

Peel Valley Water Users Association Inc

PO Box 952, Tamworth NSW 2340

EXECUTIVE SUMMARY

This submission is lodged on behalf of the Peel Valley Water Users Association Inc, which is an organisation representing irrigators in the Peel Valley (and its tributaries), as well as a number of major businesses in the Tamworth area that are connected to the irrigation industry.

This submission contains the following sections:

1. General comments

- In every previous IPART bulk water pricing review, the Peel Valley has highlighted the discriminatory pricing mechanism that results in the Peel Valley paying twice the charges that are applied in the Namoi Valley, three times the prices that are applied in the Hunter Valley, and ten times the charges that are applied in the Murrumbidgee.

2. Previous IPART Determinations have been in breach of the National Water Initiative 2004, and the Commonwealth Water Act 2007

- This Association believes that both of IPART's recent determinations of State Water bulk water charges in 2010, and the NSW Office of Water charges in 2011 are in breach of the national agreements mentioned above. Specifically, we believe that they are in breach of Clause 64, subsection (v) which states that water pricing arrangements will "avoid perverse or unintended pricing outcomes."
- It is a perverse outcome that the Peel Valley pays charges that are ten times the Murrumbidgee Valley, twice the Namoi Valley and three times the Hunter Valley. We are currently seeking a legal opinion on this matter, and we are also seeking a legal opinion on the recovery of unlawfully imposed charges retrospectively to the date of their introduction.

3. IPART should insist on equitable water pricing across the state of NSW

- State Water and NSW Office of Water are State owned monopolies, and their price gouging policies ought to be monitored and regulated by the Independent Pricing and Regulatory Tribunal. It is the clearly stated responsibility of IPART to "set the methodology for fixing the maximum price for a government monopoly service".
- Any independent person would agree that something is wrong with a situation where the Peel Valley pays about twice the charges in the adjoining Namoi Valley, three times the adjoining Hunter Valley, and TEN TIMES the Murrumbidgee. We need to go back to basics to correct this inequitable and discriminatory pricing policy.

4. Rejection of options that are listed in the Discussion Paper

- None of the options for the Peel Valley that are put forward by IPART are acceptable, because we do not believe that either upper bound pricing or lower bound pricing are appropriate for a State Government owned monopoly.

5. Proposal of alternative options that are more appropriate for the Peel Valley

- In terms of future pricing for the Peel Valley, given that we have suffered substantially financially over the years, it would be appropriate for the Government of NSW to declare a permanent Community Service Obligation (CSO) so that the Peel Valley pays the NSW weighted average water charges detailed in this submission, and listed below:

General Security Entitlement charge	-	\$4.30 per ML
High Security entitlement Charge	-	\$6.03 per ML
Usage Charge	-	\$7.91 per ML

1 General Comments

- 1.1 We thank IPART for the opportunity to submit our comments on the Discussion Paper, and we acknowledge that IPART has prepared a detailed document within a short timeframe. However, the rushed process also results in a short timeframe being available to respondents, which is most unsatisfactory when dealing with a topic of such complexity.
- 1.2 When a motor vehicle is registered in Bathurst or Tumut or Glen Innes, the same NSW State Government registration fees apply. Why is it then, that the Peel Valley pays twice, or three times, or even TEN times the fee for the same volume of water that other valleys pay? This grossly discriminatory pricing policy against the Peel Valley surely must attract the attention of the ACCC, even if IPART continues to turn a blind eye to the problem.
- 1.3 Part of the root cause of the problem is the fact that State Water and NSW Office of Water are split into two separate entities – both of which separately levy charges on general security regulated water users. This is a simply absurd situation which should never have existed, and should not be allowed to continue. The duplication of costs in administration, accounting, HR, office rental, printing and stationery, and every other business function in having two separate Government entities charging users for the same commodity is unnecessary.
- 1.4 The Peel Valley has argued in previous submissions to IPART, that the retrospective introduction of “cost recovery” and “return on investment” charges on public water assets that have already been fully funded out of taxpayer funds is morally wrong. There was no consideration of “cost recovery” or “return on investment” charges when the dams in NSW were completed and fully paid for by the NSW taxpayers 40 or 50 years ago, and the retrospective introduction of charges based on these assets is no more than a “cash grab” by Government. The fact that the Peel Valley now suffers under a discriminatory pricing regime makes the situation extremely frustrating.
- 1.5 The number layers of bureaucracy affecting all irrigators is simply ridiculous –
 - We have to deal with State Water
 - We have to deal with NSW Office of Water
 - The irrigation industry has to comply with the NSW Government’s budgetary income requirements
 - We have to deal with IPART
 - We now also have to deal with the ACCC
 - We have to comply with the National Water Initiative
 - The Water Administration Ministerial Corporation gets involved
 - We have to comply with the Water Charge Infrastructure Rules (2010)
 - We have to comply with the Water Management Act 2000
 - We have to comply with the Water Act 2007
 - We have to meet the needs of the Council of Australian Governments (COAG)
 - Many of us also have to deal with the Murray-Darling Basin Authority, and the Commonwealth Environmental Water Holder

Put simply, irrigation farmers produce food, and we produce other products which are inputs to the human food chain. We generate wealth and we create employment from our efforts and our investment – and we are over-regulated on irrigation matters! We do not need these ever-increasing multiple layers of bureaucracy - particularly when they continue to deliver bad outcomes!

1.6 It is irrelevant what methodology either State Water, or the NSW Office of Water uses to calculate their price increases, or how they justify their discriminatory pricing – they are State owned monopolies, and their discriminatory pricing policies should be monitored and regulated by the Independent Pricing and Regulatory Tribunal.

Under the Independent Pricing and Regulatory Tribunal Act 1992, Division 5 Clause 13A (1) states that in making a determination for a government monopoly service, IPART's role includes –

“(a)(ii) setting the methodology for fixing the maximum price for the government monopoly service”.

It is very clear that IPART has the ability to determine the methodology for the maximum price applicable to water in the Peel Valley.

The outcome of the pricing policy process to date has been grossly discriminatory against the Peel Valley, and as the outcome is wrong, then that means that the process is wrong - and the process should be completely transformed and the current inequities should be rectified.

2 Previous IPART Determinations have been in breach of the National Water Initiative 2004, and the Commonwealth Government Pricing Objectives 2011

The Commonwealth *Water Act 2007* (the Water Act), made under Section 92(1) of the Water Act, creates the institutional and governance arrangements that address the sustainability and management of water resources in the Murray-Darling Basin (the Basin). Among other things, the Water Act gives the Minister for Water the role of making water charge rules. Schedule 2 of the Water Act documents the relevant objectives and principles for these charge rules.

The *Water Charge (Infrastructure) Rules 2010* contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Water Act.

Broadly, these objectives and principles seek to

- a) promote the economically efficient and sustainable use of water resources, water infrastructure assets and government resources devoted to the management of water resources
- b) ensure sufficient revenue streams to allow efficient delivery of the required services
- c) facilitate the efficient functioning of water markets
- d) give effect to the principle of user-pays and achieve pricing transparency in respect of water storage and delivery in irrigation systems and cost recovery for water planning and management, and
- e) avoid perverse or unintended pricing outcomes.

The water charge infrastructure rules were registered on 11 January 2011 and had legal effect from 12 January 2011 (Ref - IPART Review of Rural Charging Systems – Discussion Paper June 2012 pg 35 6.1.2)

The Peel Valley Water Users Association believe that the NSW Governments bulk water charges for both State Water (IPART Determination and Final Report 2010) and the NSW Office of Water (IPART Determination and Final Report February 2011) are in breach of the Commonwealth Governments pricing objectives and principles since they became legal on the 12th January 2011. Specifically they are in breach of meeting condition **e) avoid perverse or unintended pricing outcomes.**

The NSW Governments Bulk Water Charges are also in breach of the Intergovernmental Agreement on a **National Water Initiative** between the Commonwealth of Australia and the Governments of NSW, Victoria, Queensland, South Australia, the Australian Capital Territory signed into effect on the 25th June 2004 by the then Prime Minister (John Howard) and the Premiers and Chief Ministers of the above States and Territories. The breach by the NSW Government is of **Best Practice Water Pricing and Institutional Arrangements – Outcomes – Section 64 (v) avoid perverse or unintended pricing outcomes.** (Ref - Intergovernmental Agreement on a National Water Initiative 25th June 2004 page 13 64 (v))

As demonstrated below -

2.1 State Water and the NSW Office of Water Regulated River Charges 2012-13 – Water bill for a 500ML **General Security Entitlement** with 60 % usage of entitlement

<u>Valley</u>	<u>Water bill</u>
Murrumbidgee	\$2731.00
Peel	\$14,159.00

Given that 1 ML of water will produce about the same amount of hay or milk in either Valley this pricing outcome for the same entitlement and usage (for the same service) can only be considered as a perverse or unintended pricing outcome and in breach of the Commonwealth Government pricing objectives and principles. See Fig 1

2.2 State Water and the NSW Office of Water Regulated River Charges 2012-13 – Water bill for a 16,400ML **High Security Entitlement** with a 50% usage of entitlement (Indicative of Tamworth Regional Council)

<u>Valley</u>	<u>Water bill</u>
Murrumbidgee	\$102,090.00
Peel	\$701,346.00

This is an unfair burden on the residents of Tamworth who like many others in NSW are struggling to raise their young families against a continuous barrage of ever increasing costs of which water is but one. This price differential between the two valleys for the same entitlement and usage (for the same service) can again only be considered to be a perverse or unintended pricing outcome and in breach of the Commonwealth Government pricing objectives and principles. See Fig. 2.

2.3 Depending on the definition of what is considered to be a perverse or unintended outcome the bulk water charges in many valleys could be considered to also be in breach of the Commonwealth Governments pricing objectives and principles. See Fig. 3

The Commonwealth Governments Pricing Objective and Principles and the National Water Initiative can easily be met by the NSW Government implementing a price structure based on a weighted entitlement charge and a weighted usage charge across all valleys to achieve the same revenue requirement as is currently being obtained. To meet State Waters and NSW Office of Water financial requirements for the 2012-13 water year, all valleys would need to pay a

General Security Entitlement charge of \$4.30 ML

High Security Entitlement charge of \$6.03

Usage Charge of \$7.91

(Refer Table 1)

This would mean that a General Security entitlement holder in any valley in NSW MDBA with a 500ML entitlement using 60% of entitlement would get the same bill of \$4523.00 for the same service, as shown in fig 3.

No valley could claim that this pricing structure would be in breach of the Commonwealth Governments Pricing Principles and Objectives or the National Water Initiative.

If IPART is not the appropriate body to deal with this apparent breach of the Commonwealth Pricing Principles and Objectives, and the National Water Initiative, will IPART please declare in its determination which government entity is responsible for addressing this issue, and explain how IPART intends to handle bulk water pricing until this matter is resolved.

TABLE 1 Entitlement Usage and Water Charge Details for State Water & the NSW Office of Water - Weighted Average Pricing

Valley	Peel	Lachlan	Macqarie	Murrumbidgee	Gwydir	Namoi	Border R	Murray	Total	
GS Ent 1	30911	632946	631716	2264065	509665	255780	263085	2076223	6654590	
Ent Charge 2										
SW	2.46	4.25	4.06	1.6	4.07	9.01	3.33	2.32		
NOW	1.9	1.51	1.7	1.18	1.3	2.32	2.23	1.44		
Total	4.36	5.76	5.76	2.78	5.37	11.33	5.56	3.76		
Revenue	134772	3645769	3638684	6294101	2736901	2897987	1462753	7806598	28617565	
									26954	20% Peel
									28644519	
HS Ent 1	17381	60778	42594	436928	21458	8527	3125	257438	848229	
HS Charge 2										
SW	20.9	11.11	9.84	2.81	13.11	15.1	9.94	2.98		
NOW	1.9	1.51	1.7	1.18	1.3	2.32	2.23	1.44		
Total	22.8	12.62	11.54	3.99	14.41	17.42	12.17	4.42		
Revenue	396289	767018	491535	1743342	309210	148540	38031	1137876	5031839	
									79257	20% Peel
									5111096	
Usage 3	13052	258319	300832	1805846	247734	165558	148535	1541376	4481252	
Usage Charge 2										
SW	36.92	17.07	13.14	3.72	12.69	19.69	9.11	4.9		
NOW	3.01	1.74	1.63	0.75	1.2	1.59	1.71	0.93		
Total	39.93	18.81	14.77	4.47	13.89	21.28	10.82	5.83		
Revenue	521166	4858980	4443278	8072132	3441025	3523074	1607140	8986222	35453126	

Weighted Entitlement Charge - General Security $\$28644519 / 6654590 = \4.30ML

High Security $\$5111096 / 848229 = \6.03ML

Weighted Usage Charge - HS & GS $\$354453126 / 4481252 = \7.91

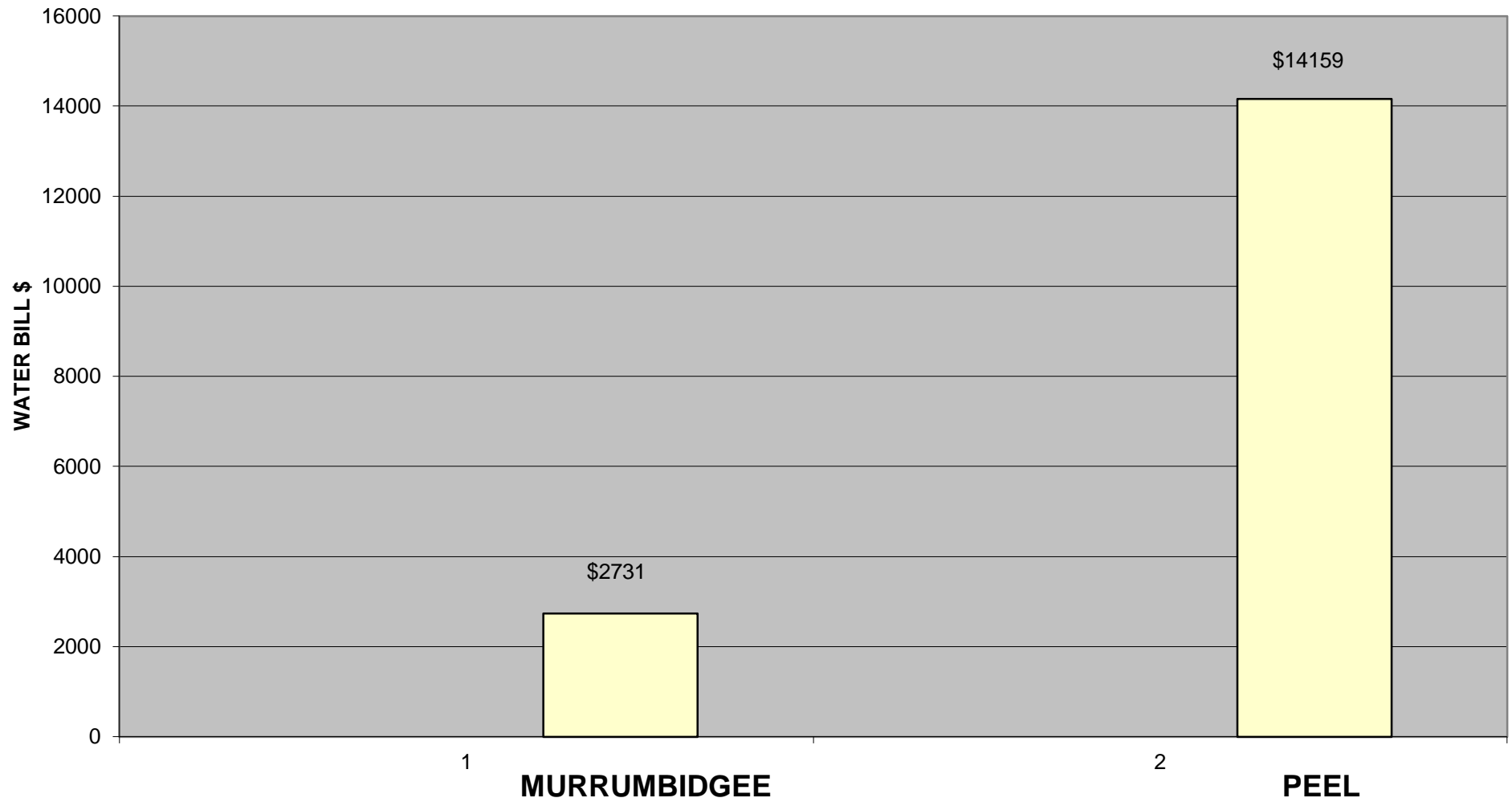
1 IPART Review of Bulk Water Charges for State Water Corporation Determination and Final Report June 2010 Table 9.2 page 120

2. State Water bulk water prices for 2012/13 water year May 2012

3 IPART Review of Bulk Water Charges for State Water Corporation determination and Final Report June 2010 Table 9.1 page 119

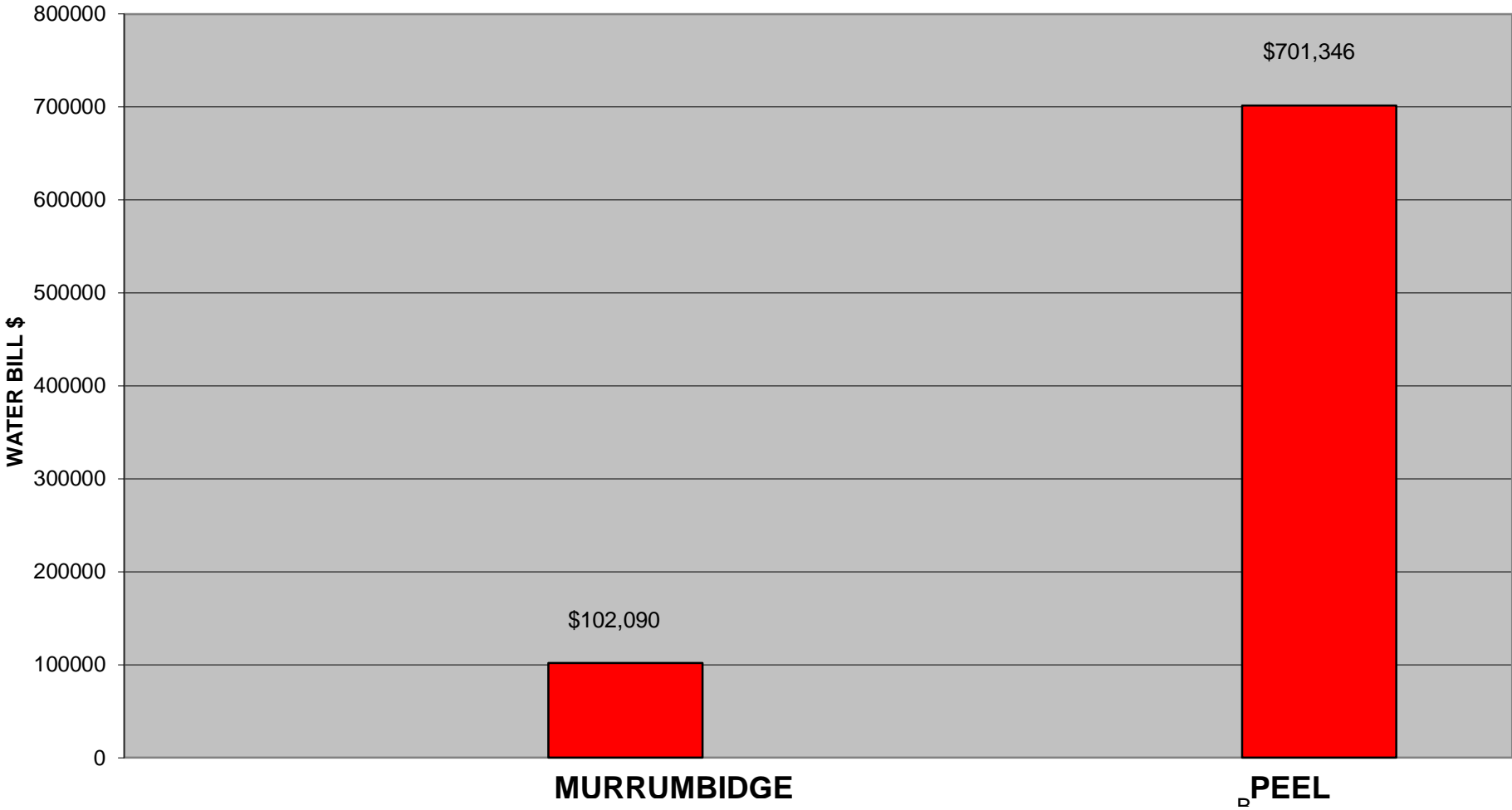
SW & NOW REGULATED RIVER CHARGES 2012-13 WATER BILL CRITERIA 500ML GENERAL SECURITY ENTITLEMENT; 40/60 FIXED / USAGE RATIO; 60% WATER USAGE

FIG 1



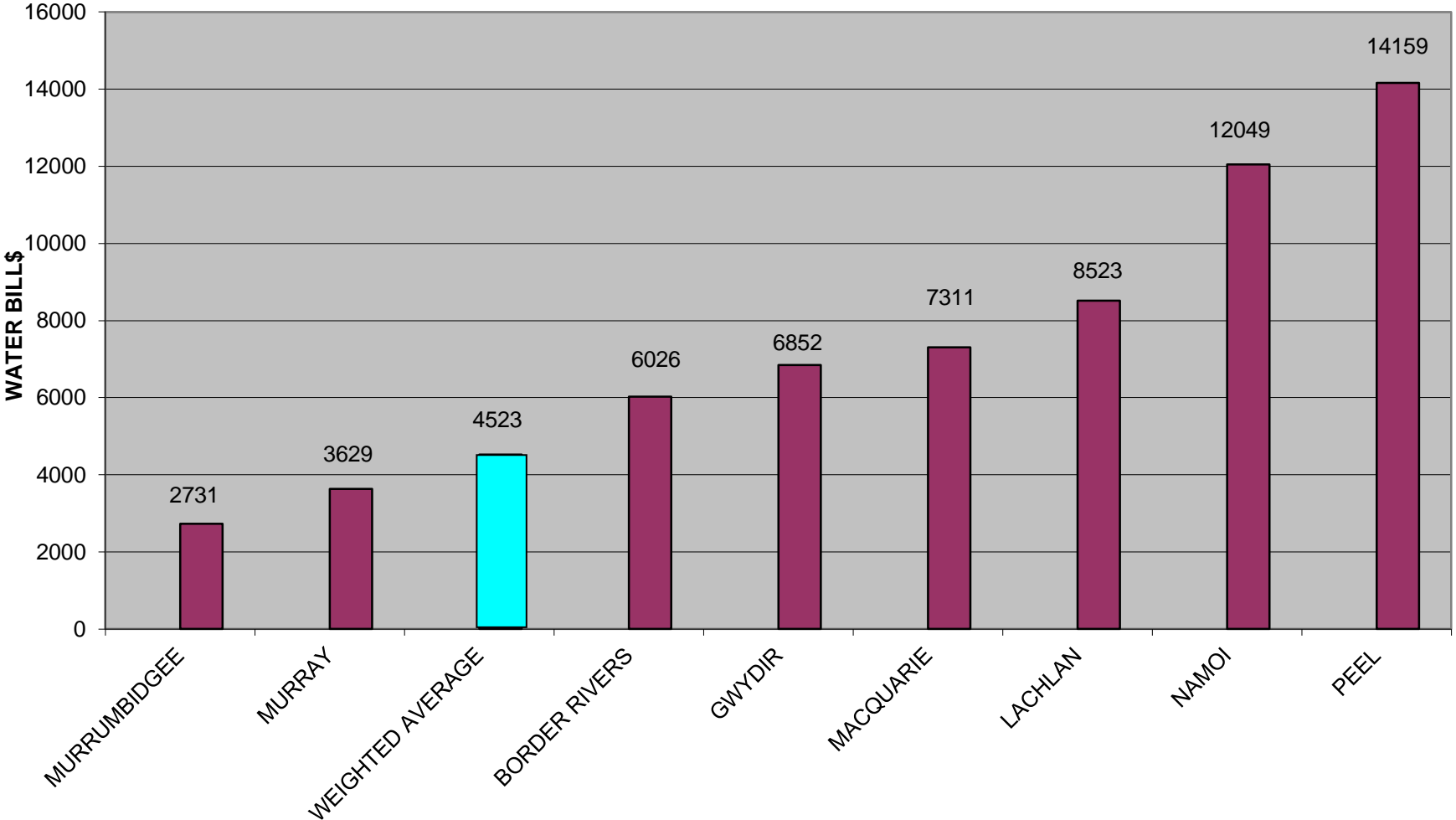
SW & NOW REGULATED RIVER CHARGES 2012-13 WATER BILL CRITERIA 16,400ML HIGH SECURITY ENTITLEMENT (TRC) 40/60 FIXED USAGE RATIO; 50% WATER USAGE

FIG 2



SW & NOW REGULATED RIVER CHARGES 2012-13 WATER BILL CRITERIA 00ML GENERAL SECURITY ENTITLEMENT; 40/60 FIXED / USAGE RATIO; 60% WATER USAGE

FIG 3



3. IPART should insist on equitable water pricing across the state of NSW

3.1 Why is the move to Uniform State Wide Bulk Water Pricing inevitable and necessary?

- **Climate Change**

Very few doubt that climate change is taking place. It is the degree of the change that is contestable. Reference CSIRO "Water availability in the Murray Darling Basin Oct 2006.

"The impacts of climate change by 2030 are uncertain; however, surface water availability across the entire MDB is more likely to decline than to increase. A decline in the south of the MDB is more likely than in the North. In the south of the MDB, a very substantial decline is possible. In the north of the MDB, significant increases are possible. The median decline for the entire MDB is 11 percent – 9 percent in the north of the MDB and 13 percent in the south of the MDB."

"The relative impact of climate change on surface water use would be much greater in dry years. Under the median 2030 climate, diversions in driest years would fall by more than 10 percent in most New South Wales regions, around 20 percent in the Murrumbidgee and Murray regions and from around 35 to over 50 percent in the Victorian regions. Under the dry extreme 2030 climate, diversions in driest years would fall by over 20 percent in the Condamine-Balonne, around 40 to 50 percent in New South Wales regions (except the Lachlan), over 70 percent in the Murray and 80 to 90 percent in the major Victorian regions."

That is with climate change it is likely there will be a lot less water available to generate revenue for State Water.

- **Impact of the Murray Darling Basin Authority**

(Reference -The Basin Plan – A Concept Statement June 2009)

The central legal requirement of the Basin Plan is to set environmentally sustainable limits on the amount of water that can be taken in future from the Basin's water resources. Such a limit is known as a "sustainable diversion limit"(SDL).

*SDLs will limit the quantity of **surface water** and **groundwater** that may be taken from the Basin water resources as a whole. **There will also be SDLs to limit the quantity of surface water and groundwater that can be taken from individual water resource plan areas and particular parts of water resource plan areas within the Basin.***

The current Cap on surface-water diversions is set at a level based on historic use, not on what is sustainable. In addition, the existing Cap does not limit the use of groundwater, and groundwater consumption has grown significantly in the context of the introduction of the surface water Cap.

*The SDLs must be set at a level that the Murray-Darling Basin Authority (MDBA), **using the best available scientific knowledge**, determines to be environmentally sustainable.*

This is defined as the level at which water in the Basin can be taken from a water resource without compromising key environmental assets, key ecosystem functions, key environmental outcomes or the productive base of the water resource.

Given the stresses on the Basin environment, it is likely that the Basin-wide SDL for both groundwater and surface water will be set at a level below the current level of use.

(note: this is not necessarily the impact on an individual valley basis but is likely to be the case in most valleys.

This Plan whilst only a conceptual statement leaves little doubt that the active use of Bulk Water in the Murray Darling Basin will be less than current active use. The question is by how much will active use be cut?

3.2 The Impact of Inter Valley Bulk Water Sales.

Neither the MDBA or IPART have addressed the issue of inter valley trading on Valley Based price structures. What happens if entitlement is sold say from the Peel to the Namoi. Does the Peel's entitlement and usage charge go with the entitlement? Do the remaining entitlement holders pay more?

In the Peel it is possible that half the General Security entitlement could be sold out of the Valley. The cost impost on the remaining entitlement holders could be enormous in a system which is already unviable price wise.

The Murray Darling Basin Authority in its concept plan of June 2009 states

Trade

Develop efficient water trading regimes across the Basin

A Basin-wide approach to the trading of water rights is another important element of the Basin Plan.

Even IPART in its State Water Issues paper July 2009 promotes Bulk Water sales.

The ability to trade entitlements produces strong financial incentives for water to be traded to its highest value use due to the more productive and profitable outcomes that the purchaser can achieve with it. The financial incentives created through the operation of a secondary market produces strong demand management outcomes by ensuring that water is diverted towards those who value it most.

There is little doubt that inter valley Bulk Water trading will become a significant mechanism for ameliorating the impacts of reduced Bulk Water availability and getting Bulk Water to its highest valued use.

These issues are very hard if not impossible to deal with under vastly different Valley based pricing structures.

Uniform State Wide Bulk Water Pricing solves this issue as the price structure is the same for all Valleys.

Environmental Protection – promotion of ecologically sustainable development via appropriate pricing policies.

Currently the water pricing process has resulted in the valleys which do the most environmental damage having the cheapest water, as clearly demonstrated in the following Figures 4 and 5.

It is notable that the Peel Valley, which has the lowest impact on the environment, has the highest effective price.

Figure 4 - ENVIRONMENTAL IMPACT - REDUCTION IN LONG TERM AVERAGE END OF STREAM FLOW DUE TO WATER EXTRACTION

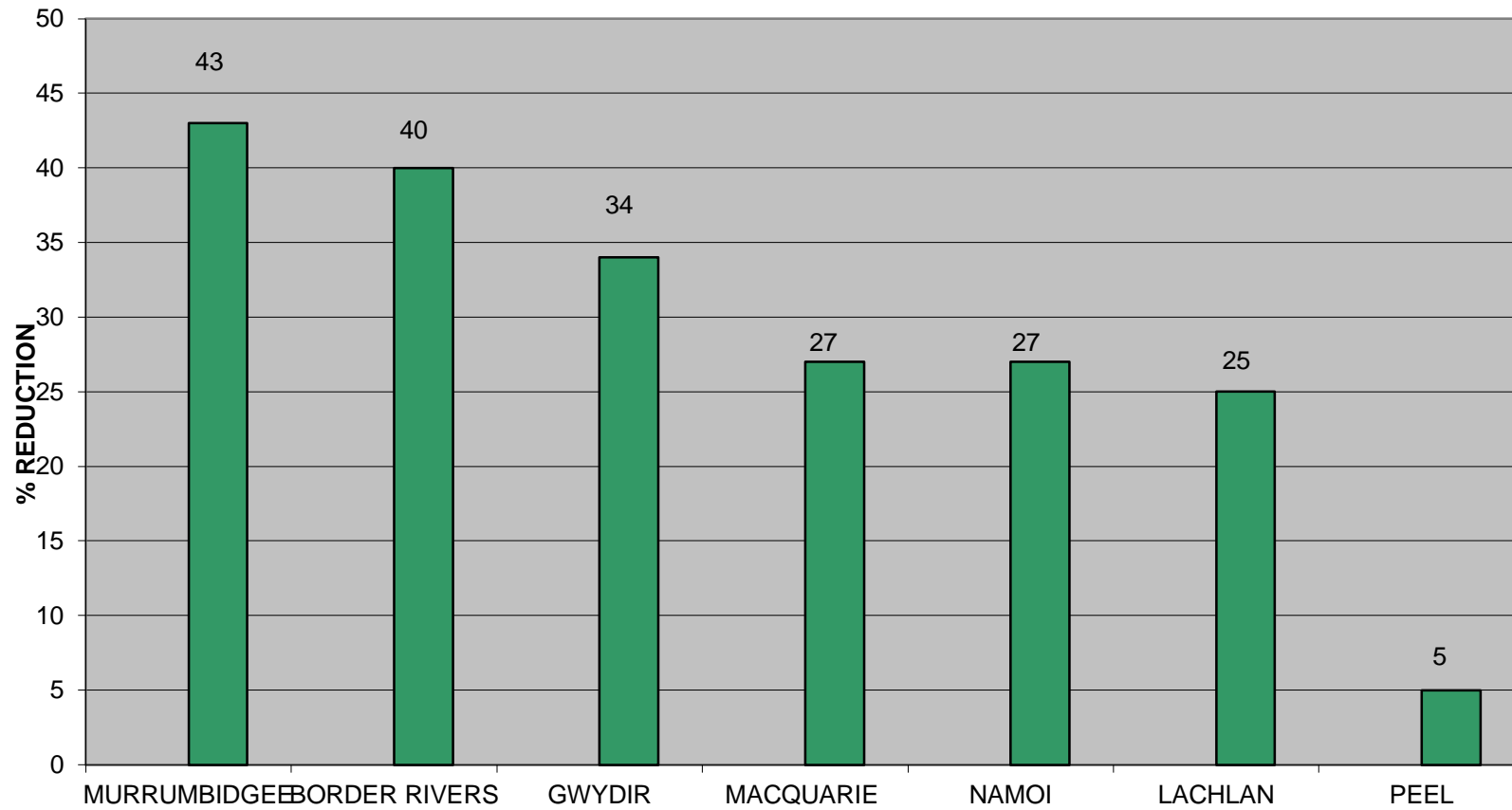
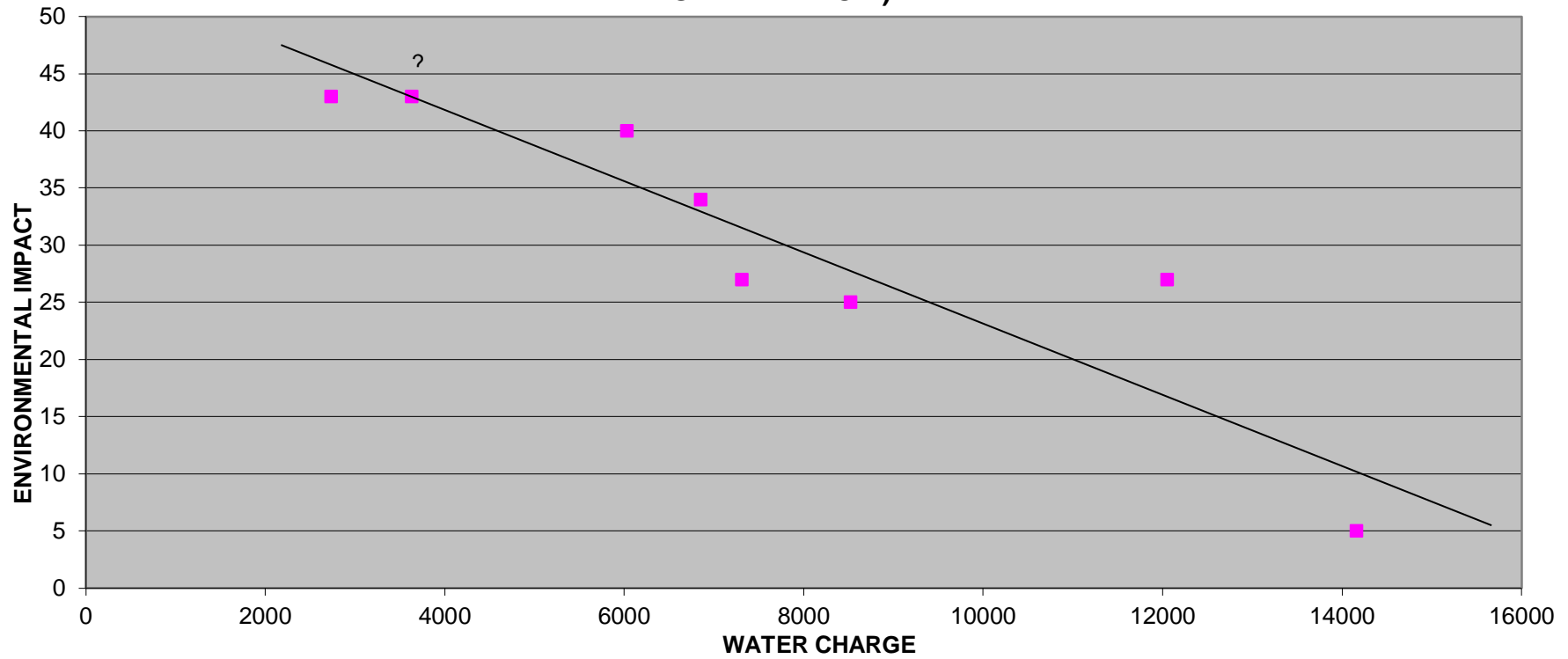


Figure 5 - WATER CHARGE VERSES ENVIRONMENTAL IMPACT (REDUCTION IN END OF STREAM FLOW)



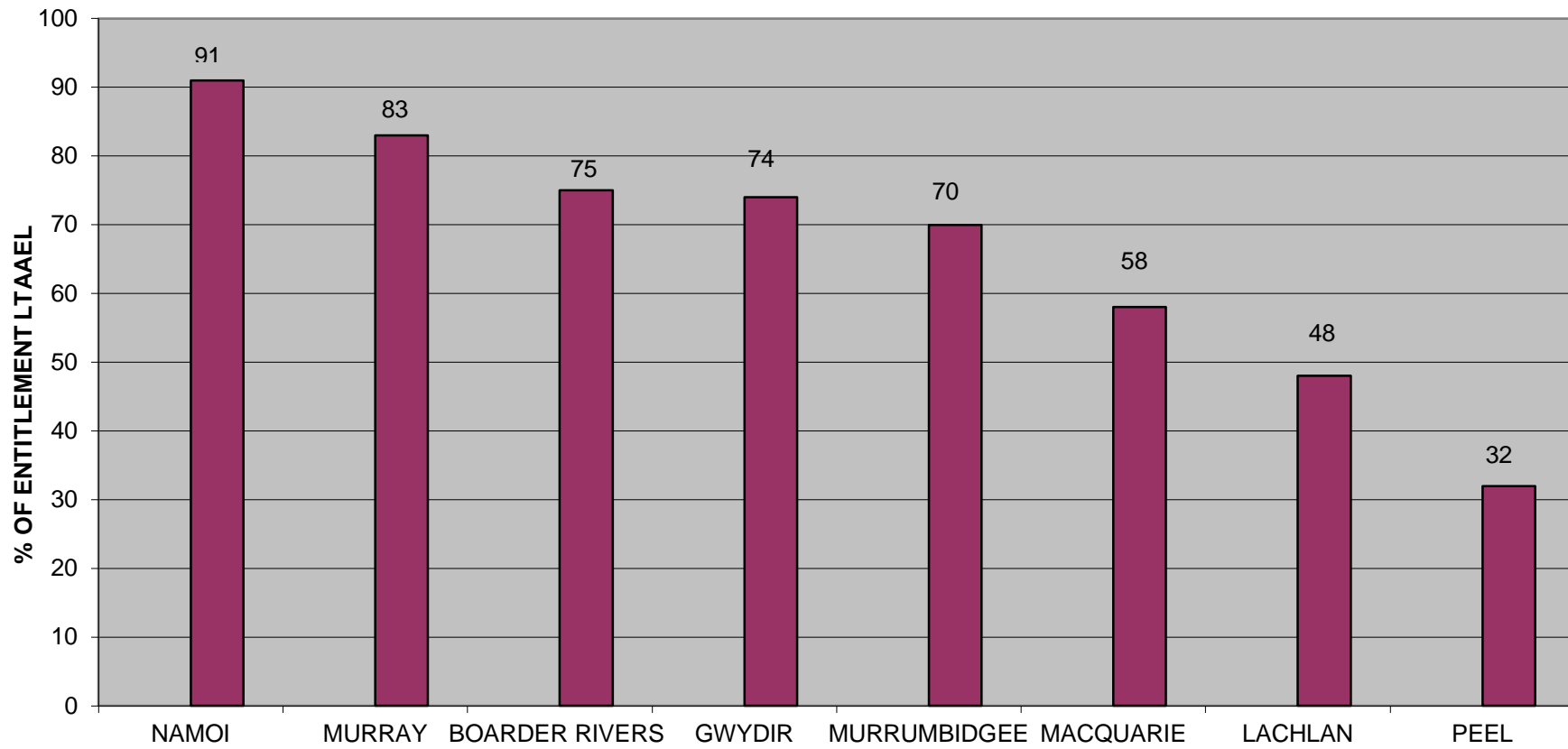
3.3 Water Sharing Plans

The WSP for the Peel Regulated System will limit active use of the General Security Users in the Peel to 20% of General Security entitlement. Which means on average something less than 6,100 ML and decreasing over time will be all that State Water can levy a usage charge upon, reducing State Water's revenue and no doubt further impacting on the viability of the Peel Valleys General Security water users.

Each Valley's ability to use entitlement due to restrictions by the water Sharing Plans is demonstrated in Figure 6.

The General Security water users in the Peel Valley are even worse off than that depicted in Figure 6 as the General Security Access will be limited to a long term average of 20%. This situation becomes more complicated if a valley breaches the extraction limit, as the AWD will be wound back by the NSW Office of Water, so that water sharing compliance is met. For Valleys such as the Macquarie, Lachlan and Peel, whose water sharing plans allow quite low access to entitlement, the cuts in the AWD will be significant at 0.4 to 0.7 per unit share to achieve compliance. How will IPART address this issue?

Figure 6 - WSP RESTRICTIONS - ABILITY TO USE ENTITLEMENT - WSP LTAAEL AS A % OF GS & HS ENTITLEMENT



4 Rejection of options that are listed in the Discussion Paper

The options for cost recovery and government subsidy in the Peel Valley in the Discussion paper are:

- Option 1 – freeze current Peel Valley prices with the remainder of the costs covered by an explicit community service order (CSO)
- Option2 – progressively increasing the average Peel Valley bill by 5% per annum in real terms with the remainder of the costs covered by a CSO
- Option 3 – targeting lower bound pricing with the remainder of the costs covered by an explicit CSO

None of the options for the Peel Valley that are put forward by IPART are acceptable, because we do not believe that either upper bound pricing or lower bound pricing are appropriate for a State Government owned monopoly.

Upper bound pricing is defined as “ the level at which, to avoid monopoly rents, a water business should not recover more than the operational, maintenance and administrative costs, externalities, taxes or tax equivalent regimes (TERs), provision for the cost of asset consumption and cost of capital, the latter being calculated using a weighted average cost of capital (WACC).

Lower bound pricing is defined as “ the level at which to be viable, a water business should recover, at least, the operational, maintenance and administrative costs, externalities, taxes or TERs (not including income tax), the interest cost on debt, dividends (if any) and make provision for future asset refurbishment/replacement. Dividends should be set at a level that reflects commercial realities and stipulates a competitive market outcome”.

These pricing mechanisms are simply not relevant for a State owned monopoly.

Every business would like their profitability to be determined by either of these pricing mechanisms, however, they are not applicable to businesses which grow something, make something, and contribute substantially to the economy - by nailing two pieces of wood together and taking a business risk in doing so. Why is it that there is an ever increasing portion of the community who produce nothing, grow nothing, make nothing, take no risk, but expect to be rewarded handsomely by either upper or lower bound pricing mechanisms?

5 Proposal of alternative options that are more appropriate for the Peel Valley

In general terms, the Peel Valley is in favour of freezing the current cost share ratios, and maintaining the status quo.

In terms of future pricing for the Peel Valley, given that we have suffered substantially financially over the years, it would be appropriate for the Government of NSW to declare a permanent Community Service Obligation (CSO) so that the Peel Valley pays the NSW weighted average water charges detailed previously, and listed below:

General Security Entitlement charge	-	\$4.30 per ML
High Security entitlement Charge	-	\$6.03 per ML
Usage Charge	-	\$7.91 per ML

The value of the proposed Community service Order is in the order of 1% of the estimated water user contribution for the 2012/13 water year. This is well within the accuracy of the projected water use and projected revenue, which is based on the inherent inaccuracies of using the 20 year rolling average of use to determine revenue.

IPART needs to clearly understand that the Peel Water Sharing Plan which took effect from 1st July 2010 has restricted irrigators' access to general security regulated surface water by 80% - (from 31,000ML to 6,100ML). The result is that irrigators can only access a maximum of 20% of their total entitlement, and IPART must therefore be aware that fixed charges on 80% of the total entitlement in the Peel Valley apply to entitlement that can never be used.

Part of the problem for the Peel Valley is that any price increase that is based on a percentage increase adversely affects us, because the Peel Valley is already suffering excessive charges. Any percentage based increase is disproportionately excessive in the Peel Valley because it is calculated on a high starting figure.

IPART will be aware from submissions to previous IPART hearings that the two main outputs from irrigated farming in the Peel Valley are lucerne hay and dairy products – (predominantly milk). There is a limit to the price that a purchaser will pay for lucerne hay, and milk prices are set by the milk factory - therefore the irrigation farmer cannot pass on the cost increases, and as a result irrigated farming becomes progressively less sustainable. In about the last ten years, the number of dairies operating in the Peel Valley has at least halved and the milk factory in Tamworth has closed. At the rate that dairy farms have ceased operating, there will come a time where it is uneconomical for the milk processor to keep transporting diminishing quantities of milk to either Toowoomba or Newcastle, and the whole dairy industry in the district will be priced out of business. Exactly the same scenario applies to lucerne hay production – with fewer and fewer producers bearing an increasing share of the cost of irrigation, it is only a question of time before the whole irrigation industry is forced to close down due to the excessive prices charged for water in the Peel Valley.

IPART already knows that it is not just the irrigators that are affected by the consequences of the discriminatory pricing policies that affect the Peel Valley – there are many businesses in town that rely heavily on the irrigation industry, and many of them have joined our Association to support our case. In addition, many businesses with high water usage (such as the 3 abattoirs in Tamworth) are also under threat from the excessive High Security water charges that are imposed on Tamworth Regional Council by IPART. Those businesses, their employees and families, the on-farm employees and their families - and all of the other businesses with whom all of those people transact their business affairs – are all under threat from IPART's ongoing discriminatory pricing policy.