

## Response to the ESC Draft Decision

12<sup>th</sup> April 2016

### Irrigation Tariffs 9.4.3

Not approving uniform pricing by the ESC is the correct decision and is in accordance with the Water Act 2007. The ACCC Review of Water Charge Rules Draft Advice does not support uniform, postage stamp, pricing. (page 149 Review of the Water Charge Rules Draft Advice) The ACCC supports the view of the expert panel in the Report of the Independent Review of the Water Act 2007.

This independent review of the Water Act uses the example of the Peel Valley in NSW where the ACCC ruled that irrigators in higher cost systems should pay more and irrigators in lower cost systems should pay less giving to the ACCC Objective of user pays.

The ESC in their draft decision will consider common fees in the other five districts, excluding Shepparton, if GMW submits an application to do so. GMW states in their Submission to the Price Review 2016 in 2.1.4 Context "there are uncertainties in relation to specific project outcomes. Over the long term there are uncertainties reflecting the introduction of new technology on a scale not previously implemented. This means the impact on maintenance, operations and whole of life asset costs will continue to emerge as the modernised network is integrated into GMW's systems and operational issues are understood."

What this means is that the five districts involved in the Connections Project will move at differing paces and with different technologies yet paying the same fee for a particular tariff under uniform pricing.

The Loddon Valley in particular is using low pressure pumping systems (Retic) but remain on a gravity tariff for pumping. The fees may be similar in nature but the costs are vastly different in total. Over the water plan 4 period the cost differentials between low pressure pumping and gravity supply could increase to be quite large for Infrastructure Usage Fees and Infrastructure Access Fees. This does not mean that overall costs will increase in the Loddon Valley for IAF and IUF, however the portioning of cost within this district will change.

It is recognised that the service standards for pumping are district based. There are three pumped districts of Nyah, Tresco and Woorinen. However within the gravity districts pumped irrigators remain on a gravity tariff. Using gravity service standards for low pressure pumping and not a low pressure service standard will lead to a higher cost base system for gravity irrigators if low pressure pumping standards are not employed as GMW endeavour to maintain this pumping as a gravity operational standard.

Connection Project districts have hybrid pumping systems that are evolving and again are being charged at a gravity tariff and not at low pressure pumping tariff. For service standards it is unclear how operations are remedied if there is pump failure and who is qualified to assess breakdowns in pumping.

The extra pumping failures not applicable to gravity are; electricity interruptions, motor fusion, power surges and fuse burnout, blocked suction pipe, blocked pump impeller, pipe burst, circuit overload and other miscellaneous events. When a pumping failure occurs who does the diagnosis?

The electrician will not fix a blocked suction pipe and conversely a water bailiff will not fix an electrical problem. The costs associated with pumping are above those with gravity. The pumping systems still need gravity to supply water to the pumps within their networks so the irrigators are still liable for the maintenance of this gravity infrastructure to supply water to the pumps.

The actual running costs associated with running the motors are also extra. The power usage has to be paid for and the electricity tariff has to be paid to the electricity provider. The electricity tariff will have to be calculated and added to electricity usage fee for each ML pumped, however with Water Plan 4 this cost will be met by all gravity irrigators. The electricity tariff will have to be paid for in the winter shutdown months as well the normal irrigation season unless the power is disconnected and then reconnected at the start of the irrigation season which may be even more expensive to do so.

The Connections Project to date has been about water savings. The use of low pressure pumping has allowed for greater consistency in supply to the irrigator compared to the old channel system and has saved water from leaks and evaporation; this has led to savings for GMW as these channels have been remediated reducing maintenance and operational cost, but the cost analysis for the pumping has not been shown. These costs will be covered by all gravity irrigators and conversely not allow a reduction in fees for gravity irrigators, as GMW has stated above " This means the impact on maintenance, operations and whole of life asset costs will continue to emerge as the modernised network is integrated into GMW's systems and operational issues are understood."

The ACCC Non Discrimination Rules refers to infrastructure service "of the same class". The existing Rule 10 (which currently only applies to Part 3 Operators but will be amended to apply to all infrastructure operators under Rule Advice 5-A) has existing guidelines on these rules defining an infrastructure service being of the same class to be of the same quality or standards, the same characteristics and the same features. Where an operator claims to be providing two different classes of service, it should be able to clearly distinguish between services with references to factors such as; Delivery standards (for example, whether the service can be accessed 'on demand') or Pressure standards (for services provided through pressurised networks).

**The ACCC recognises that, during the transition period immediately after the proposed amendments to the rules are made, the situation may arise where it is not possible for charges determined by the regulator to be fully consistent with the amended requirements outside Part 6. In these cases, the regulator should seek to ensure that charges it approves or determines- including the annual review process – are consistent as far as possible with the amended water charge rules as a whole.** (ACCC Review of the Water Charge Rules Draft Advice - Consistency with water charge rules as a whole. Page III)

- Rule 10 non discrimination rules applies that gravity irrigators are facing extra costs that are born by a service dissimilar to their gravity system. Uniform pricing blends the extra costs of pressurized services that are currently being charged at gravity prices across all five districts.

Murray Valley irrigators should not have to be involved with the running or cost analysis of a district which is totally disconnected from the Murray Valley. The ACCC Review of the Water Charge Rules Draft Advice also supports the district pricing with the Objective of user pays and price transparency.

Basin Water Charging Objectives and Principles (BWCOP) apply to any decision to change from district pricing to uniform pricing. In light of the Peel Valley decision the ACCC will review its guidance material with Recommendation 4-A. Recommendation 4-A will include interpretation of key terms such as “perverse or unintended pricing outcomes.”

The Peel Valley Irrigators believed that the increase in fees were perverse in reaching the objective of user pay. The ACCC decision is to implement a 10% cap on real annual increases in the Peel Valley. Avoiding perverse or unintended outcomes has been locked in at 10%pa increases until achieving the ACCC objective of user-pays.

The ESC has noted that the five GMW districts excluding Shepparton were within 7.5% for IAF/IUF with the Indec analysis. Noting that “would be sufficient to justify common fees for gravity irrigation infrastructure access and use for up to five of GMW’s districts.” (Page 52 ESC Draft Decision) This 7.5% analysis by Indec and the 10% ruling made by the ACCC should not be seen as examples of each other. The 10% per annum increase is an incremental increase to achieve the ACCC objective of user pay whilst minimising a perverse or unintended outcome. The 7.5% in the ESC Indec analysis differential may co-exist with the ACCC principle of preventing perverse or unintended outcomes by being less than 10%, but it does not co-exist with the ACCC objective of user pays, as the Peel Valley example does.

Any fee, charge or tariff where an irrigator pays more than the cost associated with running the infrastructure within their network is a perverse outcome and not in line with the ACCC objective of user pays. Single pricing could also distort an irrigators’ decision to invest in the Murray Valley (Peter Beex’s submission to the Review of the Water Charge Rules Issue Paper) if this price in the Murray Valley is artificially higher than the actual costs incurred.

### **District and Centralised Costs**

Table 9.6 in the ESC Draft of Price Review clearly shows there has been a concerted effort by GMW to create a false ideology that there has been a significant move towards centralised costs. Table 9.6 in the ESC Price Review shows the difference from GMW assumptions of 67% of operational costs being centralised compared to Indec’s report showing only 44%. For Murray Valley irrigators GMW has developed a GMW Tatura Construction Unit which operates out of Tatura. Whilst there are efficiencies gained from GMW having their own construction unit the costs for Murray Valley are largely inflated compared to Central Goulburn and Shepparton. Work teams share start times and travelling times so the further the crews have to travel the less actual work is completed. For every eight hours of work paid for both man and machine in the Murray Valley by the Tatura Construction Unit six and half hours of work is done. I believe this behaviour is having a detrimental impact on Murray Valley and is clear that if GMW ceases this push to uniform pricing with centralised costs the Murray Valley will be allowed to operate in a more efficient manner using localised contractors and cutting costs.

### **Waranga Basin and Other Anomalies**

The ESC has flagged that a 7.5% for IAF/IUF differential may be grounds to consider uniform pricing in five of the six GMW Districts. In the Indec analysis extra pumping costs would not have been realised for pumping water in the Waranga Basin in years of drought, as this did not occur in the

Indec analysis period. It is very feasible that the situation will arise in the WP4 period requiring GMW to pump this water.

If uniform pricing is considered, all GMW's five districts excluding Shepparton will have to incur this extra cost in IAF/IUF to meet these extra pumping costs within the Waranga Basin. However Rule 10 of the Non Discrimination Rules, as stated above, determined that fees should be of the same class. The moment the pumping decision is made for the Waranga Basin it becomes a pumped district and distinctly different from the gravity districts. It is an unworkable situation for GMW to reassess costs for the Waranga Basin irrigators with uniform pricing. It is also to note the ESC should consider the ACCC amended rules including Rule Advice 5-A before considering approval of uniform pricing.

It should not be compulsory for the ESC to increase the fees because of the probable pumping from the Waranga Basin. The ESC has approved the revenue cap form of price control so GMW can apply to increase fees for the Waranga Basin irrigators to meet the extra costs. With the Peel Valley example this is set at 10%pa until the user pays principle is obtained. GMW has provisions under the Water Act that the State Government contribute funds to meet any shortfalls in fees until the Waranga Basin irrigators finally meet user pays. It is clear that irrigators of a differing class in a distinctly differing district should not have to bank roll other charges not applicable to them.

The ESC in their draft decision will consider common fees in the other five districts, excluding Shepparton, if GMW submits an application to do so. With the Indec findings that the other five districts excluding Shepparton will be within 7.5% for IAF/IUF these findings in their report were done whilst all districts have a 100% allocation. If during WP4 allocations in each of the districts vary it will have a disproportionate effect on the districts as a whole. IUF per megalitre of water used will increase in low allocation district whilst IUF per megalitre will remain stable in other districts with high allocations. With uniform pricing the cost differentials considered in the Indec Report may question the rationale of the ESC in considering a move to uniform pricing if differing allocations across the GMID occur.

### **Form of Price Control**

In the ESC Draft Decision the commission proposes to maintain a revenue cap form of price control with a rebalancing constraint on individual tariffs of +/- 10 per cent of the approved price path in each year.

ESC has allowed GMW to reformulate its fee reform proposal in response to this draft decision. (Page 52 ESC Draft Decision). It is unclear that if GMW resubmit their fees and in doing so increasing the amount greater than what the ESC has allowed, if on approval will the ESC reconsider its decision to price control.

After ensuring sufficient revenue streams to allow efficient delivery of the required services with the Indec review, it would not be prudent then to allow the nominated form of price control as a revenue cap if these fees were increased.

Based on the independent Indec report the ESC reformulated the fees payable and reduced this amount in accordance with the ACCC pricing principles. If the ESC then allow for an increase from GMW response to the Draft Decision based on GMW claiming declining demand and rationalisation of its asset base (10.2.2 GMW Draft for Price Review) then the risks to GMW would have largely been extinguished therefore the appropriate form of price control would be Price Cap.

- I only support the ESC draft decision on price control if it remains in accordance with the ESC Draft Decision on expenditure.

#### **11.4 Environmental Water Holder Tariffs**

The ESC stated that “We can confirm environmental water holders are subject to the same tariffs as other G-MW bulk storage customers”

The process and information obtained in reaching the above statement conclusion is absent from the Draft Document. It is not stated from whom the confirmation of paid tariffs is obtained as there are three entities charged with the responsibilities of environmental water in the Murray system. The environmental water holders are; Commonwealth Environmental Holder, Victorian Environmental Water Holder and The Living Murray which is controlled by the MDBA.

The ESC Draft Decision does not mention The Living Murray water account held by the MDBA.

##### **BOX 6.3: THE LIVING MURRAY PROGRAM**

The Living Murray (originally named The Living Murray Initiative, now known as The Living Murray Program or simply The Living Murray) is a joint government initiative announced in 2003. Its assets and holdings are coordinated by the MDBA on behalf of the Australian, New South Wales, Victorian, South Australian and Australian Capital Territory governments. The governments have pledged \$650 million to the initiative. The aim of The Living Murray is to restore the health of the River Murray through the recovery of 500 GL of water and the construction of major water management structures at six environmental icon sites: Barmah-Millewa Forest; Gunbower-Koondrook-Perricoota Forest; Hattah Lakes; Chowilla Floodplain and Lindsay-Wallpolla Islands; the Lower Lakes, Coorong and Murray Mouth; and the River Murray Channel. The MDBA works closely on the initiative with the local communities, including Indigenous communities, land managers, catchment management authorities, water authorities and construction companies. By 2013 The Living Murray had recovered a long-term average of 479,973 ML of water and delivered 657,016 ML of environmental water. The governance structure of The Living Murray is set out in the 2004 Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin, including the then Murray-Darling Basin Commission's role as a service provider to the Joint Venture governments. This responsibility was later transferred (as part of the commencement of the Act) to the MDBA. (Report of the Independent Review of the Water Act 2007 box 6.3)

“‘Water recovery Permanent’, cost-effective recovery of water for the environment is an important step forward in the process of returning the Murray to a healthy working river. The First Step decision of The Living Murray was to recover 500 gegalitres for return to the environment and to use this water to achieve environmental objectives at the icon sites. This was termed the First Step as it was recognised that it was only the first step towards restoring the Murray River to better health. Each state has a target amount of water to be recovered by June 2009. This water is recovered

through a variety of measures including efficiencies created through water infrastructure upgrades and regulatory reform.” (MDBA website)

G-MW Resources Manager has issued a statement about the Barmah-Millewa Forest Environmental Water Allocation (B-MF-EWA) stating that 177GL of water was borrowed. (Weekly Times on February 17<sup>th</sup> 2016. This page 9 article by Chris McLennan is titled ‘Growers to repay enviro water.’)

G-MW has confirmed this from their board meeting regarding the repayment of 177 GL saying Water Resources to provide a fact sheet detailing this process. “GMW manage the Bulk Entitlements from which water may be borrowed as allocation for use by customers. Once irrigator allocation reach 100%, instead of putting water away for next year, it is returned back to the Environment. It is up to GMW to determine if water is used.”(GMW Board response to WSC) I have attached a copy of the B-MF-EWA from the MDBA.

The Living Murray has 9589 HRWS and 72582 LRWS in the Murray system. (Page 78 G-MW Submission to the Price Review 2016). The B-MF-EWA is not included in the Living Murray entitlement, nowhere in the Report of the Independent Review of the Water Act 2007 does it mention borrowing water from bulk entitlements and repaying this water as G-MW has stated.

- Does the Barmah-Millewa Forest Environmental Water Allocation (B-MF-EWA) have validity with the creation of the Water Act 2007 as amended? The B-MF-EWA was created on the 25<sup>th</sup> May 2007.
- If the B-MF-EWA has validity then how does the B-MF-EWA environmental allocation pay bulk water charges when it does not hold entitlement?

### **Environmental Water Holders Infrastructure Fees**

Dot point number 3 on page 66 of the ESC Draft Decision says;” By arrangement, the Victorian Environmental Water Holder pays an Infrastructure Access Fee based on an equivalent delivery share.”

The above statement is false. A delivery share is a share in the infrastructure operators’ network where the infrastructure operator can charge a fee per delivery share held to cover costs for that infrastructure. This fee for infrastructure access (IAF) is a fixed cost.

An equivalent delivery share is a casual usage fee unlike the IAF it is only paid in the year which it is used and is based on the actual amount of water used in the network. The ‘equivalent delivery share’ is a variable cost.

The Water Charge Infrastructure Rules (WCIR) requires all infrastructure operators including GMW to produce a Schedule of Charges. Infrastructure operators are prohibited from imposing a regulated charge relating to an infrastructure service unless that charge is listed in their Schedule of Charges and a copy given to the customers. Rule 4 provides what must be included. (5.4.1 ACCC Water Charge Infrastructure Rules)

- GMW has not included in their schedule the equivalent delivery share.

**Rule Advice 5-B**

The rules should be amended to expand the current protections in rule 10 to also prohibit price discrimination (including through discounting) based on; (c) The holding, volume or use of a tradeable water right.

- The allowance of an equivalent delivery share to the VEWA is not in accordance with rule 5-B (c) as it is based on “the holder” of the water user.

On page 71 ACCC water charge (infrastructure) rules it is stated that “when an infrastructure operator provides a casual usage service, it should not limit the availability of that service with reference to one of the proscribed bases or charge different casual usage charges to different customers on one or more of the proscribed bases,” for which the holding is one of the bases.

I do not support the 11.5 Draft decision as it clearly is not in accordance with the ACCC Rule Advice 5-B.

Yours sincerely,

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