



Murray Irrigation

Review of the water charge rules

Submission to the ACCC.

June 2015

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Executive summary

The Water Act outlines the basis for Basin water charge, water trading and water market rules including charges relating to Basin water resources and water service infrastructure.

The water charge rules (WCR) have been developed to deliver the Basin water charging objectives and principles (BWCOP) primarily to promote the economically efficient and sustainable use of water resources and infrastructure and government management of those resources and infrastructure.

While the intention of the rules is good, the reality is that the three sets of WCR and the water market rules (WMR) are overly complex and raise questions about compliance and consistency of enforcement across private and state operators and state water planning bureaucracies.

The result of the rules has been that States that were already regulated now have an additional layer of bureaucracy, as do private and public irrigation infrastructure operators (IIOs), while States that have not been regulated in the past are still not captured.

The compliance burden for IIOs has increased since the implementation of the WCR; however, while some of the requirements under the rules are welcome and provide increased transparency of fees and charges, it is questionable as to how much demand there is for others.

For example the Network Services Plan (NSP) and the prescriptive consultation process is costly and onerous and there is little evidence that customers engaged in this process. There is little doubt that such long-term business planning is a sensible activity for a sustainable and efficient company to undertake, the question remains as to whether the cost of compliance for a regulated process such as that prescribed by the WCR is balanced by the benefits provided.

As a member owned company governed by a predominantly shareholder-elected Board of Directors, Murray Irrigation is directly accountable to our customers who are our shareholders. This accountability, combined with the growing competition in the agricultural sector to attract investment in our regions, act as a deterrent to monopoly pricing practices that the NSP process is trying to prevent.

The determination process for bulk water suppliers is welcome, however, the fact that the WCR apply only to water supply in the Murray Darling Basin has added to the process in NSW leading to duplication and further complexity. Murray Irrigation acknowledges that there is capacity for State pricing authorities to gain accreditation under the ACCC; however, there is little scope in the rules to allow a state authority to customise pricing principles to better suit the business and structure of their state's water resources and bulk water providers. The ACCC should consider relaxing the rules to allow flexibility as long as the principles adopted are consistent with the intent of the BWCOP.

Murray Irrigation supports amending the rules to reduce the regulatory burden on IIOs and to simplify the regulatory regime.

1 Background

1.1 Background

Murray Irrigation is an unlisted public company that provides irrigation water and associated services to approximately 1,200 family farm businesses over an area of 748,000ha through 3,000km of channels in the NSW southern Riverina. As such, we are a Part 5 operator under the Water Charge (Infrastructure) Rules 2010.

Murray Irrigation is governed by a Board of Directors comprised of six shareholder directors and two non-shareholder directors. Murray Irrigation's shareholders are farmers with food, fibre and livestock being the focus of regional production. Murray Irrigation's source of water is the regulated River Murray and the company's water supply is almost exclusively NSW Murray General Security water. Murray Irrigation is a not-for-profit company and we do not pay dividends.

1.2 Membership

Murray Irrigation is a member of the National Irrigators' Council. Murray Irrigation makes this submission on behalf of our business, focusing on those issues relevant to our business. Murray Irrigation endorses the submission of the National Irrigators' Council representing broader industry issues and addressing other sections of the ACCC issues paper.

2 Submission

2 Submission

Murray Irrigation welcomes the opportunity to make this submission to the Review of the Water Charge Rules being conducted by the ACCC.

Murray Irrigation has not addressed all questions posed by the ACCC in the Issues Paper published in May 2015, instead focusing on the areas relevant to Murray Irrigation's business.

2.1 General matters: Issues paper chapter four

The NCP sets out Murray Irrigation's existing infrastructure and expenditure profile and includes alternative investment strategies for Murray Irrigation that impact on service to customers and fees and prices.

The purpose of the NCP is to facilitate consultation with customers prior to completion of the NSP.

Murray Irrigation provides irrigation water and surface and subsurface drainage services to its customers across nearly 750,000ha through a network of 2,954km of earthen supply channel and 1,425km of earthen drainage channels.

2.1.1 Definitions and differentiations

The Water Charge Rules and Water Market Rules fail to define an Infrastructure Operator. As subordinate regulation, in the absence of a specific definition, it must be assumed that the definition of the *Water Act 2007* must apply. That is:

Section 7 Infrastructure operators etc.

(1) *This section applies if a person owns or operates infrastructure for one or more of the following purposes:*

- a. *The storage of water;*
- b. *The delivery of water;*
- c. *The drainage of water*

For the purpose of providing a service to another person.

(2) *The person is an **infrastructure operator***

(3) *The infrastructure is **water service infrastructure**.*

(4) *If the infrastructure operator operates the water service infrastructure for the purposes of delivering water for the primary purpose of being used for irrigation:*

- a. *The operator is an **irrigation infrastructure operator**; and*
- b. *The infrastructure is the operator's **irrigation network**.*

By this definition, all small irrigation trusts and cooperatives fall into the category of being an IIO. As identified in the Murray Irrigation submission to the Water Act Review; to date the ACCC is unable to list all IIOs in the Basin who must comply with the WMR and the WCR. Murray Irrigation is concerned that the multitude of smaller irrigation trusts, districts and cooperatives in NSW are not compliant with the WMR; consequently the water market is not a "level playing field".

Recommendation: The ACCC conduct an audit to ensure all IIOs are compliant with the WMR to ensure fair and efficient trade throughout the Basin.

2 Submission

The *Water Act* does not define an IIO based on the size of its network or the number of members. However the water charge (infrastructure) rules (WCIR) distinguishes IIOs based on volume and applies a tiered regulatory framework. The WCIR follow a three-tiered regulatory structure with more scrutiny and compliance requirements under tier three than tier one.

The ACCC has prepared guidelines and fact sheets for the tiered requirements, and the explanatory memorandum to the rules outlines the three-tiered approach, but the WCIR do not refer to tiers at all, rather distinguishing operators according to the most rigorous 'part' of the rules that apply.

While the tiered regulatory approach makes sense, Murray Irrigation does not believe the differential treatment of member owned operators based on size is appropriate as it can lead to inequity for customers because the associated compliance costs are passed on to irrigators with higher costs for larger IIOs.

A contributing factor for compliance costs is the interpretation of the WCR with regard to providing information to customers. Murray Irrigation has been advised by the ACCC that where the WCR require information to be provided to customers, the operator needs to have 100 percent coverage of all of its customers. In the case of Murray Irrigation, where it cannot be guaranteed that all customers have email this requires all customers to be provided with a hard copy.

Recommendation: That the rules be amended to allow publication of information and notice of publication with an option to request a hard copy to be adequate to meet the needs of provision of information to customers.

2.1.2 Multiple regulations

Currently there are five different sets of rules that apply to IIOs, bulk water suppliers and State regulators including the three WCR and the WMR which fall under the ACCC's jurisdiction and the Water Trade Rules which are contained in the Basin Plan and administered by the Murray-Darling Basin Authority.

All of the rules are designed to protect the interests of irrigators, however, the complexity of the structure of the rules means that many irrigators are not aware of the rules and how they apply.

Currently the WMR deal with irrigation rights and delivery rights held with an IIO and the transformation of those rights. The Water Charge Termination Fee Rules (WCTR) deal with the fees an IIO can charge a customer if they wish to cede their delivery rights.

At the same time, the WCIR deal with the fees and charges of an IIO or bulk water supplier and the Water Charge Planning Management and Information Rules (WCPMR) deal with the provision of information by States regarding the fees charged for water planning and management activities.

Recommendation: Amalgamate related rules to simplify regulation.

2.2 Water Charge (Infrastructure) Rules (WCIR): Issues paper chapter five

The WCIR relate to infrastructure fees levied by bulk water providers and irrigation infrastructure operators (IIOs).

The purpose of the WCIR is to improve transparency and consistency of pricing across the Murray-Darling Basin and deter monopoly pricing by IIOs and bulk water providers.

2 Submission

2.2.1 Member owned IIOs

Murray Irrigation supports the intent of the WCIR, however, compliance is costly and onerous, particularly for Part 5 operators.

The WCIR provides a tiered approach to regulating with an IIO's compliance requirements dependent on its size and ownership. As mentioned previously Murray Irrigation does not believe the differential treatment of member owned operators based on size is appropriate as it can lead to inequity for customers with the associated compliance costs for larger IIOs passed on to irrigators.

Member owned operators are unique in that their customers are their shareholders with voting rights and the ability to influence the decisions of the company through constitutional rights, annual general meetings and other avenues for access. While IIOs are natural monopolies, the customer-shareholders are able to challenge the companies' pricing through any of these avenues or by reference to the ACCC.

Recommendation: Remove unnecessary administrative burdens and costs for private IIOs by treating all member owned IIOs equally under tier one rules.

To minimise regulatory burden, Murray Irrigation does not support additional regulation such as a mandatory template for the tier one requirement of producing a schedule of charges as discussed in the issues paper. Regulation is costly with development costs, costs of policing and enforcing as well as costs to companies to alter current systems and compliance.

The schedule of charges is a good mechanism to allow customers to compare rates and charges across IIOs; however, there is no consistency in terminology across IIOs or States. Improving consistency of language would improve the ability of customers to compare fees and charges for like services and products without the cost or administrative burden of further regulation.

Recommendation: The ACCC develop a glossary of terminology to be used in a schedule of charges, rather than developing a mandatory template.

The requirement for IIOs who meet the criteria of a part five operator (tier two) to consult on and develop a fully-costed Network Service Plan (NSP) is particularly onerous and costly.

The Explanatory Memorandum for the WCIR explains that tier two rules (part five) address concerns about asymmetric information and a lack of transparency in the processes used by operators to determine their charges. As mentioned above, as a member owned company with a Board of predominantly shareholder directors, our members have other opportunities to engage with the company about operations and costs.

As noted in Murray Irrigation's submission to the Water Act Review, the fact that Murray Irrigation only had seven responses from over 1,200 farm businesses on the Network Consultation Paper (NCP) is indicative of the degree in which customers want to engage in that level of detailed business planning. There is nothing in the Water Act 2007 that stipulates that private, member owned operators, must be subject to such stringent requirements.

Adding to the cost burdens is the requirement by the ACCC for every customer to receive a copy of the NCP and the NSP. As mentioned previously in the case of Murray Irrigation, that required both documents to be mailed to ensure all of our customers receive, rather than had access to, the papers. This requirement alone cost Murray Irrigation thousands of dollars in postage on top of the administrative and labour costs to prepare both documents.

Recommendation: Remove the requirement for member owned IIOs to produce and consult on Network Service Plans.

If the requirement for NSPs is maintained, the rules be amended to allow publication of consultation papers and the NSP and notice of publication with an option to request a hard copy to be adequate to meet the needs of provision of information to customers.

2 Submission

2.2.2 Bulk water providers

Rules relating to the determination of bulk water prices are sound; however, as noted in Murray Irrigation's submission to the Water Act Review, in practice the rules have not achieved the intended goal of consistency across the Basin. The result is that States that were already regulated now have an additional layer of bureaucracy, while States that have not been regulated in the past are still not captured.

Murray Irrigation's submission stated:

"This anomaly is most obvious when reviewing the ACCC's Water Monitoring Report which provides hypothetical Bills for bulk water suppliers and private diverters as well as IIOs. The ACCC notes that hypothetical bills for private diverters vary considerably throughout the Murray-Darling Basin¹ but does not make the point that private diverters in South Australia pay no bulk water charges, unlike diverters in Victoria, Queensland and NSW. This highlights that there is no consistency and or equity in water charges across the Basin which also assist distort permanent and allocation markets."²

The submission went on to point out that while NSW operates under the "beneficiary pays principle" with identifiable government/user cost shares, it is difficult to determine to what extent regulated water charges are subsidised by Government in Victoria through their process and South Australia pays no regulated water charges and therefore water holders outside of irrigation trusts pay no ongoing water management or water use charges.

2.2.3 Determination timing

At the core of the determination process is the release of the final determination and the annual review outcomes.

In accordance with the rules, Murray Irrigation must provide customers the schedule of charges with the required period of notice prior to implementing changes to fees and prices.

Murray Irrigation operates on a financial year consistent with the water season and the practice of the majority of our customers, Water NSW and the NSW Office of Water whose charges to Murray Irrigation are passed through to customers.

Issues arise when there is a delay to the determination process and the final determination is released after the deadline for which Murray Irrigation has to set prices and provide customers the required notice to implement charges from the beginning of the financial year.

Recommendation: Amend the rules to require pricing applications to be submitted by a date that would allow finalisation of the determination at least two months prior to the commencement of the new financial year.

The other alternative would be to allow IIOs to update their fees to recover government charges without meeting the 10 business day requirement for notice where a change to the schedule of charges is solely linked to the government charge component.

2.2.4 Accreditation of state agencies

The Essential Services Commission in Victoria has been accredited under Part 9 of the WCIR. Unlike Victoria, NSW at the time decided not to have the State pricing agency, the Independent Pricing and Regulatory Tribunal (IPART) accredited under Part 9 due to the inflexibility provided for a State to address state specific issues and operate under broader objectives and principles provided for under their State legislation. Previously, the IPART legislation allowed for a wider range of factors to be considered including contemplating a government/user co-payment and applying an efficiency dividend to MDBA charges³.

¹ Water Monitoring Report 2012-13, ACCC, p94-97

² Murray Irrigation submission to the Independent Expert Panel review of the Water Act 2007, 2014

³ Review of bulk water charges for State Water Corporation 2010-14, IPART, June 2010, p17

2 Submission

Murray Irrigation said at the time that under the WCR irrigators in NSW effectively have less protection than they had under the IPART determination process⁴.

As a result of the decision not to accredit IPART, Water NSW has had prices applied to water users in the Murray-Darling Basin determined by the ACCC for the period of 2014-2017 while the remainder of their prices for non MDB users are determined by IPART.

This has added further complexity for water users in NSW whose charges are now regulated by the ACCC for Water NSW charges and IPART for NSW Office of Water charges. Murray Irrigation would support allowing State based regulators to approve regulated water charges by applying their own pricing principles as long as the intent is consistent with that of the WCIR.

Murray Irrigation understands the NSW Government has, or is in the process of, applying for IPART accreditation into the future.

Recommendation: Allow for accredited State regulators to apply objectives and principles relevant to specific state issues as long as the intent is consistent with the Basin Water Charging Objectives and Principles.

2.2.5 MDBA Charges

Adding to the inconsistent nature of water charges throughout the Basin, there is no uniformity in how State Governments recover MDBA charges. In NSW the majority of these charges are passed onto irrigators through both Water NSW and the NSW Office of Water charges. In South Australia they are apparently recovered at least in part through a Murray-Darling Basin natural resource levy and/or the recently cut 'Save the River Murray Levy' which was used in part for Living Murray initiatives in the State⁵.

The WCIR apply to water charges in relation to Basin water resources, yet the overall manager of a significant portion of management charges for river operations in the southern connected system has no process for public scrutiny and regulated determination.

Murray Irrigation acknowledges that currently the MDBA do not apply "charges", rather they are funded by State and Commonwealth "contributions"; however, it is our contention that these "contributions" amount to charges that should be scrutinised in a similar manner to that which is applied to other bulk water charges.

Without some form of determination to review and analyse costs that includes public consultation it is impossible for stakeholders, including Governments to be confident they are paying only what is effective and efficient, or that funds earmarked for one business unit are not cross-subsidising another business unit.

Adding to the need for transparency is the fact that in NSW these "contributions" are passed on to irrigators in the form of "charges" and therefore should be subject to public scrutiny.

As noted when the ACCC met with the National Irrigators' Council IIO sub-committee in Canberra on 10 June 2015, the difference between "contributions" and "charges" is semantics that is being used to avoid public scrutiny of the costs of a public authority. The Federal budget papers are inadequate as the MDBA only reports against one outcome and there is no obvious distinction between Basin Plan costs, river operations costs and costs of other programs.

Murray Irrigation acknowledges that there has recently been a Ministerial Council review of joint programs; however, again there was no public process to allow stakeholder consultation.

Recommendation: Regulation of MDBA charges/contributions relating to River Operations consistent with Part 1, Section 10 (1)(a)(i) – charges relating to Basin water resources - to allow for scrutiny and ensure Basin Governments are only asked to fund effective and efficient activities with appropriate cost shares.

⁴ Murray Irrigation submission on ACCC Draft Decision on State Water Charges 2014-17.

⁵ <http://www.environment.sa.gov.au/managing-natural-resources/river-murray/water-charges-and-how-they-are-spent>

2 Submission

2.3 Water Charge (Termination Fees) Rules (WCTR): Issues paper chapter six

Termination fees allow an IIO to mitigate the impact of the loss of income when a customer chooses to disconnect from the irrigation network by charging a multiple of the total network access charge. An IIO is restricted by the rules as to the circumstances under which termination fees may be charged.

Murray Irrigation supports the current methodology to calculate the total network access charge and the circumstances under which the termination fees may be charged.

In Murray Irrigation, termination is not the only option open to irrigators wishing to discontinue irrigating within our network.

2.4 Water Charge (Planning and Management) Rules:

As discussed previously in this paper, Murray Irrigation questions the need for multiple regulations and encourages the ACCC to streamline the various rules to reduce the complexity while retaining the intent.

Murray Irrigation supports the need for States to publish information about the water planning and management charges; however, there is concern that some states remain uncompliant⁶ five years after the implementation of the rules.

According to the ACCC some states have said that the costs involved in identifying and publishing the required information outweigh the benefits of doing so.

There is a significant disconnect between the enforcement approach the ACCC takes to rules applying to private operators compared to these rules applying to State governments. In our experience, where private IIOs have erred in compliance with a rule, the ACCC has acted immediately and publicly; however, State governments are still able to be non-compliant without any repercussions.

If the ACCC has been unable to ensure compliance after five years, the conclusion must be that the rules are ineffective – even if the intent and the information that is provided where the rules are being complied with is useful and sound.

The failure for all states to equally comply with the WCPMR highlights issues raised previously in this paper about the different approaches by the States to bulk water charges (or not in the case of South Australia) and recovery of MDBA charges.

⁶ *Review of the Water Charge Rules – issues paper – May 2015, ACCC, p36*

3 Conclusion

The complex nature of the WCR and WMR means the cost of compliance for operators likely outweighs the benefits to water users.

Murray Irrigation supports the requirement to publish information about fees and charges to promote transparency in the water market and the irrigation industry; however, Murray Irrigation urges the ACCC to reconsider its interpretation of the WCR and the requirement to physically deliver information to customers when modern technology means there are and more cost effective and efficient options available.



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