BURDEKIN RIVER IRRIGATION AREA COMMITTEE

141 Young Street
AYR QLD 4807
Telephone: (07) 4783 4800

PO Box 957
AYR QLD 4807
Fax: (07) 4783 4914

1724

6 December 2002

EJ Hall
Chief Executive
Queensland Competition Authority
GPO Box 2257
Brisbane Q 4001

Dear Sir

RE: BURDEKIN HAUGHTON WATER SUPPLY SCHEME: ASSESSMENT OF CERTAIN PRICING MATTERS RELATING TO THE BURDEKIN RIVER IRRIGATION AREA

I attach the following for your consideration:

(1) BRIAC response to QCA Draft Determination
(2) Copy Statutory Declaration of Ross Noel Chapman
(3) Copy Statutory Declaration of Lyndsay George Russell Hall
(4) Copy Statutory Declaration of Leslie John Searle
(5) Copy Statutory Declaration of James Timothy Smith
(6) Copy Statutory Declaration of John Lawson Wassmuth

The Declarations are enclosed to specifically deal with the retrospective nature of the rate of return issue.

Yours Faithfully

RK McNee
CHAIRMAN

BURDEKIN RIVER IRRIGATION AREA COMMITTEE

141 Young Street
AYR QLD 4807
Telephone: (07) 4783 4800

PO Box 957
AYR QLD 4807
Fax: (07) 4783 4914

25th November 2002

The Chairman
Queensland Competition Authority
GPO Box 2257
BRISBANE QLD 4001

Dear Sir

RE: BURDEKIN HAUGHTON WATER SUPPLY SCHEME INQUIRY

The draft report of September 2002 by the Authority on the assessment of certain pricing matters relating to the Burdekin River Irrigation Area is a bitter disappointment to Irrigators in the Burdekin.

We say this, not merely because we have a material financial interest at stake, but because more importantly the draft report does not even attempt to address many of the issues raised specifically by BRIA farmers or dismisses such arguments with the most superficial of remarks. The draft report seems almost designed to avoid many of the issues raised rather than deal with them. Moreover, it is so ridden with errors that serious questions should be directed as to its objectivity.

BRIA Irrigators were concerned that the Ministers very restrictive directions to the QCA would result in a predictable outcome that would preserve the integrity of the current price paths. Irrigators were relying on the independence of the QCA to address their concerns impartially and free of preconceived prejudice.

The conclusions of the QCA particularly in relation as to when it is appropriate to charge a positive rate of return has left BRIA Irrigators questioning the QCA's independence and impartiality.

BRIA farmers are entitled to a full statement of reasons if their comprehensively presented arguments are to be rejected. It is totally unacceptable that reasoned arguments should be brushed aside without being fully dealt with. The QCA has a legally enforceable duty to conduct an inquiry which bases itself on the arguments presented to it and to consider those arguments on their own terms, rather than on the basis of preconceived biases towards methodologies which it cannot defend (and has not even done so) against the arguments presented to this inquiry.

In addition, we note that the QCA has avoided certain issues by failing to address adequately its terms of reference. It has failed to examine fully where it is appropriate not to seek a return on capital or whether lower bounds have incorporated an excess return to capital. It has omitted all mention of the fundamental problems which BRIAC identified in the Green-Edwell report. That report was required and made available for the purposes of this inquiry and it beggars belief that the QCA appears to have deemed it to be irrelevant to the inquiry's terms of reference.

BRIA Irrigators agreed to the QCA review only after being provided with an undertaking by Ministers that they would be provided with a comprehensive justification and detailed explanation as to why it was appropriate that they be required to provide a further rate of return to SunWater through annual water charges over and above the contributions they had already made.

The methodologies used and the conclusions reached by the QCA only become an issue to BRIA Irrigators once our concerns relating to the retrospective requirement for a rate of return on BRIA Infrastructure is fully addressed.

It is obvious that there is no evidence to support claims that Irrigators who invested in the BRIA were told of any requirement to provide a further rate of return as a component of water charges.

Statutory Declarations attached to this submission provided by individuals involved in policy planning and advisory roles prior to and during the BRIA Auctions substantiate that rates of return were not required or even discussed.

A letter to QCA from the Minister for Agriculture, Fisheries and Forestry, the Hon Warren Truss confirms that SunWater seeking to recover a return through Irrigators water charges on the grant paid to the Queensland Government by the Federal Government for the construction of the Burdekin Dam is contrary to the intention of the Commonwealth grant.

To suggest that Irrigators investing in the BRIA Scheme would have done so knowing that they would be required to pay an unknown rate of return on a yet to be determined value defies logic and fundamental business principles. It is significant that even at the last Auction of BRIA farms in 1998 no advice was provided to prospective purchasers that there was a requirement to provide a rate of return as a component of water charges.

Even more alarming is any suggestion that a retrospective requirement for a rate of return can be justified by the corporatisation of a water provider 12 years after Irrigators made their investment in the Scheme. Any attempt to justify a rate of return on this basis would be viewed as unethical and inconsistent by Irrigators particularly when Government sees fit to subsidise Government Owned Corporations such as Queensland Rail and Ergon annually by amounts we believe to be in the vicinity of $700M and $600M respectively.

BRIA Irrigators are extremely concerned with the hypocrisy and double standards that prevail when sectors of the community are selectively required to provide a rate of return on Government investment in Infrastructure as well as pay full operational, maintenance and refurbishment costs that automatically increase by CPI every year.

Irrigated Agriculture competes in a truly commercial environment and does not have the luxury of increasing the price of its produce automatically by CPI or demanding a rate of return on its investment. If SunWater was a truly commercial entity it would not have this luxury either.

The QCA has recognised that under prevailing prices Sugar Cane Irrigators in the BRIA do not have a capacity to pay a positive rate of return. At the inception of the Burdekin Scheme individuals investing in the BRIA, recognising they were competing on international markets against heavily subsidised overseas production would have realised their inability to provide Government with an ongoing rate of return via water charges and not supported the Burdekin Dam Scheme.

The QCA should also recognise that Irrigators in the BRIA and Irrigated Agriculture in general are extremely unlikely to be able to provide Government with a rate of return unless there are major changes in world agricultural trad resulting in the removal of massive subsidies provided to our competitors.

Ministers asked the QCA to complete a full and proper inquiry. Ministerial assurances were given to Irrigators that all the issues would be fully and impartially investigated. But they have not been. Irrigators have instead been served up a package of conclusions based on the acceptance of methodologies which they have questioned vigorously without their questions being answered.

Among the inconsistencies or lapses in the QCA draft report, we include the following -

1. The QCA writes up the value of Burdekin infrastructure yet does not include such nominal revaluation gains as income and counts them as returns to investment (contra p 88, there is no historic cost reconciliation).

2. The QCA counts Commonwealth Government grants as part of the asset base, but does not include such grants as income to the scheme.

   - Private sector companies must count government grants as income and include them as financial returns in their accounts.

   - The QCA wrongly denies that the Commonwealth grant has been written off (p 29) yet admits the grant was made at a time when governments did not seek commercial cost recovery (p 30) and letter from Minister Truss confirms

the above and states that it was not the intention that SunWater should recover a rate of return on the Commonwealth grant.

3. Nor does the QCA explain why a State taxpayer-funded irrigation scheme should be treated any differently from other taxpayer-funded public works such as roads or bridges, Queensland Railways or Ergon Electricity Infrastructure.

   - How would motorists react if they were charged on the notional value of the roads their taxes have already paid for?

4. The QCA values the Burdekin scheme on the basis of depreciated optimised replacement cost and talks about "unaccounted for" capital.

   - this is like saying that because you paid $20,000 for land from the Government in 1960 and your land is now worth $150,000 you must have "stolen" from the Government and should be made to pay up the difference;

   - the QCA appears to undervalue capital contributions by BRIA farmers in any event (p 23);

   - if someone asks you to contribute to part of the cost of a common project such as a fence, you would be angered to be told later you had to meet the whole cost. Yet material reproduced by the QCA (p 25) shows this is what is happening. BRIA farmers were told certain payments were their capital contributions and now are being told they should pay more.

5. New South Wales has not tried to make Irrigators pay for previously-built water infrastructure. The regulator there has realized you cannot rewrite history.

6. The QCA has pretended to use a private sector capital asset pricing model, yet it has not been consistent and treated capital gains as part of the investment returns. Nor has it used the usual private sector accounting rules of calculating returns on the basis of actual historic cost.

   - to say a weighted average cost of capital return should be paid on assets built by previous generations is like saying we should be paying a return to the British Treasury for the roads built by Colonial Governors to open up the country for development.

   - the QCA commits economic error in pretending there is an opportunity cost of capital for sunk assets and does not answer BRIAC's arguments against the misuse of the private sector capital asset pricing model (p 63). What the QCA is really doing is making up a bogus concept of "cost of capital" to legitimise taxes disguised as water charges.

7. The QCA has said that SunWater should charge a commercial rate of return on new investment projects.

   - but the corporatisation of SunWater should not be a licence to impose retrospective taxation. It is nonsense to pretend that SunWater *needs* to charge a rate of return on *old* investments which cost SunWater *nothing* and which were paid for by users and taxpayers. That is like saying Telstra should charge a farmer a rate of return on a replacement value of $50,000 for the phone connection he paid $10,000 for in 1975.

8. The QCA fails to take into account other beneficiaries from the scheme. Credit has not been given for benefits to government from increased economic activity and taxes generated by the scheme nor for social benefits from flood mitigation. The

QCA wrongly rejects the benefits of fiscal externalities (p 100). Nor has the QCA fully acknowledged that Townsville's water supply security is a major beneficiary from the scheme.

9. Nor does the QCA really acknowledge the implications of the fact that the Burdekin scheme was designed to service 660 farms of 56,760 hectares in the BRIA but now services only 362 farms of 48,278 hectares in the BRIA plus 394 users in the North and South Burdekin Water Boards for 55,376 hectares.

10. The QCA has pretended that the Burdekin scheme should be treated as subject to company tax when there is no tax payable by the State of Queensland.

    - the requirement to pay tax equivalents does *not* mean that you ignore the tax-exempt status of the State of Queensland; otherwise it would be a situation of tax upon tax being thrown at taxpayers using government-owned infrastructure that their taxes and contribution had paid for.

11. The QCA has endorsed charging BRIA farmers on the basis of notional valuations not the actual costs of the Burdekin scheme.

    - How would you feel if 20 years after you bought your house, the developer came back and said you should be charged a further amount on what it would cost to drain and pipe your land today?

12. The QCA did not recognise that there were hidden excess returns on capital through excessive operational charges (p 88)

13. The QCA adds insult to injury by suggesting that BRIA farmers have been under-charged in the past and may have to be charged more on a profit-based basis in the future (p 92)

    - in effect, the QCA is suggesting SunWater should become every farmer's landlord. No one in their right mind would have ever spent one cent on a cane farm if he had been told that years down the track, water prices would be set to squeeze his returns.

14. The QCA has not disclosed its legal advice where it has rejected BRIAC's legal arguments (eg p 97). We do not even know the form of the questions on which legal advice was sought by the QCA. It is totally unacceptable for the QCA to base conclusions on documents which we cannot examine and question.

We therefore request copies be forwarded to us of all documents or correspondence between the Authority or its officers with other persons in respect of legal issues raised by BRIAC and in respect of criticisms of, or validity of, the capital asset pricing model.

Perhaps the most galling feature of this inquiry (if one can use that word in respect of a process which seems to have a predetermined outcome) is its inexcusable failure to address properly the fundamental economic principles at stake in this dispute. BRIAC in its submissions devoted considerable attention to the proper economic principles which should govern public utility pricing. Because those submissions appear to have been either not read or not understood by the Authority, we are attaching further copies to this letter with the request that they be read. For example, we note with astonishment there is not a single reference in the report to the work of Professor Bob Walker on fallacies in measuring profitability of water businesses, to which we drew the Authority's attention.

We also note that Professor John Quiggin, a member of the Authority, would have to recant much of his own academic writing were he to sign a final report on the lines of the draft report. Like Professor Bob Walker, he would be aware of many of the pricing fallacies

BRIAC has questioned in its submissions.

Further, we know we are on sound ground in questioning the relevance of sunk capital to current day water pricing, as that argument was in effect accepted by the New South Wales regulator. No amount of finessing or "wordsmithing" is an acceptable substitute for a proper discharge by the Authority of its legal duty to conduct a full and impartial inquiry which examines all the arguments presented and gives proper reasons for rejecting those arguments it rejects.

ADDITIONAL SPECIFIC COMMENTS

Chapter 1 Executive Summary

page 1

Capital Contributions and Asset Valuations

While there is no generally accepted definition, the Authority has taken the view that capital contributions are capital payments made towards the capital cost of an asset by a third party with the intention of reducing the capital outlay by the owner of the asset **and with the expectation that the payment will be recognized for pricing purposes**. Capital contributions may be made by prospective users and/or by government.

The QCA has to explain why the highlighted statement is correct. It is clearly contradicted by Minister Truss' letter. An inquiry into cost should look at what the actual net costs are and not speculate about motives.

Page 2

In relation to DORC valuations and unaccounted for capital, the methodology needs to be challenged. It is like saying that if I spent $200 on jewellery and its replacement cost is now worth $500 there is an "unaccounted for" capital contribution of $300. The gap the draft report points to is due to the failure to account for revaluations over historic cost and to treat government contributions in the same way as a private sector company would account for government bounties

Page 3

para 2

This is quite inappropriate for a taxpayer-funded natural monopoly. Maximizing the value of a monopoly means destroying much of the value which could be created in downstream user industries. In the BRIA case it means reducing canefarmers to becoming the economic serfs of SunWater.

Criteria for investment in new projects are irrelevant to sunk capital.

Pricing needs to reflect beneficial externalities as well as negative externalities.

Page 3 last para

The 2-3% cost quoted is incorrect we believe the excess over efficient operation, maintenance and renewal costs to be 4-5% and this reduction must be pursued. We are astounded that QCA should dismiss this amount as being almost insignificant yet condone 2-3% CPI increases in water charges so as to maintain revenue to SunWater in real terms.

QCA should be aware that SunWater has recently installed new metering devices in sections of the BRIA and they have consistently measured approximately 50% increase in water usage. A 50% increase in water use will have major ramifications on all aspects of water pricing and rates of return to SunWater not to mention increased costs of production for Irrigators.

Chapter 2 Background

Page 6 para 4

But a commercial entity treats government bounties or subsidies as income or cost offsets

in its accounts. So why doesn't SunWater?

Page 6 last para (d)

An accounting is a *counting up* of actual payments, not the measuring of a difference between a *valuation* and capital contributions. We interpret this term of reference as referring to capital investments not financed by ostensible capital contributions but, for example, by excess profits or charges. Normal historic cost accounting would not treat the difference between a revalued capital asset and its cost of acquisition as an "unaccounted for" capital contribution – in plain English, an increased asset value is not a "contribution" by anyone.

Page 8 first paragraph

Bringing values and contributions to October 2000 exaggerates the difference between farmer capital contributions and the cost of the scheme. Mathematically, A minus B will always be bigger if it is multiplied up by indexation factor. If normal commercial accounting were practised, everything would have been done on historic cost. As Professor Walker's work demonstrates, the QCA should provide all its figures and reconciliations on the basis of verified historic cost accounting before drawing any conclusions about costs or profitability.

Page 9 second and third last paragraphs

It is interesting that, even on the QCA's imperfect reckoning, the scheme returned more to government then was originally anticipated in any case.

Page 11

A close reading of the requirement to pay tax equivalents and actual local government rates does *not* mean that SunWater should necessarily pay corporate income tax nor does it necessarily imply that rates should be levied on land under water or channels, any more than rates are levied on land under roads.

Page 13 paragraph 5 dot point

The basis for setting prices under the 1926 *Water Act* was clearly recovery of *actual costs only*. There was no statutory basis for revaluing assets and claiming notional returns on notional capital expenditure. As a long-term exponent of northern development, Premier Theodore would have been astonished by the idea that the State of Queensland should gouge workers and farmers by charging anything other than a contribution towards actual costs. Indeed, Queensland expected at the time to make an *accounting* loss on development works, just as for roads and railways, the losses of which would be covered in due course by the induced growth of the State's economy.

The subsequent automatic indexation of water delivery charges was open to question at the time and was objected to. In particular, automatic indexation deprives growers of the benefit of their investment in the scheme and denies to the sugar industry the benefits of productivity and technology gains. It squeezes growers' margins and is an indirect form of taxation.

Figure 2.2 exhibits an ability to dictate unchanged real prices for some 35 years which would be the envy of virtually every other industry in Australia. It is certainly not a replication of a competitive pricing situation that no productivity gains whatsoever appear to have gone to users.

Chapter 3 Capital Contributions

Page 15 paragraph 3

The Authority has not provided its legal advice on whether the Federal *Trade Practices Act* might require SunWater to recognise user contributions as capital contributions.

Page 15 paragraph 5

One might have thought that, if the Commonwealth and State were prepared to fund the scheme and defray part of the costs while indicating to growers that their payments were capital contributions, that circumstance, of itself, was a sufficient indication that growers would not be charged a rate of return on that part of the cost of the public works which was taxpayer funded, just as motorists do not expect to be charged a rate of return on a notional revalued replacement cost of roads they have already paid for in taxes.

Page 15 last paragraph

It is a gloss against common sense to require a further expectation that a capital contribution will be recognized for pricing purposes. When a government grants a subsidy on production to an industry, it takes it for granted that the benefit will be passed onto the community. Indeed governments tend to become concerned when industry seems to be acting in an anti-competitive manner and capturing the benefits of a subsidy, as is alleged to be the current case of general insurers enjoying reduced liabilities through so-called tort law reform.

Page 16 fifth paragraph

The approach taken by IPART is the only logical approach open where there is a change of policy and the water authority is unable to produce proper historic cost accounts to justify its proposed capital base. The onus of proof should be on the monopoly authority seeking to charge the public. SunWater has come nowhere near discharging that onus of proof. There is also significant concern that the QCA may have not correctly represented IPART's 'line in the sand' methodology and the reasons behind its use.

Page 18 sixth paragraph

It is curious that SunWater decries the probative value of the 1980 report, yet in the past has resorted to it to suggest that a rate of return on capital was always envisaged. Be that as it may, the 1980 report is relevant in so far as it shows that government spent public funds on public works on orthodox cost benefit analysis. In these circumstances it is not surprising that government would not seek to charge immediate users of the scheme more than the capital contribution reflected in land and water allocation sales. Just as government expects an indirect rather than a direct return from building bridges and roads, the 1980 report, if anything, supports the view that Federal and State governments funded the project on the basis of its overall *economic* return to the Nation and State and not on the basis that they would recoup all the expenditure through land and water sales, followed by user charges.

Page 19 third paragraph

The auction value of the land represented the value Irrigators placed upon entitlements on the assumption that water delivery charges would be based only on recurrent costs, not on some future inflated replacement cost of the whole scheme. Having paid their capital contributions to the scheme on the assumption (which they were led into, rather than disabused of, by government authorities) that this would be their once-off capital contribution, it is inequitable in both an economic and a legal sense for them to be deprived of the benefit they have paid for. In commercial parlance, what the QCA is inherently blessing in this report is a "bait and switch".

Page 20 paragraph 5

The quotes indicate very clearly that the land and water allocation sales charges were meant to delineate the extent of capital cost recovery from irrigators. If someone invites you to join a joint venture on the basis that "this will be your capital contribution" you would be outraged to be charged later for a further capital contribution. As for the contention about legal advice, we have not seen either the advice or the precise questions which were directed to the QCA's legal advisers. In particular, we beg to question whether any normal commercial corporation engaging in such tactics in trade or commerce would be outside the strictures of the Federal *Trade Practices Act* relating to misleading or deceptive conduct or unconscionable conduct.

Page 22 paragraph 3

The fact that realised auction prices exceeded upset prices shows that the government received more by way of capital contributions than it originally expected. Having paid their contributions in a free auction why should Irrigators be expected to pay again a further contribution towards capital?

Page 25 paragraph 7, 8, 9, 10 and 11

These quoted statements *from official sources* state or imply that capital contributions for water works were to be the only contributions in relation to capital sought from Irrigators. That is their plain English meaning and nothing can disguise it. The Authority need look no further. In the face of such plain admissions, it is irrational for the Authority to suggest that Irrigators should be charged *any* return on *any* concept of capital. To find these facts and then proceed to ignore their fundamental significance is to fly in the face of the evidence.

Page 27 paragraphs 5, 6 and 7 dot points

The revenues from sugar mill levies formed part of recurrent charges above operation, maintenance and renewals, which should then be treated as recoupments of capital. The Authority has misconstrued its terms of reference in relation to lower bounds by ignoring this possibility.

The *Water Resources Act 1989* which is quoted acknowledges that the levy could be a contribution towards capital costs.

The Federal Court decision is quite misconstrued by the Authority. The Court was looking at the deductibility of a levy against a grower, not whether the entity receiving the levy was using it to defray capital costs. A payment by one person may be a deductible, recurrent, expenditure yet still be used by the recipient for capital purposes. This is a major reason why the Authority's refusal to examine the composition of the lower bound through a misconceived understanding of its terms of reference is so damaging to the process of this inquiry.

Page 29 paragraph 2

This is contradicted by Minister Truss' letter.

Page 29 paragraph 6

This seems to misrepresent the Industry Commission. The Industry Commission *did* accept that the Commonwealth had written off the grant. It would be rather silly if it had not, since what other accounting treatment is possible for a nonrepayable grant?

Page 30 paragraph 3

This is an admission that full cost recovery from users was not part of the Burdekin scheme.

Page 31 paragraph 6

But why should there be a difference in the way bridges, roads, railways, electricity infrastructure, and irrigation schemes are charged for? Spending on public works is a necessary function of government undertaken with taxpayer funds because private sector financing is unavailable or would lead to inefficient monopolisation. Efficient pricing means pricing at marginal cost, zero in the case of roads in many cases and also zero in the case of sunk capital costs of irrigation schemes. It is arbitrary to say that taxpayer funds spent one way "owe" a rate of return to government while taxpayer funds spent another way do not - just as arbitrary as it would now be for a government to go back and charge interest to past recipients of unemployment benefits or age pensions. They are equally grants paid out of taxes under statutory authority as was the Commonwealth grant for the Burdekin Dam.

Page 32 paragraph 2

The inability to produce proper historical cost accounts is a major reason why IPART drew a line in the sand and valued pre-1997 water storage and delivery assets at zero. The onus is on SunWater to justify its charges as a monopolist. The principle which should guide the authority is that if SunWater cannot discharge that onus, irrigators should not be charged for unverified costs.

Page 33 second last paragraph

The argument that capital contributions should be depreciated where a capital asset is depreciated in value ignores the fact that depreciation may have already been charged to users in respect of that asset. It is also irrational that user contributions are depreciated yet the overall scheme assets are revalued upwards - with a difference credited to "unaccounted for" capital on which a rate of return should be sought. In addition it should be noted that, with the change to renewals annuity accounting, past depreciation allowances should have been credited back as user contributions.

Chapter 4 Unaccounted for Capital

The methodology of this chapter relies on -

- first, a notional replacement cost valuation of the scheme to create a (convenient?) gap between the original cost of the scheme and its current higher indexed value; and

- second, a refusal to treat Commonwealth or State payments as contributions to the scheme.

Mathematically, there can never be any "unaccounted for" capital in terms of ordinary historic cost accounting. Double entry accounting requires that the cost of an asset be reflected in actual payments. Revaluations of assets are treated as capital or revenue *profits* rather than some loss of unaccounted for capital. What really has not been "accounted for" by SunWater are the revaluation gains over historic cost nor government grants in the nature of subsidies.

Page 37 table 4.1

IPART excluded pre-1997 assets for a further good reason, namely that water authorities

could not produce proper accounts of their costs. The onus is upon a monopoly authority to justify its charges as Parliament cannot be presumed to have intended to grant an unlimited power to tax to a statutory creature.

Page 38 paragraph 8

To be required to *use* data is not to be required to be bound by it. The Authority has to consider the matter afresh, even if starting with a consideration of previous work, and has a legal duty to consider arguments on the capital cost base on their own merits, without any preconceived bias towards DORC.

Page 39 paragraph 1

Commercial entities seek a commercial rate of return on actual historic cost, *not* DORC. The inflation premium embedded in interest rates and corresponding threshold rates of return on capital investment sufficiently compensate them for any opportunity cost from using up assets now when their replacement cost will be greater later. Future investments are financed by future capital raisings.

Page 39 paragraph 2

This is nonsense. In economics and business, bygones are bygones. It is hard to see how charging on the basis of replacement cost for the use of Roman aqueducts or for natural river channels does anything for economic efficiency - indeed, by creating artificial scarcity, it may promote inefficient and wasteful alternative investment.

Page 39 paragraph 6

DORC itself is a form of arbitrary indexing.

Page 40 paragraph 9

To substitute retrospectively a deemed WACC cost for an actual cost of interest to push up assets valuations is an egregious example of the arbitrary nature of this capital cost base valuation process. It is particularly outrageous when the funds were provided by governments and largely financed by taxes rather than borrowing.

Page 43 paragraph 1

But if the cost of building roads was an expense to be offset against land sales, so too was the irrigation scheme itself and there should be *no* amount treated as capital expenditure. That would result in an accounting loss, which is why the scheme had to be financed by government in the first place because government, not a hypothetical commercial service provider, is in the best position to benefit from the broader external social and economic benefits which the scheme provides.

Page 43 paragraph 4

But national competition policy requires that external benefits or costs be brought to account in determining efficient prices. You cannot logically charge water users for negative externalities and ignore positive externalities from an irrigation scheme. Further, it is curious that in this case, the Authority is applying marginal cost pricing principles to eliminate any requirement of contribution from external beneficiaries while always refusing to apply marginal cost pricing principles to irrigators themselves in relation to the sunk assets of the scheme or the excess capacity of the scheme.

Page 44 – 45

The authority is here imputing a notional DORC cost of land against irrigators (on the mistaken assumption that the land has an alternative use) while treating the scheme as a fixed and free asset to justify not charging beneficiaries of flood mitigation. This is inconsistent.

Page 54 paragraph 4

Why should capital contributions be depreciated when the assets created are being revalued upwards on the basis of replacement cost? This is completely illogical and biased. It seems to be merely another technique for maximising the difference between a capital contributions and the putative "capital" "tied up" in the scheme. This methodology seems to have no other purpose than to maximise the potential charging base for SunWater. The Authority should re-do all its figures on historic cost, as would be done by a normal commercial operation operating under normal accounting principles.

Chapter 5 Weighted Average Cost of Capital

Page 63 paragraph 7

The authority does not give reasons for rejecting BRIA's arguments. This is unacceptable.

Page 63 paragraph 10

It is a strange concept of a cost of capital that it be independent of the source of financing. What the Authority really seems to be saying is that there is an imputable opportunity cost of capital tied up in infrastructure assets. But this is nonsense when you look at fixed assets which have no alternative use.

Page 82 paragraph 4

The Authority does not give a reason for rejecting BRIA's argument that a commercial water supply entity could be organised as a tax transparent (zero corporate tax) joint venture, partnership or trust.

Page 85 paragraphs 2 and 3

The authority does not demonstrate why BRIA's argument that corporate tax is unnecessary for a commercial provider is incorrect. In particular, the Authority does not address itself to the precise wording of the statutory tax equivalents regime, which appears to allow the adoption of a tax efficient structure.

Chapter 6 Excess Return on Capital

Page 88 paragraph 2

The Authority is in error, as the terms of reference, read as a whole, *do* allow it to start with lower bound costs and examine whether there is an implicit return to capital embedded in them.

Page 88 paragraph 9

It is quite puzzling that the Authority thinks it has included nominal revaluation gains as income of the scheme and which has been offset against the required return on capital. This assertion needs to be checked in detail. The historic cost figures year by year need to be produced.

Chapter 7 Appropriateness of Positive Rates of Return on Assets
page 92 last paragraph

The assertion that prices for water services are only two to three percent of cost of production needs to be questioned.

Page 93 paragraph 4

BRIA's first submission did point out that a positive rate of return need not come from user charges and a loss-making investment could still be justified on general cost benefit principles.

Page 94 paragraph 4

The Commonwealth and State capital contributions to the scheme *were* transparent CSOs authorized by Federal and State Acts of Parliament!

Page 96 paragraph 2

No legal advice is given for this proposition. While it is true that the Crown in right of the State may alter its contractual position by statute, this is subject to applicable Federal law such as the Trade Practices Act prohibitions against misleading or deceptive conduct or unconscionable conduct. The Authority appears to have obtained no legal advice on this question which depends on whether the shield of the Crown is available to a commercial enterprise.

Page 96 paragraph 4

Irrigators in the BRIA find it incomprehensible that the QCA has found that it is appropriate let alone ethical for an entity to charge a positive rate of return when they have not disclosed this requirement to individual investors at the time of their investment.

The BRIA Auctions were promoted by the Queensland Government throughout Australia and overseas and enticed individuals to invest considerable sums of money in the BRIA Scheme. If there was an intention to charge a rate of return as a component of water charges, over and above Irrigators initial contributions to the Scheme, Government had a duty to disclose such requirement at the time of purchase.

Private enterprise indulging in such unethical behaviour would find itself before the courts.

The QCA's determination that corporatising the BRIA water provider some 12 years after the Irrigators purchased at Auction is justification for charging a positive rate of return is rejected by BRIA Irrigators and amounts to moving the goal posts once investors have committed to purchase.

Page 96 last paragraph

Maximising the rate of return on assets in the case of a monopoly necessarily involves inefficient and destructive monopoly pricing. Parliament *cannot* have intended that taxpayer funded assets be used in this way, as this would be granting a licence to tax. SunWater is not a normal commercial entity operating in a competitive market accountable to private sector shareholders who subscribe their own capital out of their own pockets. It is a creature of statute, operating a public utility enjoying a natural monopoly and funded by taxpayers.

Page 97 paragraph 4

That legal advice should be tendered. It seems that no legal advice has been obtained as to the position of SunWater under the Federal *Trade Practices Act.*

Page 98 paragraph 5

The QCA's assertion that it is acceptable to treat pre-existing users within a Scheme differently in relation to a rate of return is astounding.

We remind QCA that SunWater or any other supposedly commercial entity was not in existence at this time, and any contractual or other negotiations were entered into by Government departments who are obliged to be consistent in their negotiations and any application of a rate of return on capital.

If Government deemed it not appropriate to charge one pre existing user a rate of return all pre existing users should be excluded. This inconsistency simply highlights the fact that a rate of return as a component of water charge was not a requirement.

QCA's contention that differentiation in rate of return between existing Schemes is acceptable depending on perceived capacity to pay is equally objectionable.

The concept that Irrigators in existing Schemes should provide SunWater with a rate of return on existing irrigation infrastructure because of a perceived capacity to pay, is no more acceptable to Irrigators than it would be to individuals earning above the average wage to retrospectively be required to pay a rate of return on other public infrastructure because of their perceived ability to pay.

Page 100 paragraph 6

This amounts to a denial of the reality of fiscal externalities or external benefits. This is inconsistent with a proper application of national competition policy.

STATUTORY DECLARATION

I Ross Noel Chapman of 3 Sauvignon Street, Carseldine in the State of Queensland do solemnly and sincerely declare that -

1. I was Manager of the Burdekin District CANEGROWERS Executive from 1973 to 1989 and Secretary of the Committee responsible for the lobbying and negotiations for the construction of the Burdekin Dam during the period 1976 to 1981.
2. It was during this time discussions took place with regard to the building and development of the Burdekin Dam Scheme with both Federal and State politicians and senior members of the various Government Departments involved in this matter.
3. I was fully involved in all discussions relating to the building and development of the Scheme and can categorically state that at no time was it mentioned that a rate of return would be required to be paid on the Scheme by any beneficiaries of the said Scheme.
4. The Federal Government, for its part, financed the construction of the dam wall and did not expect a return on capital. Its decision was based on political considerations strengthened by the support and involvement of the city of Townsville. The Federal government believed that the dam's construction benefited the whole community not just direct beneficiaries.
5. For its part the State Government committed itself to financing and constructing the distribution infrastructure which is still incomplete. It was intended that State Government expenditure on land subdivision and the water distribution system would substantially be recouped via the sale at auction of farm blocks resumed as grazing land, developed and subsequently sold as irrigated land. No rate of return was mentioned to the dam negotiating committee nor in the sales catalogue which advised the conditions applying to each auction.
6. Further, I can add that, in my opinion, it is doubtful whether the Scheme would have proceeded at all, if a real rate of return on the capital cost of the scheme had been required of the direct beneficiaries of the said Scheme.
7. I MAKE this solemn declaration conscientiously believing that the information contained therein is correct and by virtue of the provisions of the Oaths Act 1867-1989.

SIGNED AND DECLARED by the abovenamed)

Declarant at Brisbane this)

4th day of December 2002 in the)

presence of _____) R Chapman

_____
(Signature of Witness)

Justice of the Peace (c.dec)
(Occupation of Witness)

STATUTORY DECLARATION

I Lyndsay George Russell Hall, of George Road, Clare, in the State of Queensland do solemnly and sincerely declare that -

1. I held a number of positions representing farmers within the agricultural community in the State of Queensland during the period from about 1970 to about 1993, when the concept of the Burdekin Dam Scheme was being discussed, considered and developed.
2. The positions, which I held, were as follows;
   (a) Chairman of the Queensland Rice Marketing Board
   (b) Chairman of the Lower Burdekin Rice Producers Co-operative
   (c) Chairman of the Queensland Council of Agriculture
   (d) Chairman of the Queensland Farmers Federation
   (e) Member of the Burdekin Dam Project Advisory Group.
3. The most important body, with which I was involved, so far as the Burdekin Dam Scheme was concerned, was the Burdekin Dam Scheme Advisory Group. This was a group formed by the State Government to advise it with regard to all aspects of the Burdekin Dam Scheme. I was a member of this Group from its inception in the mid 1980s until 1993.
4. As a result of my membership of the bodies referred to in paragraph 3 above, I was involved in numerous meetings and discussions relating to the development of the Burdekin Dam Scheme, from initial talks, through the planning and construction stages, to the selling of the initial blocks at auction.
5. Initially the Federal Government was not in favour of building the dam but in or about 1975 there was a change of view amongst the Federal Government, which at this time, decided to support the building of the dam. The Federal Government proceeded to provide the State government with a full grant for the building of the Dam. It never sought a rate of return on its investment, justifying spending tax-payers' money on the basis that the development would produce its own returns by providing export earnings, greater employment and benefits to downstream industries.
6. Once the Federal Government had made its decision, the main discussions took place with State Government representatives. I dealt in turn with all the various Ministers for Water Resources, namely John Golby, Ken Tomkins, Don Neal and Martin Tenni. The State Government representatives acknowledged that the Scheme would lead to increased productivity and export earnings as well as increased employment opportunities. They also appreciated that they would obtain capital sums from the purchasers of each of the developed blocks towards the costs of the Infrastructure head-works. There was never any mention of an external rate of return being required by the State Government on the Infrastructure as its representatives acknowledged that this was being obtained through the benefits of the development and the capital contributions made by the purchasers of the new blocks of land.

7. I, therefore, can state, unequivocably and categorically, that at no time during the negotiations and subsequent development of the Burdekin Dam Scheme was a rate of return contemplated by either the Federal or State Governments over the period from in or about 1970 to in or about 1993.
8. Further, I can add that, in my opinion, it is doubtful whether the Scheme would have proceeded at all, if a rate of return had been expected to be paid by the land purchasers of the said Scheme.
9. On a personal note, I and my family bought at auction 7 blocks and we would certainly not have invested money in the Scheme if we were aware that a rate of return was going to be required.
10. I MAKE this solemn declaration conscientiously believing that the information contained therein is correct and by virtue of the provisions of the Oaths Act 1867-1989.

SIGNED AND DECLARED by the abovenamed)

Declarant at AYR this 19th)

day of NOVEMBER 2002 in the)

presence of W.A. LAWSON) _____

COMMISSIONER FOR DECLARATIONS

_____
(Signature of Witness)

9642

MANAGER
(Occupation of Witness)

STATUTORY DECLARATION

I Leslie John Searle of Old Wharf Road, Ayr in the State of Queensland do solemnly and sincerely declare that -

1. I was Chairman of the Burdekin District CANEGROWERS Executive from 1982 to 1992 and was directly involved through the Executive Representative on the Burdekin Dam Project Advisory Committee from 1976 until the completion of the Dam.
2. I was fully involved in the discussions relating to the building and development of the Scheme and can categorically state that at no time was it mentioned that a rate of return would be required to be paid on the Scheme Infrastructure by any beneficiaries of the said Scheme.
3. It was intended that State Government expenditure on land subdivision and the water distribution system would be recouped via the reserve price for blocks at the farm auctions. No rate of return was mentioned in the sales catalogue which advised the conditions applying to each auction.
4. The Dam Wall was constructed by Grant Funds from the Commonwealth Government on the anticipation of the Australian Tax Payer being reimbursed by income to the Government by the extra crops that would be grown in the area.
5. Further, I can add that, in my opinion, it is doubtful whether the Scheme would have proceeded at all, if a rate of return had been expected to be paid by the beneficiaries of the said Scheme.
6. I MAKE this solemn declaration conscientiously believing that the information contained therein is correct and by virtue of the provisions of the Oaths Act 1867-1989.

SIGNED AND DECLARED by the abovenamed)

Declarant at Ayr this 15th)

day of November, 2002 in the)

presence of GEORGE WILLIAM SMITH) Les Searle

JP (Q'ldec)
(Signature of Witness)

Justice of the Peace (Commission for Declarations)
(Occupation of Witness)

STATUTORY DECLARATION

I, James Timothy Smith of 45 Hill Street, Toowoomba, in the State of Queensland do solemnly and sincerely declare that;

1. I worked as a regional engineer for the Department of Natural Resources in its Northern Region at Ayr from the period 1984 to 1991.
2. My job responsibilities comprised planning and policy development, design, construction and land settlement for the Burdekin River Irrigation Scheme.
3. I am, therefore, fully acquainted with the negotiations and discussions, which took place during the development and building of the Burdekin Dam Scheme.
4. The State Government set financial targets for the Burdekin Scheme through the late 1970s and well into the development of the irrigation area and start of new farm settlement in the 1980s. Policy was well communicated, not only locally but also to the broader community as part of the State's strategy to get the scheme underway, and then successfully implement it.
5. The financial target communicated was that the State would seek a direct return of about 30% of its capital cost which would be achieved through land and water allocation sales, and that that target was somewhat higher than what had been sought earlier with the other irrigation area developments in Queensland. Over the first 3 or 4 years of farm auctions, this target was achieved through farm sales.
6. The Commonwealth's $150M contribution to build the Burdekin Dam and road form Mingela never seemed to be an issue. Both State and Commonwealth Governments acknowledged the ongoing indirect returns that would flow from the project when it was up and running. Likely indirect returns based on an established economic outcome of $1 produced from irrigated agriculture multiplying to a $4 to $6 return across the broader community were well communicated by both Governments as well.
7. Policy development for the scheme was reviewed by the Burdekin River Project Advisory Committee, which was the formal legislation based avenue of advice for the State and Commonwealth Governments for the scheme. Membership was drawn from the areas major rural industries (growers and millers), affected landholders and governments. The Advisory Committee was well aware of, and supported, this policy.
8. This policy and approach was also well communicated with the increasing interest and inquiry from all over eastern Australia that came with land sales and the settlement of new farms. The State was also very conscious of the needs of the 130 existing irrigation farms in the older Clare, Millaroo and Dalbeg, which now had secure water supply with the Burdekin Dam. Ongoing consultation and review at the political level saw the State Government agree to set the same charges for water for the whole scheme. Those policies saw the scheme get well under way by the time I moved south in 1992.

9. I MAKE this solemn declaration conscientiously believing that the information contained therein is correct and by virtue of the provisions of the Oaths Act 1867-1989.

SIGNED AND DECLARED by the abovenamed)

Declarant at AYR this 26th)

day of NOVEMBER 2002 in the)

presence of WILLIAM ALEXANDER LAWSON)

COMMISSIONER FOR DECLARATIONS

Reg. No. 9642

(Signature of Witness)

MANAGER

(Occupation of Witness)

STATUTORY DECLARATION

I John Lawson Wassmuth of 32 Chippendale Street, Ayr in the State of Queensland do solemnly and sincerely declare that -

1. I was Chairman of the Invicta Mill Suppliers' Committee and a member of the Burdekin District CANEGROWERS Executive from 1977 to 1987 and a member of the Planning and Inspection Committee set up to administer the new land being developed as part of the Burdekin Dam Scheme from 1984 to 1999.
2. It was during these periods that discussions took place with regard to the building and development of the Burdekin Dam Scheme. The discussions were between local farming organisations, Federal and State politicians and senior staff of their Government departments.
3. I was fully involved in the discussions relating to the building and development of the Scheme and can categorically state that at no time was it mentioned that a rate of return would be required to be paid on the Scheme Infrastructure by any beneficiaries of the said Scheme.
4. It was intended that State Government expenditure on land subdivision and the water distribution system would be recouped via the reserve price for blocks at the farm auctions. No rate of return was mentioned in the sales catalogue which advised the conditions applying to each auction.
5. Further, I can add that, in my opinion, it is doubtful whether the Scheme would have proceeded at all, if a rate of return had been expected to be paid by the beneficiaries of the said Scheme.
6. I MAKE this solemn declaration conscientiously believing that the information contained therein is correct and by virtue of the provisions of the Oaths Act 1867-1989.

SIGNED AND DECLARED by the abovenamed) J.L. Wassmuth

Declarant at Ayr this 15th

day of November 2002 in the)

presence of GEORGE WILLIAM SMITH) _____

JP(Q'ldec)
(Signature of Witness)

Justice of the Peace (Commissioner for Declarations)
(Occupation of Witness)