

Submission to Office of Water

Regulations Pursuant to Section 91I of the Water Management Act 2000

130125

Andrew Gregson
Chief Executive Officer

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 those Members but does not preclude and of those Members from lodging separate submissions that may contain further information or detail specific to their interests.

Notes on Consultation

Whilst pleased to have the opportunity to comment on the proposed Regulations, NSWIC submits that the timing of the process is inappropriate. Attached to this submission is our Consultation Expectations Policy. The process does not comply with that policy *per se*, but engaged in a further transgression by conducting consultation in the holiday period.

NSWIC has sought an extension on submissions for all stakeholders to Friday 1 February.

Furthermore, NSWIC emphasises that meter equipment is an operational issue and varies at a local level. For this reason, more extensive consultation should be sought from valley representatives and existing networks who deal with metering issue on a regular basis.

General Comment

NSWIC concurs with the intent of the amendment and the concept of the Regulations. We harbour some concerns in respect of the content of the latter.

Specific Responses

The requirements referred to below mirror those in the paper provided by NOW. The balance of this document should be read in conjunction with that paper.

Requirement 1

NSWIC disagrees with the notion that a water user be responsible for the operation or otherwise of a State owned meter. A metering service charge is levied against users. It is incongruous that they must also face legal responsibility for ensuring that a piece of infrastructure that they do not own is operable.

Users of a state owned meter should not be required to make themselves aware that a State owned meter is inoperable, however should they become aware that a meter is not working, then users should be requested to assist the owner in a) informing them when a meter is not working and b) helping to provide back-up information to help assist in determining water usage.

NSWIC is content with the capacity to report online on the basis that alternative mechanisms, including telephone and fax notification, are available.

Requirement 2

Whilst content with the provision of "date when they intend to take water" data, NSWIC submits that such information must specifically not be binding. It is the nature of irrigated agriculture that external variables - including weather - can see such intent change rapidly and frequently.

The requirements to provide a reason as to why a meter has ceased to operate must be worded such that an absence of such information cannot lead to transgression. It is not reasonable to assume that an approval holder will necessarily know why a meter - particularly one that they do not own - has ceased to operate.

Requirement 3

NSWIC submits that 72 hours is a reasonable timeframe, but specifically notes that an obligation to notify in respect of state-owned infrastructure is not acceptable.

Requirement 4

We concur that maintenance of existing procedures is preferable.

We submit that a requirement to maintain information in respect of readings subsequent to the installation of an alternative meter is both onerous and unnecessary. In the instance of a state-owned facility, it is unacceptable given that the user is forced to pay a metering service charge as well.

Similarly, NSWIC does not believe it reasonable to require a user of a state-owned meter to record times when pumps are operated, the size of the pump or the extraction rates. We submit that that a charge is paid for a service. The provision of such service where infrastructure becomes inoperable must not be cost-shifted to irrigators.

Requirement 5

NSWIC concurs that the metering of take is preferable in circumstances described.

We submit that determination of use in the absence of a meter based on maximum extraction rates is demonstrably unfair, particularly in respect of state-owned installations.

NSWIC submits that the section 91I explicitly states that a replacement meter need not be an identical make or model to the one it replaces. It should only be a requirement that the replacement meter is compliant with current standards.

Requirement 6

NSWIC believes the 21 day period is both arbitrary and unsupportable. The geographical location of many irrigators together with the specialised nature of the equipment means that three weeks is unlikely to be achieved in many circumstances. NSW submits that an application for extension for a further 21 period should see a deemed acceptance unless NOW can provide good reason why this should not be the case in each individual circumstance.

Requirement 7

No submission.

Requirement 8

NSWIC strenuously objects to the concept of approval holders providing information to State Water from state-owned installations. A metering service charge is paid by the approval holder. That charge is specifically levied to obtain such information. We will not accept cost-shifting in the absence of a review of this charge by IPART or the ACCC.

ENDS



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Consultation

The Expectations of Industry

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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 woeful¹. 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.

Forms of Consultation

¹ See case studies later in this document.

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)²; 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

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

² Although note specifically that artificial timeframes, such as political necessity, will not be well received by irrigators.

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 published³ 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.

³ 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 publicised⁴. 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 and feedback. Further change to a policy at this point should not, under any circumstances, be ruled out.

⁴ Regional newspapers, radio stations and the websites of representative groups and infrastructure operators are useful options in this respect.

(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.