

Peel Valley Water Users Association Inc

The only organisation that represents the Irrigation Industry in the Peel Valley
PO Box 952, Tamworth NSW 2340
peelvalleywaterusers@bigpond.com

SUBMISSION TO IPART

REVIEW OF PRICES FOR WATERNSW, RURAL BULK WATER SERVICES FROM JULY 2017

RESPONSE TO THE IPART DRAFT REPORT, ISSUED 24 MARCH 2017

This submission has been lodged in response to the comments in the IPART Draft Report regarding the Peel Valley, particularly those comments contained in Appendix D.

However, an important development occurred immediately prior to the release of the IPART Draft Report that deserves IPART's consideration. On 22nd February 2017, the NSW Minister for Water, Minister Niall Blair wrote to the Peel Valley Water Users Association with a proposed solution to the problem of excessive water usage charges in the Peel Valley. The proposed solution (after taking into account the IPART Draft Report) suggested a General Security Entitlement charge of \$4.09/ML and a usage charge of \$18.69/ML. The usage charge is significantly lower than the \$54.97/ML proposed by IPART, and the Peel Valley Water Users Association would support the Minister's proposal because of the significantly lower usage charge.

The key issue with the Minister's solution is that under the proposal the High Security Entitlement charge would be \$42.30/ML, compared to the figure of \$20.77/ML proposed by IPART in the Draft Report. Tamworth Regional Council is the major High Security Entitlement holder in the Peel Valley, and at the Council Meeting on 11th April 2017 the Councillors voted against the Minister's proposal because the net impact would be \$692,000 additional expenditure for the Council over the 4 year period of the IPART review compared to the charges proposed by IPART in the Draft Report.

Tamworth Regional Council has reportedly sought financial compensation from the Minister to offset this additional expenditure, but we understand their efforts have been unsuccessful to date.

We would urge IPART to investigate whether a resolution can be achieved; and to then adopt the Minister's proposed pricing scheme for the Peel Valley.

The Peel Valley Water Users Association's support for the Minister's solution is contingent on the General Security Entitlement charge being set no higher than \$4.09/ML as proposed by the Minister, because as this Association has submitted to IPART on multiple previous occasions:

- (a) The Peel Valley irrigators pay entitlement charges on 31,000ML of entitlement, yet the Water Sharing Plan limits the annual extractions to only 6,100ML. Therefore, the effective General Security entitlement charge for each megalitre used is approximately five times higher than the figure quoted by either IPART or the Minister, namely \$20.79/ML under the Minister's proposal.
- (b) The Peel Valley has had a historically low level of reliability of access to water for General Security irrigators. As shown in Table 1, eleven of the last 22 years have had a start of season AWD of less than 50% (including 8 years of zero allocation). The Peel Valley irrigators strongly object to paying excessive fixed entitlement charges when there is no water available.

If IPART rejects the Minister’s proposed pricing solution, then the PVWUA expects that the following range of Regulated bulk water draft usage charges that have been determined by IPART for all valleys in the Murray Darling Basin will apply:

Table 1 - Water Usage charges proposed by IPART in the Murray Darling Basin effective from 1 July 2017 (all charges are in \$/ML)

Valley	2016-2017	2017-2021	% Change
Peel	58.26	54.97	-5.6
Lachlan	21.12	18.20	-13.8
Namoi	20.26	18.12	-10.6
Macquarie	16.97	11.98	-29.4
Gwydir	12.13	11.00	-9.3
Border	6.60	5.28	-19.9
Murrumbidgee	3.53	3.24	-8.2
Lowbidgee	0	2.09	0
Murray	2.31	2.00	-13.7

It is acknowledged that the draft usage charge in the Peel Valley is marginally less than the current usage charge, and marginally less than the charge proposed by WaterNSW. However, still considering this, the Peel Valley will receive the **lowest percentage reduction** in water usage charges in the **entire Murray Darling Basin** over the next four years.

It is evident that IPART intends to continue to **impose grossly inequitable water usage charges** in the case of the Peel Valley. It beggars belief that IPART cannot recognise that the figures in the above table are excessive, inequitable and unfair on irrigators in the Peel Valley.

The PVWUA offers the following comments in response to the IPART Draft Report:

1. Flawed accounting principle

It does not cost WaterNSW \$54.97 to deliver a megalitre of water in the Peel Valley.

On page 209 of the Draft Report, IPART acknowledges that *'the small customer base means that the price per ML would be higher for Peel valley users than users in other valleys with a larger customer base'*.

IPART has again delivered a price determination that is strongly biased against the Peel Valley. It is a travesty of justice that the regulator continues to approve enormously excessive charges in one valley just because there is a small customer base.

The current pricing policy will always penalise valleys with a small customer base, and the Peel Valley has the smallest customer base and is the smallest water user in the Murray Darling Basin. IPART should accept this as a fault with the current pricing policy, and acknowledge that the existing pricing policy produces outcomes that are inequitable, unintended and unfair.

The IPART website states that *'IPART provides independent regulatory decisions and advice to protect the ongoing interests of the consumers, taxpayers and citizens of NSW'*.

IPART has contravened its obligations in the above statement for the water users in the Peel Valley. How can such an unfair and inequitable pricing policy be endorsed by a self-professed 'independent' pricing regulator?

2. Perverse pricing

The Peel Valley Water Users Association submission to the IPART Issues Paper stated that *'we contend that the water usage charges in the Peel Valley... compared to every other valley in the Murray Darling Basin are:*

- *Unfair*
- *Inequitable*
- *and anti-competitive*
...and undeniably 'perverse'and therefore undeniably in breach of the Water Act, and therefore undeniably illegal.'

The Peel Valley Water Users Association submission also stated that:

'Further, we believe that IPART cannot make a ruling on whether the water usage charges in the Peel Valley are a "perverse pricing outcome" or not unless IPART publishes its definition of the term "perverse pricing outcome". We believe that it is the regulator's role to ensure that a state-owned monopoly is not in breach of the Water Act.'

On Page 210 of its Draft Report, IPART has trivialised the importance of a potential breach of the Water Act, by stating that *'We consider that prices in this determination are not perverse, unfair, inequitable or anti-competitive'* and *'We also consider that the prices in the Peel valley do not produce perverse outcomes.'* IPART has repeatedly ignored the request to define what constitutes a 'perverse or unintended pricing outcome'.

A potential breach of the Water Act by a Government-owned monopoly is a vitally important matter which rightfully ought to be determined by the facts, and not summarily dismissed in an unsubstantiated statement of opinion by the regulator.

IPART is hereby again requested to provide a written definition of the term 'perverse or unintended pricing outcome' that it has used in order to decide that WaterNSW is not in breach of the Water Act.

3. 'Capacity to pay' statement

3.1 Page 210 of the IPART Draft Report contains the following statement:

"As a fundamental pricing principle, prices should be set within the efficient pricing band. The upper limit of this band reflects customers' capacity to pay. Where prices are higher than the upper limit, there is a broad change in customer behaviour. This would include the surrender and return of licences and a clear reduction in water usage.

....However, despite gradual increases in billslicence numbers and entitlement volumes have remained stable and there has been no observable downward trend in water usage in the Peel Valley.'

This clearly indicates that IPART has no regard for the current inequity of the water usage charges in the Peel Valley compared to other valleys in the Murray Darling Basin.

Instead, IPART obviously considers that the charges are fair and reasonable – even until such time as the charge reaches the point at which customers are forced to surrender and return their licences.

The concept that a Government-owned monopoly deliberately increases water charges in one valley until the point at which the water users in that valley are driven out of business by bad Government pricing policy would be abhorrent to most Australians.

The fact that the regulator can actually endorse and promote that pricing policy simply beggars belief.

This is a wholly unacceptable mind-set for the regulator of the bulk water charges imposed by a Government-owned monopoly in NSW.

3.2 IPART has gone to considerable efforts to alleviate the financial burden resulting from high water charges for irrigators in the North Coast and the South Coast of NSW. IPART has commissioned consultants reports and has consulted widely to determine the irrigators' capacity to pay the high charges.

However, as raised at the IPART Public Hearing in Sydney on 4th April 2017, whilst we sympathise with our fellow irrigators in the above two valleys, the water usage charges proposed by IPART in those valleys are \$45.04/ML and \$42.08/ML respectively.

Clearly IPART has serious concerns about the irrigators' capacity to pay in those valleys, but IPART obviously has no such concerns about the irrigators' capacity to pay in the Peel Valley, where the proposed usage charge is \$54.97/ML – about \$10/ML and \$13/ML higher respectively, or about 22% and 23% higher respectively.

This inconsistent approach by IPART is not welcomed by the irrigators in the Peel Valley.

The notion that IPART determines one water usage charge for all customers across the entire Sydney metropolitan area and at the same time determines nine separate and widely divergent water usage charges across the Murray Darling Basin is also inconsistent.

3.3 Unregulated water charged at Regulated water rates

Approximately 61% of the Peel Valley catchment is located below Chaffey Dam. Therefore, a large proportion of the water in the Peel River never enters Chaffey Dam, and is therefore technically unregulated water.

There are a number of significant tributaries that flow into the Peel River below Chaffey Dam before the Peel River joins the Namoi River. These tributaries include Duncan's Creek, Dungowan Creek, Timbumburi Creek, Tangaratta Creek, Goonoo Goonoo Creek, and the Cockburn River.

WaterNSW incurs no costs for supplying this 'regulated' water other than monitoring stations, yet WaterNSW sells all of that water at Full Cost Recovery rates.

This point has been made to IPART previously, and it is unjust that such a large volume of unregulated water is charged at Full Cost Recovery rates.

3.4 The Peel Valley pays 100% of the Full Cost Recovery charges in return for 5% of the water

The Peel Valley Water Users Association has also previously highlighted to IPART that the irrigators and Tamworth Regional Council combined only access 5% of the long term average annual end of stream flow in the Peel River.

Therefore, the irrigators and Tamworth Regional Council should not be responsible for payment of 100% of the Full Cost Recovery charges in the Peel Valley.

If IPART genuinely intends to impose cost reflective charges in each valley, then IPART ought to limit the charges in the Peel Valley to 5% of the Full Cost Recovery charges in the Peel Valley, not 100%.

No credit or recompense has ever been offered by IPART to the Peel Valley for the 95% of water that the Peel Valley supplies downstream, on which Peel Valley water users have already paid 100% of the Full Cost Recovery charges.

4. Price Gouging

The Peel Valley Water Users Association's submission to the IPART Issues Paper requested that IPART explain how the prices in the Peel Valley are not 'price gouging'.

On Page 210 of the Draft Report, IPART states that '*WaterNSW is not price gouging under our determination...*', and then proceeds to explain that the NSW Government needs to recover costs (and make a return on investment), and also that other valleys should not subsidise the Peel Valley.

Regardless of that explanation, the fact remains that a Government-owned monopoly which deliberately increases water charges in just one valley until the point at which water users are priced out of business, is clearly price gouging in that valley.

That is the definition of price gouging.

Therefore, unless IPART uses an alternative definition of 'price gouging', the Peel Valley Water Users Association submits that IPART is permitting price gouging by WaterNSW in the Peel Valley.

It is completely unacceptable that IPART supports and endorses this pricing policy by a Government-owned monopoly.

Further, on Page 209 IPART acknowledged that '*... the small customer base means that prices per ML would be higher for Peel valley users than users in other valleys with a larger customer base.*' In other words, IPART's attitude appears to be that 'there are only a few water users in the Peel Valley; therefore they cannot make much noise about the excessive water usage charges; nobody else cares about the issue because they are not affected; so therefore we will continue to increase the charges regardless of their complaints'.

5. Full Cost Recovery in the Peel Valley

The following statement is made on Page 232 of the *Attachments to the ACCC Draft Decision on State Water Pricing Application 2014-15 to 2016-17*:

'The ACCC notes that historically, prices in the Peel Valley have been set below full cost recovery. In its 2006-10 price determination, IPART stated:

In some valleys full cost recovery could not be achieved without substantial increases in tariffs that would have damaging impacts on users. In some instances (e.g. North Coast, South Coast and Peel), the Tribunal considers that cost reflectivity will never be achieved. In such instance, it considers State Water should review the future of these services and consult with government in those cases where it considers that the service could be recognised as a community service obligation

IPART has subsequently stated that State Water and the NSW Government should assess the long term viability of its operations in valleys such as Peel Valley that are below full cost recovery.'

Despite IPART's own declaration that '**full cost recovery could not be achieved without substantial increases in tariffs that would have damaging impacts on users**' (in the Peel), Section 12.4.3 on Page 144 of the IPART Draft Report states that:

'The Peel valley is now at FCR, achieved in 2016-17.'

IPART has permitted Full Cost Recovery in the Peel Valley, knowing full well that the substantial increases in tariffs would have damaging impacts on users.

On Page 210 of the Draft Report, IPART now contradicts its own original statement with the view that 'We consider that prices in the Peel valley under this determination are not perverse, unfair, inequitable or anti-competitive.'

It is unacceptable for a regulator to recognise that Full Cost Recovery will have damaging impacts on users, then despite that knowledge, proceed to impose Full Cost Recovery charges that have had demonstrable damaging impacts on users, and then declare that 'all is fair and equitable, and competition is being promoted'.

The role both regulators – IPART and the ACCC - in this series of price increases ought to be investigated.

6. Water usage statistics for the Peel Valley

On Page 210 of the Draft Report, IPART makes the statement that:

*'Where prices are higher than the upper limit, there is a broad change in customer behaviour. This would include the surrender of licences and a clear reduction in water usage. However, despite gradual increases in bills over the last three determination periods to reach Full Cost Recovery, licence numbers and entitlement volumes have remained stable **and there has been no observable downward trend in water usage in the Peel Valley**'.* (Emphasis added)

It is inappropriate for IPART to publish statements that are not supported by the facts, and as submitted to the IPART Public Hearing in Sydney on 4th April 2017, this statement is wrong for two reasons:

6.1 'This would include the surrender and return of licences'

Surrender and return of licences would only occur if the entitlement charge was excessive – that is, if the cost of keeping the licence was so great that it was uneconomical to continue to hold the licence. In the Peel Valley the General Security entitlement charge is currently at a reasonable level, so there is no reason for IPART to expect Peel Valley licence holders to surrender their licences due to excessive pricing.

6.2 'There has been no observable downward trend in water usage in the Peel Valley'

This statement is not correct.

The figures in Table 3 were provided by WaterNSW and show the water usage in the Peel Valley from 1995-1996 to the current water year. The figures are shown separately for both the General Security irrigators and Tamworth Regional Council.

The figures in Table 3 (on the following page) have been summarised as follows:

Table 2 – Summary of water usage by irrigators in the Peel Valley – General Security licences

Period	General Security Average Usage (Irrigators)	Decrease In General Security water usage	Comments
1991-1998 Benchmark	7,600ML	-	Peel Water Sharing Plan Clause 39 sub-clause (2) (b)
1995-1996 to 2005-2006	7,013ML	-7.7%	4 zero start of season AWDs Relatively low price increases imposed by IPART
2006-2007 to 2016-2017	5,914 ML	-22.2%	4 zero start of season AWDs Significant price increases imposed by IPART

The figures in Table 2 above clearly demonstrate that there has already been a '*broad change in customer behaviour*' for irrigators – (as separate from Tamworth Regional Council).

The Peel Valley Water Users Association is not authorised to comment on behalf of Tamworth Regional Council, but Council is not seriously concerned about the high water usage charges because the charges are simply passed on to ratepayers (together with a significant mark-up).

IPART needs to recognise that the excessive prices have already impacted on irrigators' behaviour in the Peel Valley, and therefore there is an urgent need for IPART to completely reassess their approach to water usage pricing in the Peel Valley effective from 1st July 2017.

There is ample anecdotal evidence that water usage in recent years has been considerably less than it would have been, directly attributable to the high cost of using water.

There is also evidence that two property sales in the Tamworth area have recently fallen through specifically because of the excessive water usage charges in the Peel Valley. Therefore, the excessive water usage charges are not only affecting the existing producers and local businesses, but they are also impacting on the future economic development of the region.

Further, the Commonwealth Government, NSW State Government and Tamworth Regional Council contributed a total of around \$60 million to build the Australian Equine and Livestock Events Centre in Tamworth, centred on the rapidly growing horse industry in the region. Lucerne hay is the most widely used horse feed for all breeds of horses, and the Tamworth region is ideally climatically suited to lucerne hay production.

Because of the excessive water charges in the Peel Valley, it is now cheaper to transport lucerne hay to Tamworth from areas such as Gatton, Cowra and Scone than produce it in the Tamworth region.

It is contemptible that a long established, clean and green hay production industry - which has been environmentally suited to the local region for several generations – is being forced out of existence by bad pricing policy by a Government-owned monopoly. It is also unacceptable that the bad pricing policy is also supported by a self-professed 'independent' regulator.

Further, it is unacceptable that IPART continues to fail to understand that the excessive and inequitable water charges are already impacting on the Peel Valley irrigation farmers, the associated local businesses operators, and the developing economy of the Tamworth region.

Table 3 - Water usage by irrigators in the Peel Valley

Water Year	Start of Season General Security AWD	End of Season AWD	General Security Water usage (ML)	High Security Water Usage (ML)	Total Water Usage (ML)
1995-1996	0%	30%	4,043	1,899	5,942
1996-1997	10%	65%	3,468	2,173	5,641
1997-1998	100%	100%	9,021	6,999	16,020
1998-1999	100%	100%	2,825	2,736	5,561
1999-2000	100%	100%	5,058	2,251	7,309
2000-2001	80%	100%	5,247	4,994	10,241
2001-2002	100%	100%	9,849	4,822	14,671
2002-2003	60%	60%	12,654	9,151	21,805
2003-2004	0%	35%	5,085	8,240	13,325
2004-2005	0%	65%	10,665	4,500	15,165
2005-2006	0%	45%	9,269	5,484	14,753
2006-2007	0%	0%	3,169	6,549	9,718
2007-2008	0%	50%	6,548	2,532	9,080
2008-2009	30%	80%	4,881	5,302	10,183
2009-2010	80%	100%	10,939	6,578	17,517
2010-2011	60%	100%	3,484	3,431	6,915
2011-2012	78%	100%	3,701	517	4,218
2012-2013	78%	83%	10,366	2,951	13,317
2013-2014	45%	45%	12,018	5,394	17,412
2014-2015	0%	0%	2,044	4,008	6,052
2015-2016	0%	100%	5,257	5,754	11,011
2016-2017 (to 15 March 2017)	100%	100%	2,646	3,744	6,390
<i>Source: WaterNSW</i>					

7. IPART has again treated the water users in the Peel Valley with complete contempt

7.1 On Page 210 of the Draft Report, IPART states that:

We consider that prices in the Peel Valley under this draft determination are not perverse, inequitable or anti-competitive.'

This dismissive statement demonstrates just how far out of touch with reality IPART has become.

Everyone whom the PVWUA has contacted - except for IPART - agrees that the charges in Table 1 of this submission are definitely unfair, definitely inequitable and definitely anti-competitive.

If IPART cannot grasp that basic concept, then IPART is probably unsuited to continue in the role of regulator of a Government-owned monopoly.

7.2 All that the water users in the Peel Valley have ever sought is a 'fair go' with water charges in the valley.

IPART has again failed to deliver a pricing outcome which even remotely resembles a 'fair go' for the Peel Valley.

7.3 IPART may be bound by various existing regulations to set water usage charges that are grossly excessive in the Peel Valley.

If that is the case, then IPART should make a robust statement such as: 'we are constrained by existing legislation, and while we recognise that something is definitely wrong with the process and we while disagree with the inequitable pricing outcome, we have no alternative other than to impose excessive water usage charges in the Peel Valley'.

Such a statement may trigger appropriate political intervention to rectify an obviously inequitable pricing outcome in the Peel Valley. The current Minister for Water in the NSW Government has himself acknowledged that the water usage charges in the Peel Valley are excessive.

The absence of such a statement demonstrates that the regulator continues to consent to the bad pricing policy of a Government-owned monopoly, thereby disregarding the wider implications of its pricing determination on the Tamworth regional economy.

7.4 Previous submissions from the Peel Valley have highlighted the absurdity of water charges ranging from \$2.00 per ML to \$54.97 per ML – in the same state of Australia, in the same water source (the Murray Darling Basin), at the same point in time, for the same volume of water.

The fact that the grossly inequitable charges in the Peel Valley are the result of a deliberate intention, and therefore not accidental or unintended, reflects badly on the system that creates such a disparity in pricing. It also reflects badly on an 'independent' regulator, whose role is to encourage pricing fairness and promote competition.

It is incomprehensible that the regulator of a Government-owned monopoly refuses to challenge the principles on which such grossly inequitable charges are perpetuated in the Peel Valley.

Neither IPART nor the ACCC would permit this massive disparity in pricing for any other commodity (petrol, milk, eggs, gas, electricity, etc) – so the regulator ought not to be permitted to continue to endorse this inequitable pricing policy for water in the Peel Valley.

8. Bill previously introduced to Parliament for the Peel, North Coast, South Coast Valleys

In 2010, the then Member for Tamworth was so concerned by the impact of excessive water usage charges in the Peel Valley that he introduced a Private Members Bill into the NSW Parliament covering the Peel Valley, and the North Coast and South Coast Valleys.

IPART would benefit from re-visiting that Bill, which was 'An Act to amend the Water Management Act 2000 to ensure that the amount charged for taking water in the Peel, North Coast and South Coast valleys or regions is no more than the average price determined by IPART for other areas of the State'.

Unfortunately for the water users in the Peel Valley – and probably also those in the North Coast and the South Coast Valleys – the Bill lapsed on prorogation.

Details of the Private Members Bill can be accessed at the following link:
<https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=2641>

9. Conclusion

The Peel Valley Water Users Association encourages IPART to investigate whether the Minister's proposed '80:20' pricing solution may be implemented in the Peel Valley, on the proviso that the General Security entitlement charge is not higher than the figure proposed by the Minister.

The PVWUA would hope that, after considering this submission, IPART makes significant amendments to the contents of the IPART Draft Report before the release of the Final IPART Report - which is scheduled for 13th June 2017 - with effect for the next four years commencing from 1st July 2017.

If that is not the case, water users in the Peel Valley will consider the options that are available to them in order to achieve a more reasonable and more equitable pricing outcome than the water usage charges that have been proposed by IPART for the Peel Valley.