NSW to be required to fund a range of new activities resulting from the reform agenda that NSW had assumed would be funded by the Commonwealth. If this were the case, such additional costs would need to be factored into NOW's submission to IPART, or these activities could not be funded.

NSW Treasury is currently coordinating a NSW submission to the Commonwealth on this issue and therefore further clarity is expected within three months.

Murray Darling Basin Reform – sustaining the basin

Another issue relates to the funding of the NSW State Priority Project under the IGA - *Sustaining the Basin*. This program involves a set of major projects each of which requires significant expenditure. These projects were approved in-principle and included in the IGA signed by the Commonwealth and States on 3 July 2008. Implementation would be subject to due diligence and subject to agreed cost sharing arrangements. These cost sharing arrangements have not yet been resolved. Advice received from the Commonwealth is that a contribution of a minimum of 10 percent of the costs of projects would be expected, with details of what contributes to this contribution still to be agreed.

If the state contribution was to be funded by Government alone, this may equate to approximately \$70 million. The NSW Government is currently in discussions with the Commonwealth Government on this issue. I anticipate that a resolution of the core issue of the 10 percent contribution will be finalised over the next few months. Once the Commonwealth's position on that issue is better known, an estimate of the costs NOW is likely to incur due to the implementation of these projects can be determined.

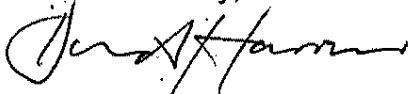
Establishment of the NSW Office of Water.

The recent NSW Government agencies restructure which saw the creation of the new NOW within DECCW has raised some issues that will also affect NOW's costs. These include whether some activities currently performed by other parts of DECCW should now be classified as water management activities, and included into the submission to IPART. If so, processes will be required to ascertain the costs of those activities.

Given these issues, I believe that it is worthwhile delaying our submission until 1 December 2009 to enable us to progress our discussions with the Commonwealth Government on these matters. I recognise that there are likely to be some issues that we will not be able to resolve fully over the next few months. However our submission will be submitted by that date and will identify any outstanding issues and provide some options for dealing with this uncertainty. I do not anticipate any further proposed extensions to the submission date.

I regret that the delay may cause some inconvenience to IPART in its inquiry process. However, I believe that this will enable NOW to provide IPART with more comprehensive and robust cost estimates, and this means IPART will have better information on which to make its Determination.

Yours sincerely,



24.8.09

David Harriss

Commissioner, NSW Office of Water