

BURDEKIN RIVER IRRIGATION AREA COMMITTEE

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12th March 2003



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

Dear Mr Hall

RE: FINAL CONSULTATION ON QCA BRIA DRAFT REPORT

The BRIA Committee has read the QCA Response to Stakeholder Comment as well as the three Draft Position Papers in relation to Submissions received following the QCA Draft Determination. We are extremely dissatisfied with the extremely short time frame allowed for stakeholder comment given that the QCA required four (4) months to respond to our submissions. We recognise however that QCA was not granted a further extension of time by Government to produce its final report and this is a strategy that has become familiar to us over the years in any negotiations and consultation with the Queensland Government and its Departments. We also recognise that the very restrictive Ministerial Directive designed to achieve a predictable outcome has prevented the QCA from examining matters critical to a conclusive determination. Nevertheless, given the magnitude of this issue we anticipated an independent body such as the QCA would take a bolder and more comprehensive approach than that desired by Government, or we would never had agreed to such a constrained terms of reference.

We do not intend to reiterate the issues raised in our initial submission and again in our response to the QCA Draft Determination. Suffice to say that our issues remain the same and we find the reasoning put forward by the QCA in dismissing our submissions unconvincing and inconclusive. In particular:-

1. The dismissal of the Minister for Agriculture, Fisheries and Forestry letters that said the Commonwealth funding for the dam was given with an expectation that it would be used to make water affordable for users, and that any attempt to recover a return on the Commonwealth Grant would be contrary to the intention of that Grant, in favour of the QCA's interpretation of what constitutes a capital contribution.
2. The dismissal of statutory declarations by individuals closely involved with the establishment of the BRIA scheme and charged with communicating the State Government's financial targets, by saying the QCA has been unable to verify their content.
3. The dismissal of any requirement for government accountability in relation to the retrospective nature of a requirement for a rate of return, on the basis that

“Through the democratic process, Australian governments are elected to adopt, modify or replace existing policies.” and “ ... there is no explicit constraint on governments to not change a particular policy *solely* because to do so would be detrimental to the welfare of an individual or group of individuals.”

4. The conclusion that BRIA Irrigators should have been aware of a Government requirement for a rate of return because of publicly available information. All of this ‘information’ was vague at best and in the form of options in draft position papers and did not provide clear evidence of Government’s intentions and most conspicuously were released after the majority of auctions were completed. The 1996 Water Pricing Policy Paper was only released after a hundred and sixty blocks had been sold at auction with only 25 blocks still to be released. Even the COAG Water Reform Policy in relation to rural water did not give Irrigators a clear indication that existing schemes would be required to provide a rate of return as a component of their water charges.

The Queensland Government had ample opportunity to inform Irrigators investing in the BRIA of their intentions regarding a return on investment. They chose not to do so instead opting to implement a rate of return by stealth. QCA appears to be saying that individuals investing in the scheme had an obligation to make themselves aware of such things as 1980 reports to Parliament and COAG water reform agendas. We believe the obligation to inform investors in the scheme of any likely requirements in relation to rates of return rested with the Queensland Government and its Departments. “Let the Buyer Beware” should not apply when dealing with responsible Government.

5. The QCA conclusion that ‘Irrigators were or should have been aware, of the possibility that prices could increase in the future’. Of course Irrigators were aware that prices would increase by actual increases in the cost of providing water, what they were not made aware of was an inclusion of an additional rate of return in those charges. As recently as 99/2000 the Water Reform Unit’s discussions with BRIA Irrigators in relation to the current price path made no mention of a rate of return. The Queensland Government’s refusal to release publicly the Green Edwell Report which was the basis for setting the current price path refutes any claims by Government and its agencies that they were open and accountable in their dealings with the Irrigators.

BRIA Irrigators reject any assertion that the Queensland Government articulated their position in relation to return on investment or “that there was lengthy and public policy debate on these matters”. Does the QCA really believe that BRIA Irrigators would not have demanded a full disclosure of the Queensland Governments methodologies and calculations in relation to a rate of return before now if they had been made even vaguely aware of Governments intentions. BRIA Irrigators only became aware that they were paying in excess of lower bound costs as a result of the water reform units recommended price paths in 2000. It then took some time for SunWater and the Queensland Government to confirm that the excess above lower bound was infact a rate of return and not a subsidy to SunWater’s inefficient costs.

6. BRIA is unable to accept QCA asset valuations knowing that they were essentially derived from the Arthur Anderson valuation which in turn was not based on accurately recorded actual costs. We acknowledge that BRIA would have

to undertake a full asset valuation to credibly challenge any existing valuations. We do not have the resources to fund our own valuation but remain of the view that both the Arthur Anderson and the QCA valuation are inflated.

SunWater's comments that "Irrigators as part of the farm inspection committee argued strongly for the provision of above ground channels at the time of the development of the Scheme and that these channels should be included in the optimised asset base" are only partly correct. Had Irrigators been aware of a requirement for a rate of return as a component of their water charges they would have re-evaluated their requirement for above ground channels and would have demanded that the design and infrastructure for the total BRIA scheme be downgraded to a more affordable system. Therefore, the optimised asset valuation for the scheme the Irrigators would have accepted knowing that they were required to provide a return on the asset base would have been greatly reduced from the asset valuation Irrigators are now required to accept.

Conclusion

The QCA has determined that SunWater as a Government owned corporation is entitled to increase charges in the order of 300% which will in turn increase production costs by 30% for an industry that is currently in receipt of Federal Government assistance, and that these increases in water charges will be determined by the State Government's assessment of Irrigator's capacity to pay.

QCA has responded in part to various statutory declarations by saying that "there is no suggestion even now that a full commercial return will necessarily be charged". Given SunWater and DNR's record to date in relation to accountability, transparency and disclosure, BRIA Irrigators believes that this is not only a possibility but a distinct probability.

It is increasingly obvious that the QCA Review will not resolve the dispute between the Queensland Government owned Corporation SunWater and BRIA Irrigators, however, the QCA Review has succeeded in finally forcing the Queensland Government owned corporation SunWater and Department of Natural Resources and Mines to a degree of transparency and disclosure, in relation to their policies and intentions, never before experienced, and enlightened Irrigators in SunWater Schemes throughout the State, realising the implications for their particular Schemes, will no doubt react accordingly

Yours sincerely



RK McNee
Chairman