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Submission to the Independent Pricing and Regulatory Tribunal

State Water Price Determination From 1 July 2010

091023

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Introduction

NSW Irrigators' Council (NSWIC) represents more than 12,000 irrigation farmers across NSW. These irrigators access regulated, unregulated and groundwater systems. Our members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries.

This document represents the views of the members of NSWIC. However each member reserves the right to independent policy on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

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Compliance with Consultation Expectations

In March 2009, in response to the growing number and complexity of consultation processes, NSWIC adopted a policy outlining the expectations of industry in this respect. The policy is appended to this submission. Consultation processes in which NSWIC participates are evaluated against this policy.

We assess this consultation as *Indirect* and encourage the Committee to ensure that individual irrigators, together with representative groups, have access to the process.

Our policy requires consultation to proceed through five stages.

(i) *Identification of problem and necessity for change*

Satisfactory.

(ii) *Identification of solutions and proposed method for implementation*

This process must occur subsequent to the close of submissions.

(iii) *Summary of submissions, identification of preferred approach*

This process must occur subsequent to the close of submissions.

(iv) *Explanation of interim determination and final feedback*

This process must occur subsequent to the close of submissions.

(v) *Publication of final determination*

This process must occur subsequent to the close of submissions.

General Comments

New South Wales Irrigators Council (NSWIC) believes that State Water Corporation (SWC) has done well in implementing significant change since the last IPART Determination. Whilst some of the changes were not made until after the IPART mandated timeframes, we congratulate SWC on having lowered its cost base whilst continuing to provide irrigators with a high level of service.

It is important to note that NSWIC supports the notion of a corporatised SWC, recognises the need for SWC to be a commercially viable operation and continues to support SWC's focus on the improvement of customer service and information.

In its IPART submission, SWC is seeking fundamental change to the manner in which prices paid by water users – including irrigators – will be set. NSWIC will submit, during the course of its presentation to IPART, that no corresponding fundamental necessity has been demonstrated. NSWIC will point to the profitable results posted by SWC over the current pricing period despite the twin challenges of severe drought and financial market turmoil as evidence that the current system is far from broken but is, indeed, remarkably successful.

Several specific issues – addressed in detail in this submission – are worthy of introductory comment:

15 Year Average Consumption Forecasting Model

SWC seeks to dispose of the Long Term Average (LTA) approach based on approximately 115 years of data contained within the Integrated Quality and Quantity Model (IQQM) that has been used in previous determinations. SWC has recommended the use of 15 years of data only, based on the “structural break” statistical data argument advanced by their consultant, the International Centre for Economics (CIE).

NSWIC will oppose this move, making several submissions to counter the ICE argument. We will note that the current LTA approach using the full data set in IQQM has served both users and SWC well in previous Determinations, underscoring our submission that no fundamental necessity for change has been identified.

WACC Increase

SWC have sought an increased margin based on a range of factors. NSWIC opposes that increase based on a similar range of factors, but primarily on the fact that the current system has not failed.

User Cost Shares

The submission of SWC suggests that IPART consider the previous allocation of user cost shares, although advances no reason for such suggestion.

NSWIC will submit that the process previously undertaken by IPART was sufficient and that no events have since occurred that provide a fundamental necessity for this fundamental change.

The IPART process is based on a receipt of a submission from SWC requesting certain parameters. Submissions in response are then invited. Given that framework, the balance of this document addresses the submission of SWC and therefore must be read in conjunction with the SWC submission. Page and chapter numberings referred to in this submission are derived from the SWC submission.

Summary of Submissions

Chapter One

NSWIC submits that the costs for the MDBA and the BRC be removed from the SWC requested total, that IPART instruct that these costs be included within the NOW submission and that an analysis of the efficiency of these costs be included in that submission.

NSWIC concurs with the SWC submission that this regulatory period be four years.

Chapter Two

NSWIC submits that revenue volatility in itself is not a business risk. It is only a risk if the Determination period trend is down.

NSWIC submits that the SWC attempts to provide an indication of business performance in the currently regulatory period that is significantly different from reality.

NSWIC submits that the form of regulation in this instance – the setting of an effective minimum revenue stream – overcomes what volumetric risk is faced.

NSWIC submits that demand-side volatility only exists in wet periods when SWC has already delivered significant volumes and hence there is no impact on base-level revenue requirements but only on upper-level revenue at best.

NSWIC submits that no evidence of continued global financial and commodity volatility has been provided and ABARE evidence points to the contrary. We submit that no revenue volatility for SWC will result and hence no change on this basis is warranted.

NSWIC submits that no evidence has been provided that suggests a dataset of 15 years will be any more accurate than the existing practice of using the full IQQM dataset. We reject the proposed model in favour of the existing process.

NSWIC rejects an increase to fixed charges on the basis of current expectations of revenue volatility.

Chapter Three

NSWIC submits that failure to meet OPEX savings timelines across the current regulatory period has contributed significantly to the current financial status of the business.

NSWIC submits that most of the thematic expenditure items are discretionary in nature and ought be deferred until defined trigger points with respect to revenue are met.

NSWIC submits that those projects within the Environment and Heritage thematic expenditure budget that are as a result of state legislation ought be fully cost-attributed to the State Government.

Further – or IN THE ALTERNATE – NSWIC submits that those projects within the Environment and Heritage thematic expenditure budget that relate to heritage matters must be considered a legacy cost were the heritage asset was constructed prior to 1997.

NSWIC submits that the dam safety thematic plan expenditure is discretionary and that it be deferred until such time as revenues recover.

NSWIC submits that the research thematic plan expenditure is discretionary and that it be deferred until such time as revenues recover.

NSWIC submits that the land management thematic plan expenditure is to develop non-regulated revenue streams and hence ought be funded by non-regulated earnings and not be included in this Determination.

NSWIC submits that emergency and security thematic expenditure is a public responsibility and ought be funded solely by government.

NSWIC submits that the activities identified as “corporate” are, in fact, standard operating procedures that are already represented within regulated OPEX. As such, we oppose increased OPEX for these programs.

In addition – or IN THE ALTERNATE – NSWIC submits that these projects are discretionary in nature and, as a result, ought be deferred until revenue recovers.

NSWIC submits that activities associated with interstate tagging are an integral part of the National Water Market System that the Commonwealth has agreed to fund. This project should not be included in the Determination for increased OPEX.

Further – or IN THE ALTERNATE – funding for this project ought be sought at the point of transfer rather than from water access license holders who do not seek to trade.

NSWIC supports the identified discretionary projects but notes that their funding ought be sourced from the relevant users rather than across OPEX as a whole to avoid cross-subsidies.

Chapter Four

No submissions

Chapter Five

NSWIC submits that revenue volatility in itself is not a business risk. It is only a risk if the Determination period trend is down.

NSWIC submits that the rhetoric advanced by SWC attempts to provide an indication of business performance in the currently regulatory period that is significantly different from reality.

NSWIC submits that the form of regulation in this instance – the setting of an effective minimum revenue stream – overcomes what volumetric risk is faced.

NSWIC submits that demand-side volatility only exists in wet periods when SWC has already delivered significant volumes and hence there is no impact on base-level revenue requirements but only on upper-level revenue at best.

NSWIC submits that no evidence of continued global financial and commodity volatility has been provided and ABARE evidence points to the contrary. We submit that no revenue volatility for SWC will result and hence no change on this basis is warranted.

NSWIC submits that no evidence has been provided that suggests a dataset of 15 years will be any more accurate than the existing practice of using the full IQQM dataset. We reject the proposed model in favour of the existing process.

NSWIC rejects an increase to fixed charges on the basis of revenue volatility.

Chapter Six

No submissions.

Chapter Seven

NSWIC submits that no reason or evidence has been provided that necessitates a change to user cost shares and would be content for the sharing regime in the current Determination to be rolled over.

NSWIC submits that where fish passage works are triggered by dam safety upgrades, the cost of those works ought be attributed as the dam works are attributed; that is, 100% borne by government.

NSWIC submits, IN THE ALTERNATE, that its further submissions in respect of user shares be considered OR that the determination of “user” be expanded to include all users of SWC services and assets including recreational boaters, fishermen, environmental entities and the like.

NSWIC submits that irrigators are not the sole beneficiary of Water Delivery and Other Operations and hence should not be the sole funder of these services. We submit that 80% of these costs be attributed to irrigators.

NSWIC submits that Flood Operations are primarily directed at the protection of community assets and hence ought be primarily funded by the community. We submit that 20% of these costs be attributed to irrigators.

NSWIC submits that Hydrometric Monitoring is a service which is availed by a range of entities. We submit that 75% of these costs be attributed to irrigators. NSWIC submits that Water Quality Monitoring is a service provided primarily for users other than irrigators (human consumption). We submit that no more than 20% of these costs be attributed to irrigators.

NSWIC submits that the benefits of Public Liability Insurance accrue to a wide range of potential claimants and hence that range of claimants ought contribute to the cost. We submit that no more than 50% of these costs be attributed to irrigators.

NSWIC submits that Corrective and Routine Maintenance and Asset Management Planning are core activities of SWC and hence the full range of beneficiaries of the full range of services provided by SWC ought contribute to these costs. We submit that no more than 80% of these costs be attributed to irrigators.

NSWIC submits that Renewal and Replacement of Assets is a core activity of SWC and hence the full range of beneficiaries of the full range of services provided by SWC ought contribute to these costs. We submit that no more than 80% of these costs be attributed to irrigators.

NSWIC submits that Structural Enhancements are a core activity of SWC and hence the full range of beneficiaries ought contribute to the cost. We submit that no more than 80% of the Structural Enhancements cost be attributed to irrigators.

NSWIC submits that no details of Other Enhancements have been provided and, as such, should not be charged in any portion to irrigators but that 100% ought be met by others until and unless adequate explanation is provided on a project-by-project basis.

NSWIC submits that Corporate Systems are a core activity of SWC and hence the full range of beneficiaries ought contribute to the cost. We submit that no more than 80% of the Corporate Systems cost be attributed to irrigators.

NSWIC submits that fish passage maintenance cost shares ought reflect the cost shares in their installation; 50% only recovered from the users.

NSWIC submits that the cost of fish passage upgrade works that are triggered by dam safety upgrades ought be subject to the same cost recovery methods; 100% ought be funded by government.

Chapter Eight

NSWIC submits that full cost recovery should not be pursued in specified valleys – namely the North Coast, South Coast and Peel – on the basis that unsustainable price increases would result.

NSWIC submits that operating subsidies must be provided by the NSW State Government as per the current Determination. Cross subsidisation from other users is not supported by NSWIC.

NSWIC submits that price rises in the specified valleys should be limited, by means of subsidy from Government, to no more than 5% per annum.

Chapter Nine

NSWIC submits that the current consumption forecasting model, using the Long Run Average Approach on IQQM data, is the most valid method available.

NSWIC submits that IPART must reject the CIE analysis that climate change will manifest in the next four years based on statistical theory that does not concur with evidence provided by scientific bodies including the IPCC and the CSIRO.

Chapter Ten

NSWIC submits that the balance between entitlement and usage charges in the current Determination ought be continued.

NSWIC submits that the alternative 90% fixed charge sought be SWC must be rejected.

NSWIC submits that scarcity is priced in the market for water and should not be further priced via delivery infrastructure.

NSWIC submits that IPART ought adopt a cost based approach to access premiums and ought instruct SWC to report back on the balance of costs associated with fixed services to high and general security licenses so as to consider an appropriate proposal.

NSWIC submits that collection of usage charges at the point of transfer for an interstate temporary trade where the purchaser has no account with SWC ought be mandated.

NSWIC submits that the Transitional Arrangements proposed by SWC with respect to the Metering Service Charge should be adopted.

Chapter Eleven

NSWIC submits that the temporary transfer charges under the current Determination are appropriate and concurs with SWC's submission that they ought be continued.

NSWIC submits that the ancillary charges regime proposed by SWC is fair and ought be adopted.

Chapter Twelve

NSWIC submits that ability to pay is not a relevant criteria in setting prices.

Chapter One – Background and Context

Section 1.5 – MDBA and Border Rivers Commission Costs

NSWIC notes that SWC does not have input to the costs of either the MDBA or the BRC, but that inclusion of costs in their submission are “simply to assist the NSW Government in establishing a mechanism for cost recovery”¹ of these costs. In determining the costs to be recovered, SWC have sought information from NSW Treasury and the NSW Office of Water (NOW).

NSWIC submits that this process does effectively requires IPART to agree to a cost without any consideration as to the efficiency or, indeed, necessity of the costs.

Given that provision of funding to both organisations is an agreement between the NSW State Government and another government entity, NSWIC submits that a Determination from IPART as to the suitability of the funding level must come through the NOW submission SWC.

NSWIC submits that the costs for the MDBA and the BRC be removed from the SWC requested total, that IPART instruct that these costs be included within the NOW submission and that an analysis of the efficiency of these costs be included in that submission.

Section 1.6 – Length of Regulatory Period

NSWIC notes the submission of SWC that a four year regulatory period be set as per the 2006 Determination. We do not concur with SWC’s submission that “the next Determination will be undertaken by the ACCC”² and continue to advance our position that IPART is the most appropriate entity to undertake Determinations.

NSWIC concurs with the SWC submission that this regulatory period be four years.

¹ Page 1-13

² Page 1-13

Chapter Two – State Water’s Financial Position

Section 2.1 – Current Period Regulatory Outcomes

SWC suggest to IPART that they have “not recovered the cost of providing services nor achieved an appropriate return on assets”³ as evidence that an increased weighted average cost of capital (WACC) is warranted based on revenue volatility.

NSWIC submits that revenue volatility in itself is not a business risk. It is only a risk if the Determination period trend is down.

NSWIC notes that the period covered by the current determination includes the worst drought on record in many parts of NSW in which SWC operates. Inflows in that period are by a significant margin the worst on record.

Yet in this period – and despite the suggestion of SWC to the contrary – the business has returned a profit based solely on regulated revenue. This is spelled out clearly in Table 2.3⁴, which shows positive earnings before interest and taxation (EBIT) in each of the four years of the current determination.

That same table shows a positive return on assets. NSWIC notes in particular the consecutive increases in return on assets year-on-year as the efficiency measures mandated by IPART in the current Determination take effect, albeit at a slower rate than mandated.

NSWIC is disappointed that SWC attempt to claim a shortfall on notional revenue of \$83.2m⁵ when a variance of \$27m is solely due to the transitional pricing path that IPART adopted. It serves no benefit to present a scenario that is not accurate. The shortfall from notional user share revenue ought be shown as \$56m only.⁶

We note that the revenue indicated includes regulated revenue only and hence does not show the full picture of the profitability of SWC.

In any event, it is only once notional interest expenses are calculated that SWC experienced a notional loss in the current period.⁷ Again, this calculation is based only on regulated revenue.

NSWIC submits that the SWC attempts to provide an indication of business performance in the currently regulatory period that is significantly different from reality.

Section 2.2 – Business Risk

In this section, SWC provide an analysis of the underlying risks faced by the business presumably to support the request for the adoption of a consumption

³ Page 2-1

⁴ Page 2-2

⁵ Table 2.2

⁶ NSWIC notes that this is described in the text but not shown in the table.

⁷ See table 2.4

forecasting model of 15 years only and an increase in WACC. This section does not, however, provide advice on what has changed so dramatically from previous Determinations as to warrant a fundamental shift in how prices ought be set in this Determination.

SWC argues that its risk is dissimilar to other water utilities based on the volumetric risk of water availability and demand, noting that “revenue risk is a function of both volumetric risk and the form of regulation”.⁸ We concur with this analysis, however

NSWIC submits that the form of regulation in this instance – the setting of an effective minimum revenue stream – overcomes what volumetric risk is faced.

SWC argues that volumetric risk exists on both supply and demand side. We do not take issue that supply side risk exists, as is evidenced by recent availability issues due to drought, but do not agree that demand side risk is relevant in a price Determination as it merely applies as a brake on upper-level profits.

NSWIC submits that demand-side volatility only exists in wet periods when SWC has already delivered significant volumes and hence there is no impact on base-level revenue requirements but only on upper-level revenue at best.

Moreover, the increased use of carry over and the continuous accounting practices of northern NSW valleys have in recent years provided systemic protection to SWC against the variance in demand side risk

SWC further argues that volatility in commodity markets and the “global financial crisis” impact on demand for water. No evidence in support of this argument is advanced. Whilst NSWIC acknowledges that volatility in commodity markets has, indeed, been a feature of the past two years (as prices have, in the main, significantly increased), recent evidence suggests that markets are returning to previous stable levels as national economies, particularly without Australia’s trading partners, return to sustainable growth levels.⁹

NSWIC submits that no evidence of continued global financial and commodity volatility has been provided and ABARE evidence points to the contrary. We submit that no revenue volatility for SWC will result and hence no change on this basis is warranted.

The Centre for International Economics (CIE) undertook a statistical analysis for SWC to provide evidence that volatility in consumption has increased outside the statistical bounds of previous data sets (IQQM). It is important to note that the CIE work was not based on physical science, did not consider any meteorological evidence and did not draw from the work of the International Panel on Climate Change (IPCC) of the Commonwealth Science and Industry Research Organisation (CSIRO). Moreover, none of the scientific evidence in respect of climate change or climate variability purports that demonstrable change will occur in the four year period of this Determination.

⁸ Page 2-4

⁹ ABARE Commodities Report, September Quarter 2009.

Forecasting weather – and hence water availability from precipitation – is a matter of assessing probabilities rather than addressing the volatility of historical datasets. The proposition that the occurrence of certain events in recent time spans affects the probability of the reoccurrence of those events is scientifically and mathematically incorrect. That is to say, the occurrence of a drought in one year has no impact on the probability of drought in the following year.

Further, scientific evidence currently available suggests that the current drought conditions – which would significantly influence the 15 year period that SWC requests – are not the “new normal”.¹⁰ In fact current conditions are worse than all but the most extreme models published by CSIRO when assessing the impacts of climate change and the predictions in those models are based on events to occur by 2030 – certainly not within the four year Determination period before IPART.

NSWIC acknowledges that a forecast of consumption levels across the Determination period is necessary and that it falls to IPART to make that forecast. We further acknowledge that the forecast in the current Determination has not been reflected by events.

NSWIC agrees that forecasts must be made on the basis of averages and that averages will not necessarily reflect eventuality. We note that the CIE model does not depart from the averaging process but seeks to severely limit the dataset which establishes that average.

NSWIC submits that no evidence has been provided that suggests a dataset of 15 years will be any more accurate than the existing practice of using the full IQQM dataset. We reject the proposed model in favour of the existing process.

SWC has submitted that rejection of their proposed 15 year average model ought result in increased fixed charges.

NSWIC rejects an increase to fixed charges on the basis of revenue volatility.

¹⁰ Day Gaydon, CSIRO

Chapter Three – Operating Expenditure

Section 3.2 – Performance Between 2006/07 and 2009/10

NSWIC congratulates SWC for having achieved a significant reduction in operating expenses (OPEX) over the current regulatory period. We acknowledge that IPART set a challenging program for SWC and that much of the challenge has been met.

It is important to note, however, that the OPEX reduction program did not meet the schedule set by IPART. In particular, the OPEX variance shown in SWC's submission¹¹ notes a cumulative \$9.6m that should have been achieved. The table also notes a forecast additional saving above target in the 09/10 year of \$0.6m that has not yet been achieved.

NSWIC submits that failure to meet OPEX savings timelines across the current regulatory period has contributed significantly to the current financial status of the business.

Section 3.3 – Forecast Operating Expenditure 2010/11 to 2013/14

NSWIC is content to endorse continuing of baseline OPEX pursuant to the current Determination, but is unconvinced that the 10.9% increase (across the period) for “thematic expenses” is warranted; particularly in a revenue-constrained period should that eventuate.

NSWIC submits that most of the thematic expenditure items are discretionary in nature and ought be deferred until defined trigger points with respect to revenue are met.

Further to this submission, or possibly IN THE ALTERNATE, NSWIC provides the following submissions in respect of individual themes:

1. Environment and Heritage

NSWIC notes that some 68% of the requested OPEX increase for thematic expenditure is allocated to this field without sufficient identification of expenditure on individual programs for stakeholders to give serious consideration.

Nevertheless, NSWIC makes the following submissions:

NSWIC submits that those projects within the Environment and Heritage thematic expenditure budget that are as a result of state legislation ought be fully cost-attributed to the State Government.

Further – or IN THE ALTERNATE – NSWIC submits that those projects within the Environment and Heritage thematic expenditure budget that relate to heritage matters must be considered a legacy cost were the heritage asset was constructed prior to 1997.

¹¹ Table 3.2 on Page 3-2

2. Dam Safety

We refer to our earlier statement with respect to the delay of discretionary expenditure to meet increased revenue when delivery volumes and revenues increase. The updating of data which is currently less than 10 years old is not sufficiently urgent to warrant an increase in regulated OPEX.

NSWIC submits that the dam safety thematic plan expenditure is discretionary and that it be deferred until such time as revenues recover.

3. Research

NSWIC recognises and supports SWC's efforts in respect of dam safety and engineering research but again notes the current revenue constrained environment.

NSWIC submits that the research thematic plan expenditure is discretionary and that it be deferred until such time as revenues recover.

4. Land Management

The SWC submission identifies this as a commercial project ("...investigate options to maximise the business returns..."¹²) to increase non-regulated revenue. Potential options are identified as grazing leases, wind farm development and carbon sequestration. These are clearly business development activities that are based around non-regulated revenue and hence should not be funded from regulated revenue.

NSWIC submits that the land management thematic plan expenditure is to develop non-regulated revenue streams and hence ought be funded by non-regulated earnings and not be included in this Determination.

5. Emergency and Security

NSWIC is mindful of the necessity of increased emergency response preparedness and upgraded security at large scale social infrastructure sites in the modern era and recognises that an operating expense will necessarily be incurred in this respect.

We do not, however, believe that it ought be user-funded via OPEX. Increased security and emergency response expenditure at Australia's maritime ports and air ports has been socially funded. This model has been determined as appropriate elsewhere and ought be applied in this instance.

¹² Page 3-14

NSWIC submits that emergency and security thematic expenditure is a public responsibility and ought be funded solely by government.

6. Works Approvals

NSWIC concurs with the SWC submission.

7. Corporate

NSWIC recognises the necessity of several of these projects, but is unable to support additional OPEX for activities that must be categorised as standard operating procedure. The OPEX requirements that have previously been identified by IPART must have a discretionary component built in that allows funding of such projects.

NSWIC submits that the activities identified as “corporate” are, in fact, standard operating procedures that are already represented within regulated OPEX. As such, we oppose increased OPEX for these programs.

In addition – or IN THE ALTERNATE – NSWIC submits that these projects are discretionary in nature and, as a result, ought be deferred until revenue recovers.

In respect to specific projects within this thematic plan area, we note the issue of interstate tagging. NSWIC understands that the Commonwealth Government has agreed to provide funding to States, including NSW, to prepare for the National Water Market System. The preparation for interstate tagging is clearly part of this and hence ought not be collected through increased OPEX.

NSWIC submits that activities associated with interstate tagging are an integral part of the National Water Market System that the Commonwealth has agreed to fund. This project should not be included in the Determination for increased OPEX.

Further – or IN THE ALTERNATE – funding for this project ought be sought at the point of transfer rather than from water access license holders who do not seek to trade.

8. Discretionary Service Levels

NSWIC notes that those projects identified as Discretionary Services were endorsed by Customer Service Committees in the relevant valleys. As such, NSWIC supports the projects.

NSWIC supports the identified discretionary projects but notes that their funding ought be sourced from the relevant users rather than across OPEX as a whole to avoid cross-subsidies.¹³

¹³ NSWIC understands that this is the intent of SWC but does not believe the SWC submission adequately reflects this.

Chapter Four – Capital Expenditure

Section 4.2 – Capital Expenditure Performance between 2006/07 and 2009/10

NSWIC is concerned at the reporting of forecast expenditure given the weighting of the program toward 2009/10. This has a clear implication for opening regulatory asset base (RAB) at the commencement of the following period.¹⁴

¹⁴ See further submissions in this respect in later sections.

Chapter Five – Revenue Required for Capital Investment

Section 5.1 – Rolling forward State Water’s Regulatory Asset Base for long lived assets

The practice of rolling forward RAB to create an opening value in the next Determination period is derailed by the practice of forecasting CAPEX when heavy weighting toward the final period occurs. In the current instance, some 56% of the five year CAPEX is attributed to a forecast figure rather than an actual expenditure. Of the total \$131.5m, \$57.9m was allocated across 2005/06 to 2008/09 (inclusive) with the balance \$73.6m “forecast” to be spent in 2009/10¹⁵.

RAB ought be based on actual expenditure rather than forecasts given its intrinsic link to pricing.

NSWIC submits that the opening RAB value be set at the end of the third quarter of 2009/10 based on updated information from SWC that includes actual CAPEX together with an update on forecast expenditure for the remaining quarter.

NSWIC notes that SWC seek to have RAB indexed at a nominated figure but do not include this increase as income in any one year, which would have a significant effect on EBIT. We do not accede to the theory that RAB ought be indexed – particularly in light of recent massive devaluations in asset value in the private sector.

NSWIC submits that RAB ought not be indexed, but ought be simply calculated solely on an opening value plus additions less disposals.

IN THE ALTERNATE, NSWIC submits that indexation increases to RAB must be accounted as income and declared in profit and loss statements.

Table 5.1¹⁶ indicates that asset disposals over the five years from 2005/06 to 2009/10 are zero. NSWIC submits that further information in this respect must be provided as we do not believe that this information can possibly be accurate.

Section 5.2 – Rate of Return

At the very heart of this discussion is the necessity for SWC to provide a convincing argument in favour of change from the current Determination.

In considering each of the WACC parameters – along with the overall consideration of whether to move the WACC in this Determination – NSWIC submits that IPART must consider if a case for change has been made.

NSWIC acknowledges the 6.5% rate of return set by IPART in the current Determination and, further, recognises that this return has not been achieved to date (although does not necessarily concur with the forecast continuation of this situation in 2009/10).

¹⁵ Table 5.1 on Page 5-1

¹⁶ Page 5-1

SWC advances a case based on *business risk* for a considerable increase in WACC. NSWIC rejects the arguments made by SWC with respect to risk. In particular, the characterisation of the risk as demand side is demonstrably incorrect. If anything, the risk is supply side – although we acknowledge that the results are indistinguishable.

SWC argues that WACC needs to be set at levels that encourage appropriate investment over the longer term, providing opinion from the Productivity Commission in support. We concur with this position based on the “longer term” presumption and specifically note that the failure to meet nominal WACC in the current Determination period *does not* breach the “longer term”

NSWIC submits that no increase in WACC is necessary to encourage efficient infrastructure investment decisions as those decisions are taken based on longer term returns, as noted by the Productivity Commission.

SWC makes much of the earnings stability variance between its operations and those of urban water utilities. NSWIC concurs that SWC faces greater volatility of supply and hence revenue, but notes that both supply and demand remain approximately constant with respect to urban utilities. That is, urban utilities do not have the upside capacity of SWC.

NSWIC submits that the revenue upside capacity held by SWC cancels the revenue volatility consideration when determining the appropriateness of WACC in line with urban water utilities. NSWIC therefore submits that the WACC of 6.5% applied to urban utilities is, as per the current Determination, appropriate for SWC.

SWC’s arguments for a higher WACC are predicated primarily on an assumption that revenue volatility is the primary driver of business risk. NSWIC contends that this is far too simplistic and that the experience of the past 3 years of the current 4 year Determination is insufficient evidence to the contrary for a long term pricing trend. The regulated revenue provided through the Determination has proven to be sufficient to more than meet the operating costs of SWC and, indeed, to provide a positive EBIT result which would have been significantly higher had cost savings mandated by IPART been met on schedule.

NSWIC submits that supply volatility alone is not the primary driver of business risk and, moreover, that no case has been made by SWC as to an increased business risk since the striking of the current Determination. Instead, cyclic conditions have been such that nominal returns were not met. A single incidence of cyclical downturn is insufficient to evidence a long term alteration to business risk assumptions.

The use of Beta’s throughout SWC’s case for a higher WACC draws attention to comparisons with equity markets, from where the notion of Beta derives. SWC has conveniently left aside comparison rates of return across the market in the current period, which clearly shows that the returns provided by SWC are well above averages.

NSWIC concurs with SWC's submission to lower the Nominal Risk Free Rate (based on the nominal 10 year Government bond rate), the Estimated Inflation Rate (2.5%) and the derived Real Risk Free Rate (1.8%).

NSWIC concurs with SWC's submission that the Market Risk Premium be retained at 6%, although reserves its right to argue that this ought, in fact, be lowered should economic circumstances recover significantly in coming months prior to the finalisation of this Determination.

We note SWC's request for a halving of assumed debt gearing and, moreover, the statement that this reduction is a primary driver of the requested increase in WACC. NSWIC reiterates its earlier submissions that no sufficient case for change from the current Determination has been made by SWC. Again, SWC contends that volumetric risk ought result is a higher business risk assumption. NSWIC contends that the volumetric risk downside (lower supply in cyclical downturn) is offset by the upside of higher cyclical years. No credible evidence is presented from any authority to suggest that such higher cyclical years will not exist.

Table 5.4¹⁷ sets out debt gearing comparisons with businesses the SWC contends are similar in nature. NSWIC rejects this assertion, noting that these are actual debt levels where debt may well – and certainly is in many cases – held on Government balance sheets. Information in respect of balance sheet debt for SWC is not available (or is potentially contained within that part of the submission blacked out) and hence comparison with actual balance sheet debt elsewhere is irrelevant. IPART is being asked to make a change to an existing assumption that has previously been well considered. NSWIC sees no evidence to suggest that such change is warranted.

NSWIC submits that no new evidence has been provided to warrant a change in a fundamental determination of WACC in debt gearing. The existence of a cyclical downturn is not a determinant of revenue volatility. Comparisons of actual debt versus assumed debt are irrelevant. NSWIC recommends no change to the current Debt Gearing assumption of 60%.

NSWIC is mindful that debt margins have spread during the course of current Determination, but notes that such spread is tightening as financial markets recover from events of the past 12 months. Whilst supporting the SWC submission that the Debt Margin is a market based parameter that ought be updated closer to the date of the final Determination, NSWIC submits that a short term model for finance of long term assets is inappropriate. Even under the request made later in its submission, SWC seek an asset life in excess of 80 years. In light of this, it is reasonable to assume that debt terms would be in excess of a four year Determination. Moreover, it would be remarkably imprudent for all such debt to mature simultaneously. In light of this:

NSWIC submits that the debt margin increase sought by SWC (from 1.2% to 3.15%) is unrealistically high given the longevity of assets and the commercial-equivalent financing that ought be nominated. NSWIC submits that the variance must be considerably lower than the 195 basis points sought.

¹⁷ Page 5-6

Whilst not necessarily concurring with the use of Beta as an appropriate parameter for setting WACC¹⁸, NSWIC acknowledges the process and the current Determination approach of estimating Beta by reviewing systematic risks.

SWC continues its reliance on volatility to make a case for dramatically increasing asset Beta. SWC again contends that it does not benefit from the same stability that metropolitan water utilities do given their stability of supply and demand. NSWIC reiterates previous submissions in respect of long term stability and lack of volatility. The occurrence of one cyclical drought does not warrant a shift from the current Determination – and particularly not a shift of the size sought by SWC. In particular, NSWIC points to evidence previously adduced that the current volumetric supply limits are not supported as a long term change by any climate science. To impose WACC parameters on this assumption that volumetric supplies will not return to long term averages is to penalise users to the potential massive upside gain of SWC with no possibility to revisit that unfair situation for a further four years.

NSWIC submits that SWC does not face higher long term business risks that other water businesses given the upside revenue of higher supply cycles. As a result, NSWIC submits that no change to asset Beta is warranted and supports the parameter set in the current Determination.

Both IPART and SWC discuss whether volumetric risks (note that NSWIC considers volume as variable rather than a risk given that minimum volumes over this Determination period still resulted in a positive EBIT) is a systematic or firm specific risk. SWC contends that the risks are systematic and hence ought be reflected in a higher WACC.¹⁹ SWC contends that the risks are “economic and climatic” in nature and therein lies the flaw in the argument. Whilst NSWIC concedes that economic and climatic changes are systematic in nature, no evidence has been provided that *shifts* (as opposed to short term variance) have occurred in either. Indeed, all available evidence either points to the contrary (the recovery of financial markets and the ABARE view that commodities markets are returning to more regular cycles) or specifically notes that no evidence yet exists of a change occurring (the IPCC and CSIRO). Importantly, a statistical analysis of a “structural break” in a long term average pattern is, at best, merely an indicator of the possible future variance in a pattern rather than evidence of altered probabilities of events. NSWIC reiterates its previous submission that the CIE report *is not, by any measure, evidence of climate change being relevant for the next 4 year Determination period.*

NSWIC submits that whilst economic and climatic change are, indeed, systematic, no evidence has been presented to prove a long term shift in either has occurred to warrant an increased WACC. Moreover, no evidence has been provided to justify a short-term significant price rise through an increased WACC to deal with a long-term issue.

¹⁸ Beta measures performance and risk against a market. SWC does not operate in a competitive market and does not have sufficient peers to provide the volume required for effective Beta measurement. Moreover, NSWIC notes criticism of Beta as a simplistic measure that does not take into account specific risk/reward scenarios even in the depth of the equities market.

¹⁹ Page 5-10

NSWIC does not see any necessity to alter either asset or equity Beta from the current Determination and notes that a “no change” position in respect of debt gearing supports this position.

NSWIC is also concerned at the attempt by SWC to address the business risk (which we do not accept) by both an increase in the WACC *and* a new model that will dramatically lower forecast consumption.

Whilst NSWIC has submitted that the business risk claimed by SWC is incorrect, we submit IN THE ALTERNATE that it is inappropriate to address that risk by both an increase in the WACC and a new consumption forecasting model that will see volumes dramatically lowered. NSWIC submits that neither is necessary on the evidence provided but, IN THE ALTERNATE, submits that only one must be adopted.

NSWIC makes no submission in respect of the Gamma parameter or the recommended tax rate, noting that no change for the current Determination is sought.

Section 5.3 – State Water depreciation method and asset lives

NSWIC makes no submission in respect of the straight line depreciation method proposed, noting that this is a no change position from the current Determination.

NSWIC recognises the work undertaken by SWC to review its assets in 2008/09 but is disappointed that said review did not result in a more robust depreciation methodology than a simple averaging. The review ought have developed depreciation schedules based on the management plan of each individual asset to reflect practice in the private sector.

That said, NSWIC accepts SWC’s position that there will be no pricing impact as a result of averaging asset lives and therefore makes no submission with respect to this matter.

Chapter Six – Building Block Revenue Requirements

NSWIC makes no submissions in respect of this Chapter.

Chapter Seven – Ratios for Sharing Costs Between Users and the Government

NSWIC is unable to fathom why SWC see a need to “revisit the rationale for the allocation of cost shares”.²⁰ The only reason advanced appears to be that the process is “largely discretionary” and is “commonly the subject of much debate with stakeholders during each Determination.”

NSWIC concurs that user shares have been the subject of much debate in previous Determinations, but can see no reason why such debate need reoccur.

NSWIC submits that no reason or evidence has been provided that necessitates a change to user cost shares and would be content for the sharing regime in the current Determination to be rolled over.

IN ANY EVENT, NSWIC believes that clarification needs to be provided to all stakeholders, NSWIC and SWC included, in respect of cost sharing for fish passage works which are triggered by dam safety upgrades.

NSWIC submits that where fish passage works are triggered by dam safety upgrades, the cost of those works ought be attributed as the dam works are attributed; that is, 100% borne by government.

IN THE ALTERNATE, NSWIC is prepared to reengage in the debate by advocating altered cost sharing arrangements pursuant to the submissions below or, again IN THE ALTERNATE, to an expansion of the term “user” to include all other users of SWC facilities.

NSWIC submits, IN THE ALTERNATE, that its further submissions in respect of user shares be considered OR that the determination of “user” be expanded to include all users of SWC services and assets including recreational boaters, fishermen, environmental entities and the like.

NSWIC makes no submission in respect of Customer Support, Customer Billing and Metering and Compliance shares.

We recognise that Water Delivery and Other Operations is a primary function of SWC and that irrigators are a primary beneficiary of those services. At the same time, irrigators are not the sole beneficiary of such services.

NSWIC submits that irrigators are not the sole beneficiary of Water Delivery and Other Operations and hence should not be the sole funder of these services. We submit that 80% of these costs be attributed to irrigators.

NSWIC makes no submission in respect of Water Transfers.

Flood Operations, whilst rare in the current Determination, are primarily in respect of the protection of community assets.

²⁰ Page 7-1

NSWIC submits that Flood Operations are primarily directed at the protection of community assets and hence ought be primarily funded by the community. We submit that 20% of these costs be attributed to irrigators.

Hydrometric Monitoring is of a high importance to irrigators, but the impactor pays approach adopted by IPART must take into account other users of these services, including, amongst others, the Bureau of Meteorology and the State Emergency Services.

NSWIC submits that Hydrometric Monitoring is a service which is availed by a range of entities. We submit that 75% of these costs be attributed to irrigators.

Water Quality Monitoring is a service that is of very little benefit to irrigators. For the most part, a broad spectrum of water quality is suitable for irrigation purposes. The service is primarily directed to human consumption and hence the costs of the service ought be attributed to those users.

NSWIC submits that Water Quality Monitoring is a service provided primarily for users other than irrigators (human consumption). We submit that no more than 20% of these costs be attributed to irrigators.

Whilst Public Liability Insurance is clearly a necessity for SWC, the benefit of that insurance clear accrues to a far great population than merely irrigators. It accrues to those that might use the assets and facilities provided by SWC and it likely accrues to those downstream that might be affected by the activities of SWC. In light of this, it is clearly inappropriate that one class of user only – irrigators – pay the entirety of the costs associated.

NSWIC submits that the benefits of Public Liability Insurance accrue to a wide range of potential claimants and hence that range of claimants ought contribute to the cost. We submit that no more than 50% of these costs be attributed to irrigators.

Corrective Maintenance, Routine Maintenance and Asset Management Planning and Replacement are clearly core activities of SWC. They are currently entirely funded by irrigators, which is inappropriate given the range of other stakeholders that benefit from the overall service provided by SWC.

NSWIC submits that Corrective and Routine Maintenance and Asset Management Planning are core activities of SWC and hence the full range of beneficiaries of the full range of services provided by SWC ought contribute to these costs. We submit that no more than 80% of these costs be attributed to irrigators.

NSWIC makes no submission in respect of Dam Safety Compliance or Environmental Planning and Protection.

In respect of Renewal and Replacement of Assets, for the same reasons advanced for Maintenance (above), the cost shares ought be altered.

NSWIC submits that Renewal and Replacement of Assets is a core activity of SWC and hence the full range of beneficiaries of the full range of services provided by SWC ought contribute to these costs. We submit that no more than 80% of these costs be attributed to irrigators.

The SWC submission sees irrigators contributing the full cost of Structural and Other Enhancements. For the reasons asserted above, a share of the Structural Enhancements ought be met by entities other than irrigators. In respect of “Other Enhancements”, it is entirely inappropriate to assign such charges to irrigators without any description whatsoever of the enhancements made. If, for example, the enhancement is to build a BBQ area at a SWC dam site, no charge whatsoever ought be levied against irrigators.

NSWIC submits that Structural Enhancements are a core activity of SWC and hence the full range of beneficiaries ought contribute to the cost. We submit that no more than 80% of the Structural Enhancements cost be attributed to irrigators.

NSWIC submits that no details of Other Enhancements have been provided and, as such, should not be charged in any portion to irrigators but that 100% ought be met by others until and unless adequate explanation is provided on a project-by-project basis.

Corporate Systems are clearly a core business activity and ought be charged pursuant to the reasoning advanced in preceding submissions.

NSWIC submits that Corporate Systems are a core activity of SWC and hence the full range of beneficiaries ought contribute to the cost. We submit that no more than 80% of the Corporate Systems cost be attributed to irrigators.

NSWIC notes the request made by SWC of IPART in respect of user shares for fish passage maintenance.²¹ We note that this work is likely to be a significant cost base for SWC but strenuously deny that the 100% user charge advocated by SWC is either reasonable or defensible. We disagree that the nature of the expenditure is “operational rather than compliance”, noting that fish passageways were installed and are required to be operational as a result of compliance.

NSWIC submits that fish passage maintenance cost shares ought reflect the cost shares in their installation; 50% only recovered from the users.

We further note that fish passage upgrade – as opposed to maintenance – has been, and will continue to be, triggered by dam safety compliance works. In this instance, the fish passage works cost recovery ought be treated in the same fashion as the dam safety compliance works.

NSWIC submits that the cost of fish passage upgrade works that are triggered by dam safety upgrades ought be subject to the same cost recovery methods; 100% ought be funded by government.

²¹ Page 7-3

Chapter Eight – Proposed Price Setting Approach

NSWIC notes that operating subsidies for a number of NSW valleys (Peel, North Coast and South Coast) are prescribed by IPART in the current Determination based on a decision not to pursue cost recovery in those valleys. We further acknowledge that this is not a decision for SWC to make and hence acknowledge that pricing in their submission is in respect of full cost recovery for those valleys.

NSWIC notes that pursuing full cost recovery in these valleys would result in massive price increases that are clearly unsustainable. In that respect, a continuation of the current Determination with respect to not pursuing full cost recovery is warranted.

NSWIC submits that full cost recovery should not be pursued in specified valleys – namely the North Coast, South Coast and Peel – on the basis that unsustainable price increases would result.

NSWIC notes that the operating subsidy that offset full cost recovery in these valleys was provided by the NSW Government. That same process ought be continued as cross-subsidisation in neither warranted nor desirable pursuant to the National Water Initiative (NWI).

NSWIC submits that operating subsidies must be provided by the NSW State Government as per the current Determination. Cross subsidisation from other users is not supported by NSWIC.

NSWIC recognises that cost increases will likely accrue to all irrigators as part of the current determination (although does not concur with SWC in respect of the size of these increases). We do not propose that these irrigators be excluded from these cost increases entirely.

NSWIC submits that price rises in the specified valleys should be limited, by means of subsidy from Government, to no more than 5% per annum.

We are mindful of the intent of the NWI that full cost recovery, where not practical, must be met with a *transparent* subsidy by government.

NSWIC supports the notion of smoothed pricing via P-nought adjustments and a glide path, but in light of our submissions opposing the significant price rises requested by SWC does not believe that this ought be an issue of concern for IPART.

Chapter Nine – Consumption Forecasts and Entitlement Volumes

Section 9.2 – Approach to Consumption Forecasting

Creating a forecast for consumption has been – and must continue to be – a task for IPART. Basic climatic variability that is a feature of the Australian hydrological scenario makes this a difficult task. In order to carry out that task, IPART has previously relied upon the Long Run Average (LRA) from the IQQM.

SWC have submitted that this approach is no longer valid and that an alternate model of 15 years data – rather than the 115 years in IQQM²² – ought be used.

The SWC submission is based on a report from CIE commissioned by SWC and (then DWE) NOW. According to SWC, CIE found that “there is strong statistic (sic) evidence (that) the current low extractions reflect a structural break in patterns of water availability rather than normal climatic variability.”

NSWIC rejects this quite bizarre assertion that is backed by no physical science evidence. In the first instance, current low extractions reflect a *drought* and droughts have occurred previously as is evidenced by the data within IQQM. In the second instance, climate change predictions provided by global (and Australian) physical science sources do not predict either that current circumstances are a new normal or that significant rainfall and rainfall-related activities will be identifiably affected *within the next four years*.

NSWIC is frankly surprised that SWC advance statistical theory as evidence of climate change when no other credible evidence is available of a manifestation of impacts within the Determination period. Even at our most charitable, we can best describe the process sought by SWC on the advice of CIE as a short term solution to a *possible* long term problem.

NSWIC submits that the current consumption forecasting model, using the Long Run Average Approach on IQQM data, is the most valid method available.

NSWIC submits that IPART must reject the CIE analysis that climate change will manifest in the next four years based on statistical theory that does not concur with evidence provided by scientific bodies including the IPCC and the CSIRO.

Should IPART believe that SWC have identified and proven that a change in the consumption forecasting methodology is required, NSWIC does not believe that the use of a mere 15 years of data – which includes the worst drought on record – results in a fair and equitable pricing outcome. Given that price set by IPART is effectively a floor price with no restraint on upside revenue, we urge IPART to act with reason rather than caution by using physical science as a guide to likely availability of supply.

²² NSWIC understands that the exact depth of the IQQM varies across valleys but that 115 is reasonably accurate as an across-the-board figure.

NSWIC has firmly rejected the SWC submission that both an increase in WACC and a new consumption forecasting model are both required. It is worth repeating that position here and further noting that we do not believe that a real and present problem has been identified, let alone a problem that needs two solutions.

Chapter Ten – Overview of Current Bulk Water Prices

Section 10.2 – Balance between entitlement and usage charges

NSWIC notes the current balance between entitlement and usage charges as outlined in Table 10.2²³. NSWIC continues to support this balance from the current Determination and sees no evidence to suggest it ought be altered.

NSWIC submits that the balance between entitlement and usage charges in the current Determination ought be continued.

NSWIC strenuously disagrees that the “alternative” put by SWC – a 90% fixed charge – is either warranted or necessary. In fact, we believe it is an ambit claim that ought be entirely ignored.

NSWIC submits that the alternative 90% fixed charge sought be SWC must be rejected.

Section 10.3 – Balance between high security and general security charges

We note SWC’s submission that a first best scenario would be an adjustment of the conversion factors contained within Water Sharing Plans (WSP’s). Whilst NSWIC does not necessarily disagree with this approach, we note that IPART do not (and should not) have the capacity to alter WSP’s. As a result, the point is effectively moot.

SWC makes much of a *scarcity premium* in its submission. NSWIC does not agree with this terminology as the concept of scarcity relates not to the delivery infrastructure but to the good which is being delivery through it – water. The scarcity value of water is prices in that market for that commodity and hence there is no requirement for shadow pricing derived form that market for delivery infrastructure pricing.

NSWIC submits that scarcity is priced in the market for water and should not be further priced via delivery infrastructure.

NSWIC does, however, support the concept of an access premium with respect to fixed charges. We note that such a premium exists pursuant to the current Determination and that such premium is based upon conversion factors.

It is our view that a cost approach ought be taken to this matter in the same way that IPART take a cost approach elsewhere based on an impactor pays basis. That is, SWC ought determine what increased portion of its fixed operating costs are associated with high security use (as opposed to general security use) and return to IPART with a proposal for premiums based on those costs.

NSWIC submits that IPART ought adopt a cost based approach to access premiums and ought instruct SWC to report back on the balance of costs

²³ Page 10-2

associated with fixed services to high and general security licenses so as to consider an appropriate proposal.

NSWIC makes no submission in respect of large customer rebates but notes that its members reserve the right to make their own submissions in this (and other) respects.

Section 10.6 – Charging for adaptive environmental water

NSWIC concurs with the position of SWC that Adaptive Environmental Water (AEW) entitlements must be fully chargeable in the same fashion as all other entitlements. We further note that entitlements held by the Commonwealth Environmental Water Holder – AEW or otherwise – must be fully chargeable.

Section 10.7 – Impact of water entitlement and allocation interstate trade

NSWIC has supported the direction of SWC to collect usage charges at the point of transfer for interstate trades where the purchaser does not hold an account with SWC. We concur that this process did not contravene the current Determination but further concur that it ought specifically be allowed in the new Determination.

NSWIC submits that collection of usage charges at the point of transfer for an interstate temporary trade where the purchaser has no account with SWC ought be mandated.

Section 10.8 – Metering service charge

The Metering Scheme described by SWC in its submission is optimistic, at best, given that the programme is far from determined. By way of background information, IPART should be aware that the programme is currently indeterminate and is far from having universal support. Funding under the COAG-agreed State Priority Projects is, *prima facie*, predicated upon the provision of water entitlements to the Commonwealth. NSWIC holds significant concerns as to how NOW intends to provide those entitlements and, until full details are disclosed, reserves its rights in respect of support for the entirety of the programme.

With respect to this Determination, NSWIC notes the Transitional Arrangements proposed by SWC²⁴ where the Metering Service Charge will accrue only to those customers whom have a new meter installed pursuant to the programme.

NSWIC submits that the Transitional Arrangements proposed by SWC with respect to the Metering Service Charge should be adopted.

²⁴ Page 10-18

Chapter Eleven – Prices for Individual Services

Section 11.3 – Proposed temporary transfer fee

SWC seeks to continue the current Determination charge.

NSWIC submits that the temporary transfer charges under the current Determination are appropriate and concurs with SWC's submission that they ought be continued.

Section 11.4 – Ancillary charges

SWC seeks to impose an hourly rate fee for information requests. Customers of SWC will not be charged for information less than two years old.

NSWIC submits that the ancillary charges regime proposed by SWC is fair and ought be adopted.

Chapter Twelve – Impact on Customers of Proposed Price Changes

Whilst NSWIC is tempted to provide commentary in response to the report that increased charges are justifiable on the basis of the total revenue derived from irrigated agriculture, we will refrain from doing so.

NSWIC submits that ability to pay is not a relevant criteria in determining costs.

We note that individual Members of NSWIC may lodge submission in respect of ability to pay in respect of setting prices in their respective valleys.



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Consultation

The Expectations of Industry

090303

Andrew Gregson
Chief Executive Officer

Introduction

NSW Irrigators' Council (NSWIC) represents more than 12,000 irrigation farmers across NSW. These irrigators are on regulated, unregulated and groundwater systems. Our members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries.

This document represents the views of the members of NSWIC. However each member reserves the right to an independent view on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

Executive Summary

This document sets out the consultation process that the irrigation industry expects from Government on policy matters affecting the industry.

Specifically, the industry expects that the contents of this document inform the consultation process with respect to preparation of the Basin Plan by the Murray Darling Basin Authority.

Background

Industry has been critical of consultation processes entered into by both State and Commonwealth Government entities in the change process with respect to water policy. Irrigators have significant sums invested in their businesses, all of which are underpinned by the value, security and reliability of their primary asset – water.

Irrigators recognise the imperatives for change and are content to provide advice on policy measures to ensure effective outcomes for all involved.

In light of these two factors, it is not unreasonable that irrigators request adequate consultation.

Recent consultation efforts have ranged from excellent to woeful²⁵. Irrigators believe that a method of consultation should be determined prior to the commencement of a policy change process. To that end, this document sets out the methods which we believe are acceptable and ought be adopted by Government both State and Commonwealth.

In particular, this document aims to inform the Murray Darling Basin Authority in its work developing the Basin Plan.

²⁵ See case studies later in this document.

Forms of Consultation

We consider two forms of consultation to be acceptable – Direct and Indirect. The preferred option will be dictated by circumstances.

Direct Consultation

This method involves engaging directly with affected parties, together with their representative organisations. As a default, it ought always be considered the preferred method of consultation.

Irrigators acknowledge that practical exigencies must be considered to determine if Direct Consultation is possible. Such considerations will include:

- The number of affected stakeholders (the smaller the number, the more ideal this method);
- The timeframe available for implementation (the longer the timeframe, the more ideal this method)²⁶; and
- The geographical distribution of stakeholders (the closer the proximity, the more ideal this method).

Indirect (Peak Body) Consultation

This method involves engaging with bodies that represent affected parties. NSW Irrigators Council is the peak body representing irrigators in this state. The National Irrigators Council is the peak body in respect of Commonwealth issues.

Irrigators acknowledge that there will be occasions on which consultation with peak bodies is necessary for practical reasons. Such reasons may include:

- An overly large number of affected stakeholders;
- A short timeframe (not artificial) for implementation;
- A large geographic spread of stakeholders; and
- An issue technical in nature requiring specific policy expertise.

This form of consultation requires some specific considerations that must be addressed in order for it to be considered acceptable;

- Timeframes

²⁶ Although note specifically that artificial timeframes, such as political necessity, will not be well received by irrigators.

Indirect Consultation is, in essence, the devolution of activity to external bodies. That is, the task of engaging with affected stakeholders to assess their views and to gather their input is “outsourced” to a peak body. That peak body cannot operate in a vacuum and, as such, must seek the views of its members lest it become unrepresentative. Dependent on the nature of the issues and the stakeholders, this may take some time. It is vital that peak bodies be requested to provide advice on necessary timeframes prior to seeking to engage them in an Indirect Consultation model.

- **Resource Constraints**

Peak bodies do not possess the resources of government. In most instances – and certainly in the case of irrigation industry peak bodies – their resources are gathered directly from members and hence must be well accounted for.

Peak bodies engage in a significant range of issues and activities, many of which feature their own time constraints.

Prior to commencing the consultation process, discussions with peak bodies must be held to ensure that the needs of stakeholders with respect to resourcing and timeframes are respected. This may include ensuring that consultation does not occur during times of known peak demand; coordination with other government agencies to avoid multiple overlapping consultation processes; and coordination with peak bodies existing consultation mechanisms (for example, NSWIC meeting dates are set annually and publicly available. These are an ideal forum for discussion as they provides access to key stakeholders with no additional cost to stakeholders).

Stages of Consultation

Irrigators believe that a multi-stage consultative model, in either the Direct or Indirect applications, is necessary.

(i) *Identification of problem and necessity for change*

Irrigators are wary of change for the sake of change. In order to engage industry in the process of change, an identification of its necessity is required. This should take the form of a published²⁷ discussion paper as a minimum requirement.

(ii) *Identification of solutions and method for implementation*

With a problem identified and described, a description of possible solutions together with a proposed method of implementation should be published.

²⁷ We accept that “published” may mean via internet download, but require that hard copies be made available free of charge on request.

It is imperative that the document clearly note that the proposed solutions are not exhaustive. The input of stakeholders in seeking solutions to an identified problem is a clear indicator of meaningful consultation.

It is likely, in practice, that steps (i) and (ii) will be carried out concurrently. This should take the form of a document seeking written submissions in response. The availability of the document must be widely publicised²⁸. The method for doing so will vary depending on the method of consultation. As a threshold, at least 90% of affected stakeholders ought to be targeted to be reached by publicity.

(iii) *Summary of submissions, identification of preferred approach*

Subsequent to the closing date, a document ought to be published that summarises the submissions received in the various points covered. It must also append the full submissions.

Acknowledgement of a consideration of the weighting of submissions must be given. As an example, a submission from a recognised and well supported peak body (such as NSWIC) must be provided greater weight than a submission from a small body, an individual or a commercial body with potential commercial interests.

There are no circumstances in which submissions ought to be kept confidential. Whilst we recognise that identification of individuals might be restricted, any material on which a decision might be based must be available to all stakeholders.

The document must then identify a preferred approach, clearly stating the reasons why that approach is preferred and why alternate approaches have been rejected.

Where the need for change has been questioned by submissions, indicating that a case has not been made in the opinions of stakeholders, further discussion and justification of the necessity must be made in this document.

(iv) *Explanation of interim determination and final feedback*

The document prepared in stage (iii) must now be taken directly to stakeholders via forums, hearings or public discussions. All stakeholders, whether a Direct or Indirect model is chosen, must have an opportunity to engage during this stage.

The aim of this direct stage is to explain the necessity for change, to explain the options, to identify the preferred option (together with an explanation as to why it is the preferred option) and to seek further input

²⁸ Regional newspapers, radio stations and the websites of representative groups and infrastructure operators are useful options in this respect.

and feedback. Further change to a policy at this point should not, under any circumstances, be ruled out.

(v) *Publication of final determination*

Subsequent to stage (iv), a document must be published summarising the feedback received from that stage, identifying any further changes, identifying why any particular issues raised across various hearings at stage (iv) were not taken into account and providing a final version of the preferred solution.

What Consultation Is Not

“Briefings” after the fact are not consultation (although they may form part of the process). Stakeholders will not be well disposed to engagement where prior decisions have been made by parties unwilling to change them. Briefings in the absence of consultation will serve to alienate stakeholders.

Invitations to attend sessions with minimal notice (less than 10 days) is not consultation. Consideration must be given to the regional location of parties involved, together with the expenses and logistical issues of travel from those regions.

Case Study One

Australian Productivity Commission (Review of Drought Support)

Getting it Right

During 2008, the Australian Productivity Commission commenced a review of Government Drought Support for agriculture. The review commenced with the publication of a document to which submissions were sought. A significant period of time was allowed for submissions.

Subsequent to the close of submissions, a draft position was published which took into account written submissions that were received, identified issues raised in submissions and identified a number of changes considered subsequent to submissions.

The Commission then engaged in a large series of public hearings in areas where affected stakeholders were located. Parties were invited to provide presentations in support of their submissions. Parties who had not lodged written submissions were also welcome to seek leave to appear. The meetings were open to the public, who were also given the opportunity to address the hearing.

A series of “round tables” in regional areas was conducted with identified and self-disclosed stakeholders. These meetings gave those who were unable or unwilling to provide presentations in public the opportunity to have input. At the same time, no submissions were kept confidential, the Commission recognising that the basis for its determinations must be available to all.

Importantly, present at the hearing were three Commissioners. It is vital that the decision makers themselves are available to stakeholders, rather than engaging staff to undertake this task.

We understand that a final publication will be made available in 2009.

Case Study Two

CSIRO (Sustainable Yields Audit)

Getting it Wrong

In early December, CSIRO (in conjunction with a number of other Government entities) conducted a regional “consultation” series with respect to the Sustainable Yields Audit. The series was, in our opinion, ill-informed, poorly organised, poorly executed and poorly received.

In late November, CSIRO sought advice from NSWIC over the format and timing of the series. We provided advice that:

- The series did not cover sufficient regional centres to engage all stakeholders. In particular, Northern NSW had not been included;
- The series should not be by invitation, but should be open to all comers given the implications not only for irrigators but for the communities that they support;
- Ninety minutes was vastly insufficient to cover the depth and breadth of interest that would be raised by attendees; and
- That the timeframe between invitation and the event was insufficient.

None of that advice was adopted.

Invitations were sent to an undisclosed number of stakeholders who had been identified by an undisclosed method. In the short space of time available to advise attendance, CSIRO threatened to cancel a number of sessions on the basis of low responses. Given the limited notice and invitation list, NSWIC became aware of a number of stakeholders who wanted to attend but were unable to.

During the sessions, information was presented as a “briefing” despite being described as consultation. As such, extremely limited time was available was questions to be addressed – a key feature of consultation. Moreover, where information that was presented was questioned, a defensive stance was taken – a key feature of lack of willingness to engage stakeholders in a consultative fashion.

In particular, NSWIC is particularly concerned at the lack of willingness to engage on factual matters contained within the report. Where glaring inaccuracies were pointed out, defensiveness was again encountered. In several instances, inaccuracies that had been advised by stakeholders were perpetuated in later documents.

Further, several presenters were clearly not aware of the full range of detail surrounding the matters that they discussed. It is imperative that those seeking feedback on a subject understand that subject in depth prior to commencing consultation.