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NEW SOUTH WALES
IRRIGATORS'
COUNCIL

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SUBMISSION

Independent Pricing and Regulatory Tribunal Review of Rural Water Cost Shares DRAFT REPORT

November 2018



Introduction

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigators and the irrigation industry in NSW. Our Members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries. Through our members, NSWIC represents 12,000 water access licence holders in NSW who access regulated, unregulated and groundwater systems.

NSWIC engages in advocacy and policy development on behalf of the irrigation sector. As an apolitical entity, the Council provides advice to all stakeholders and decision makers.

This submission represents the views of the Members of NSWIC with respect to the Independent Pricing and Regulatory Tribunal's (IPART) review of 'Rural Water Cost Shares'. However, each member reserves the right to independent policy on issues that directly relate to their areas of operation, expertise or any other issues that they deem relevant.

Overview

NSWIC welcomes the draft report into IPART's review of rural water user cost shares. We accept IPART's finding that to move from an activity-based to service-based framework is not recommended at this time, however, we are disappointed that in this process, IPART has not addressed the concerns raised by NSWIC about the lack of transparency of cost shares and cost codes or duplication.

While IPART has suggested the next price determination will provide more granularity and consider transition of cost codes, we need that information now to be able to provide adequate input into this review or we need the opportunity to provide further submissions at the time when this transition of cost codes is being undertaken.

We remain concerned that there is little regard on the impact caused by unlicensed water users such as those with basic landholder rights and recreational users.

NSWIC remains concerned that the activity codes still allow room for duplication with both WAMC and WaterNSW undertaking activities under very similar descriptors and WAMC contracting WaterNSW to undertake some of their activities. This confusion and lack of transparency will be exacerbated when the costs and activities of the Natural Resources Access Regulator (NRAR) are included in the process. NSWIC is disappointed that this review does not investigate or include the NRAR activities for assessment.

NSWIC therefore submits this review must be seen as a first step and IPART must be prepared to review and accept feedback on government/user cost shares when the final cost codes and NRAR activities are known.



NSWIC accepts that the impactor pays principle is the preferred option of IPART, however, the counterfactual that IPART has determined to be the starting point is overly simplistic and would always lean towards aligning the cost to water users. The counterfactual does not allow any flexibility to consider the history and original intent of the need for the activity.

In 2012 the ACCC suggested that new regulations that impose significant costs should be grandfathered. Doing so would recognise that, had the cost of that regulation existed prior to the development of extractive industries, those industries may not have established. The ACCC's basis was that existing users should not be materially disadvantaged by new regulations.

The precedent for taking this approach is the pre-1997 Dam Safety activity costs which recognises that many dams were constructed to encourage development and that this development may not have occurred had the full extent of the cost to users been apparent.

A similar philosophy needs to be applied to recognise that new community expectations and government regulations have led to increased costs that may have stifled development had they existed at the time.

At the time when much of the irrigation development occurred, prior to the adoption of the user pays system, infrastructure and rivers were managed primarily for consumptive users or navigation.

The objects of the NSW Water Management Act 2000 establish the concept of the sustainable use and management of water to "foster significant social and economic benefit to the State." As such, it must be recognised that extractive users are not the sole impactor on water management decisions.

Submission

In this submission, we focus on the areas of most concern to our members and the proposed changes that will have the most significant impact on pricing.

We support the recommendation of Aither to consider valley-specific ratios where there are material differences in activities and impactors.

NSWIC has long held concerns about the fact that ongoing costs for infrastructure, funded and constructed under Government environmental programs such as the Living Murray program, is being paid by water users. It is an issue that potentially needs to be addressed in tariff structures to link the purpose of the works to the fees collected for that infrastructure.

Below we address specific cost codes.



W01 Surface water monitoring

Surface water monitoring is carried out for a variety of core purposes in the modern river.

While the consultants recommend increasing the user component for quantity and quality monitoring, they propose maintaining the shared rationale for ecological condition and data management, linked to monitoring.

Aither have based their recommendations on assuming the primary impactor are water users, but rightly acknowledges that in the case of quality and algal blooms, there are other factors at play. However, in the case of quantity and quality monitoring, the assumption is that these activities would not occur if not for extractive users. NSWIC would argue that in today's society, and to deliver on the objects of the Water Management Act, the expectation for clean and plentiful water would provide for water monitoring regardless of extraction.

In the Murray Valley and the Lower Darling, water quantity monitoring is not driven solely for extractive users. Interstate water sharing arrangements, the Basin Plan and the Murray-Darling Agreement require the monitoring of water quantities and quality along the system to ensure the State and river operators are meeting their obligations under interstate agreements.

Recommendation: Retain the current user cost shares for water quality, algal and quantity monitoring.

W04 Modelling

NSWIC accepts that water modelling is conducted to aide in the distribution and management of water resources; however, the level and scale of water modelling has increased significantly and the purpose for modelling must also be considered.

Modelling is now conducted by State agencies to provide information and data to the MDBA to facilitate the implementation and assessment of the Basin Plan as well as to review and assess proposed projects under the Sustainable Diversion Limit Adjustment Mechanism.

In this case, the counterfactual does not recognise the step changes in water management that has led to increased costs. In 2001, when user shares were first established, the purpose for modelling was straightforward. At the time, IPART applied a 50% user share for surface water modelling. Fast forward to 2018 and modelling is done for river and asset management, environmental management and to inform Basin Plan implementation. The increased modelling requirements have not been caused by water users, but rather by a change in Government policy and priority. This increased modelling activity impacts both surface and groundwater.



In the consultant's report, Aither identifies the need for modelling to inform and ensure broader NSW government processes and compliance with interstate water sharing arrangements¹. This statement would indicate that the interstate arrangements are also impactors as far as creating the need for modelling activities. It cannot be argued that water users create the need for the interstate arrangements because, particularly in the Murray, interstate agreements preceded the development of any extractive industries.

Recommendation: IPART maintain the 50% user cost share for surface water modelling and reduce the user share for groundwater modelling in recognition of other impactors and increased costs due to Government policy and community expectations rather than water user needs.

W05-03 Environmental water management

Currently users pay zero environmental water management charges. Aither has recommended applying a user share of between 70-90% based on their assessment that "without the dam being built, environmental water would not be required".

NSWIC would argue that the need for environmental water management should be treated as a legacy issue to recognise that the need for environmental water management would continue, even if all extractive users ceased to operate, due to the fact that the dams have been built and will not be removed.

Treating this cost code as a legacy issue also recognises the fact that dams were built for a variety of reasons including flood mitigation, urban development, stock and domestic supply as well as irrigation. As noted in the WaterNSW submission to IPART "this pull and push between creating the need and the cost and the legacy role of the NSW Government in the initial establishment of the asset needs to be acknowledged."²

Recommendation: Recognise the legacy aspect of environmental water management.

W07 Water management works

According to Aither, this cost code relates to works conducted to remediate or protect against damage caused by extractive water use. Aither also note that the activities also protect life and property from the effects of flooding

Urban development and public infrastructure are an important factor in establishing river flow management regimes and it is these flow regimes that lead to the need for remedial and preventative works. This development and infrastructure are required for the broader community regardless of their demand for or use of water. Therefore, the main impactor is the broader community, not solely water users.

¹ Draft Report: Rural water cost sharing review, AlTHER, 2018, pviii

² Submission to the Review of Rural Water Cost Shares, WaterNSW, 2018, p5



Recommendation: Maintain the current 50/50 user/government cost share to recognise the impact the broader community has on river flow management regimes.

Flood Operations

Aither recognises that the priority for WaterNSW flood operations is the protection of life and property for communities downstream of potential floods; however, while we acknowledge that through their water utilities these communities are technically water users, we disagree with Aither's determination that as such, water users in general are the main impactor and therefore should wear most of the costs.

Aither assumes the need to protect the community from the risk of flood (caused by dam failure) would not exist in the absence of the structure. However, if it is acknowledged that many of these structures were built to encourage development, then the counterfactual to Aither's assumption could be that the community would not exist without the dam. Furthermore, flood mitigation infrastructure is not limited to dams and some would exist regardless of any upstream dam.

The over-simplistic application of the impactor pays principle is particularly perverse in this instance. Increasing the user component across this activity code means that a water user on a rural property who accepts that floods occur and has structured their land and business accordingly is paying the fees for WaterNSW to protect the roads, public infrastructure and population of towns and urban centres that are in the line of floods.

There must be acknowledgement that flood operations are conducted mainly to protect the population centres. As such there must be a greater public good component applied to the cost share to recognise that the main impactor is the broader community and to avoid inadvertently penalising the rural based water user who does not benefit from, nor require (therefore 'impact') the same level of flood operations.

Recommendation: Apply greater Government cost share to recognise the impactors are the population centres and not the "average" water user.

Environmental planning and protection

As we said in our submission to the Issues Paper, and mentioned above, the main driver in changes to costs of environmental planning and protection activities are external legislative changes.

Further, community expectations have changed and much of the environmental planning and protection costs are being incurred to reverse the effect of previous construction and management decisions.



NSWIC submits that the increased activities required to meet modern standards for environment planning and protection is not impacted by water users, rather it is being driven by the broader community and Government policy.

Irrigators understand and accept that their water use requires a level of environmental management, protection and planning; however, the standard required to satisfy community (particularly urban) expectations is greater than that required by irrigators and the cost share should reflect this.

Recommendation: Maintain the current 50/50 government/user cost share.

Conclusion

NSWIC agreed that a review of government-user cost shares was long overdue to improve the transparency and accountability of the cost share framework. The review, however, has not made any recommendations that would improve the transparency of the framework and rural water costs in general. Rather it has merely been an exercise in trying to justify and clarify how the 'impactor pays' methodology applies. By adopting an overly simplistic counterfactual, the reviewers are left with no option but to find that water users are the significant impactors even if the reality is quite different.

Even where water utilities can be considered water users, the reality is that irrigators wear the burden of meeting most of the costs passed on to users for both WAMC and WaterNSW even where the costs are incurred to protect public infrastructure or to meet the expectations of a public far removed from the river and its operations. Unfortunately, there has been no investigation into if and how water charges and costs could be recovered from other impactors such as those with basic landholder rights or recreational users.

NSWIC urges IPART to consider the issues raised in this submission.

Jim Cush
Chairman