

Iron ore  
152-158 St Georges Terrace  
Perth 6000  
Western Australia  
T + 61 (8) 9327 2000

Inquiry into Water Resource Management and Planning Charges  
Economic Regulation Authority  
PO Box 8469  
Perth Business Centre  
Perth WA 6849

21 December 2010

***Inquiry into Water Resource Management and Planning Charges: Second Draft Report***

Thank you for the opportunity to provide comment on the *Inquiry into Water Resource Management and Planning Charges: Second Draft Report*. The comments in this letter build on the comments provided by Rio Tinto to previous stages of the consultation process.

Rio Tinto (through Hamersley Iron Pty Ltd) is a licensed Water Service provider under the *Water Services Licensing Act*, providing potable water and wastewater services to Dampier, Tom Price and Paraburdoo. In this capacity, Rio Tinto will be directly affected by any changes to the legislative framework for the provision of water services and water services licensing.

Rio Tinto is both a water user for its Pilbara operations and, through Hamersley Iron Pty Ltd, is also a licensed water service provider under the *Water Services Licensing Act 1995*, providing potable water and wastewater services to Dampier, Tom Price and Paraburdoo.

Hamersley Iron is classified by the ERA as a small potable water provider.<sup>1</sup> Potable water for Paraburdoo and Tom Price is sourced from groundwater bores, while the potable water supply for Dampier is sourced from the West Pilbara Water Supply Scheme, which is operated by the Water Corporation.

In the case of water supply to Rio Tinto's port operations at Dampier and Cape Lambert, the water is also sourced from the West Pilbara Water Supply Scheme.

Rio Tinto's mining operations in the Pilbara draw their water needs from ground water resources for self-supply to mining operations and mining camps and villages at operations such as Brockman, Yandicoogina, West Angelas and Hope Downs in accordance with s5C water licences under the *Rights in Water and Irrigation Act 1914*. At some operations, s5C abstraction licences are also obtained for dewatering purposes to enable below water table mining.

Rio Tinto holds s5C water licences for all its water abstraction activities in the Pilbara.

Rio Tinto's approach to managing its water resources across its iron ore operations is guided and informed by the *Rio Tinto Iron Ore (WA) Water Strategy*. A key element of the Water Strategy is to engage in the broader policy debate and the water reform process.

---

<sup>1</sup> Economic Regulation Authority *Water, Wastewater and Irrigation Performance Report 2007* p27

Rio Tinto therefore welcomes the opportunity to provide comments on the *Inquiry into Water Resource Management and Planning Charges: Second Draft Report* and submits the following comments to the Economic Regulation Authority for consideration and action.

Rio Tinto has raised and discussed its views on the concepts, principles and issues raised in the Authority's *Issues Paper*, *Discussion Paper* and *First Draft Report*, including the public good characteristics of many of the services offered by the Department of Water, and the need to appropriately weigh up the costs and benefits of sophisticated charging regimes for certain services offered by the Department. We continue to endorse the approach taken by the Authority in this regard and do not intend to repeat these comments in response to the *Second Draft Report*. We request that references to previous submissions be considered by the Authority for this final stage of the consultation process and in the drafting of the Final Report.

The following comments mostly refer to the recommendations in the *Second Draft Report* that are of interest to Rio Tinto iron ore.

### **Key Principles**

Rio Tinto has already provided substantial comment on the issue of principles and the need to reflect the public good nature of many of the services performed by the Department of Water (DoW) in the allocation of costs between private and public users. Rio Tinto agrees with the principles that underpin the charging regime proposed in the *Second Draft Report*.

Rio Tinto supports the ERA's recognition of the public good aspect of many of the services performed by the DoW and the need to recover these costs from the public via Consolidated Revenue. Rio Tinto also supports the ERA proposition that where beneficiaries cannot be clearly identified, costs for that service need to be recovered from public funds. This is consistent with the notion of public goods. This recognition of areas of uncertainty is critical to the acceptance of any new charging regime.

In addition, Rio Tinto agrees with the Authority's approach to levying charges based on efficient provision. The Authority's conservative approach to charging where there is some concern regarding the level of efficiency in service provision will encourage positive change and at the same time ensure that the cost of this inefficiency is not being borne by the private beneficiary.

Rio Tinto supports the user pays approach to water management and urges the Authority to ensure that inability to pay will not lead to cross subsidisation. The concept of cross-subsidisation between industries seems at odds with both the principles of transparency that underpin matters to which the Authority should have regard under s26 of the *Economic Regulation Authority Act 2003*, and some of the key principles which underpin the NWI that seek to ensure efficiency of water use. With regard to the latter, water resource management and planning charges should seek to cover the efficient costs of management and planning services and not seek to be a proxy for pricing signals that should be determined by the market, within the framework set by the NWI.

The subsidisation of any user groups which may claim an inability to pay is essentially a political decision. Rio Tinto strongly agrees with recommendation 8 of the *First Draft Report* that subsidies should not be provided through the design of the charging regime, but rather be clearly and transparently provided via grants.

### **Impact of changing functions of the Department of Water arising from the NWI on recoverable costs**

Rio Tinto's submission to the *Issues Paper* highlighted the need to consider the implications for the charging regime of moving from the current legislative arrangements



to a regime that caters for the water management and planning described under the NWI framework. This is consistent with the Terms of Reference for the Inquiry.

It is not evident that the Inquiry process to date has considered in any detail the significant changes to the functions of the Department of Water such as the new administrative responsibilities associated with the introduction of perpetual Water Access Entitlements, entitlement registers, water trading and statutory management planning obligations, which would characterise the proposed water management regime. These functions will entail significant costs and it was clearly envisaged under the NWI that provision be made to put in place a water resources management charging regime that fully accounted for the direct costs of administering these new administrative responsibilities.

Rio Tinto considers that together with experience from other jurisdictions that have already implemented commitments under the NWI, the draft legislation for the proposed Water Resources Management Bill is sufficiently progressed to consider indicative costs of such a regime, and reflect on the potential impact of these costs on users. At the very least, the Authority should recommend an appropriate process to address this issue.

### **Charges that reflect the level of administrative effort**

Rio Tinto acknowledges the difficulty in achieving an appropriate balance between a charging regime that reflects user pays principles and the cost of administering the system. The use of the Department of Water's existing risk categorisation framework for processing and assessment of s5C *Rights in Water and Irrigation Act* licences and for annual water allocation planning and management charges appears to be a reasonable and workable approach.

Rio Tinto supports the ERA's conclusion on p41 of the *First Draft Report* that costs should not be recovered on a per ML volumetric basis or on the basis of size of licence and supports the Authority's accompanying assessment of volumetric charging and of the size of licence as a basis for cost recovery. The Rio Tinto submission to the *First Draft Report* provided some detailed arguments in support of this view and these arguments still hold.

Rio Tinto does not believe that volumetric charging has a direct relationship to the level of administrative effort required to administer the system. This level of effort is better reflected in the Department of Water's risk categorisation framework which forms the basis of the charges proposed in the *Second Draft Report*. Any attempt to further disaggregate this categorisation framework will simply add to the cost of administering a charging system.

It is critical that water resource management and planning charges relate to the cost of service provision. This would enable lower costs for those catchments where NWI type management arrangements (ie perpetual water access entitlements) do not apply because of market failure (eg. too few users), resulting in a charging system that is proportionate to the management and administrative effort required for that catchment or region.

Rio Tinto notes that the *Second Draft Report* refers to annual water allocation planning and management charges as a charge that applies "per licensee".<sup>2</sup> Rio Tinto seeks clarification that this is in fact the case, rather than per licence.

Rio Tinto also seeks clarification as to whether this charge would apply where no water allocation plan is in place.

Similarly, the *Second Draft Report* notes that the annual water licensing policy and enforcement fee applies "per licensee".<sup>3</sup> Rio Tinto also seeks clarification that this applies per licensee, rather than per licence.

<sup>2</sup> Economic Regulation Authority *Inquiry into Water Resource Management and Planning Charges: Second Draft Report* (2010): p(iii)



**Separate billing for large licence holders and reversal of the *First Draft Report* recommendation for reimbursement of licence holders for costs incurred for licence applications**

Rio Tinto strongly endorsed recommendation 6 of the *First Draft Report* which proposed reimbursement of licence holders for costs incurred for licence applications. It was noted in previous submissions that Rio Tinto already contributes significantly to the identification, development and management of the water resources it uses, for example in exploration and resource definition, improved resource modelling, metering and monitoring. This is in addition to the substantial investment it makes in infrastructure to obtain the water. This was clearly acknowledged by both the Water Reform Implementation Committee in the *Blueprint on Water Reform in Western Australia*<sup>4</sup> and in *Western Australia's Implementation Plan for the National Water Initiative*<sup>5</sup>, and is also highlighted in the Authority's *Issues Paper*<sup>6</sup>.

The idea that investments made by licence holders in water management *that provide benefits to other water users generally or to the public good*, should be credited against water charges is a key corollary of the principle of beneficiary pays. It is inconsistent that one be introduced without the other.

Rio Tinto seeks further clarity on the Authority's decision to reverse its previous recommendation in this regard (ie Recommendation 2 of the *Second Draft Report*). Rio Tinto considers that the reasons for this change have not been adequately presented in the *Second Draft Report*.

To some extent the proposed difference between medium and high risk charges for licensing acknowledges this contribution. However, it is arguable that this is not a reasonable reflection of the extent of that investment.

The discussion in the *Second Draft Report* with regard to Recommendation 10 suggests separate charges for direct licensing costs to be levied on large licence holders, but limits the recommendation to the Water Corporation only. If large customers are to transition to billing that more directly reflects the specific costs of the project/operations, it is appropriate and reasonable that the public good cost component and costs associated with first users in isolated catchments (from which subsequent entrants have the capacity to be "free riders") be subtracted from the charges levied.

In addition, Rio Tinto strongly recommends a closer analysis of the process, thresholds and triggers that might apply in transitioning from the proposed standard charging regime to separate billing for large licence holders be undertaken by the Authority. The *Second Draft Report* provides little information in this regard and it is difficult to ascertain how this might apply to users other than the Water Corporation.

**Annual charges for the protection of public drinking water sources**

Rio Tinto has numerous concerns or points requiring clarity in relation to these charges.

In the submission to the *First Draft Report*, Rio Tinto indicated it did not support the costs of water resource management and planning activities directly associated with the protection of public drinking water supplies being recovered from licensed water service providers. Rio Tinto's view was that these services qualify as public goods and deliver a clear public benefit to the end consumer, rather than the water service provider *per se*. Water source protection is part of a regulatory framework to ensure certain quality

<sup>3</sup> Economic Regulation Authority *Inquiry into Water Resource Management and Planning Charges: Second Draft Report* (2010): p(iii)

<sup>4</sup> Water Reform Implementation Committee "*Blueprint on Water Reform in Western Australia*" 2006: p43

<sup>5</sup> Government of Western Australia "*Western Australia's Implementation Plan for the National Water Initiative*" 2007: p55

<sup>6</sup> Economic Regulation Authority "*Inquiry into Water Resource Management and Planning Charges: Issues Paper*" 2009: p10

standards are delivered to end consumers and thus it is the consumers (ie the end users) that should bear this cost.

Rio Tinto continues to advocate for the coverage of these costs out of Consolidated Revenue.

The *Second Draft Report* discusses the application of charges for protection of public drinking water supplies to the Water Corporation, AQWEST and the Busselton Water Board only. Rio Tinto seeks clarification on how these are intended to be applied to smaller licensed service providers, and requests that in doing so the Authority reflects upon the nature of the core business of these providers when formulating their proposals.

The *Second Draft Report* is not clear on a number of matters relating to proposed charges for protection of public drinking water supplies:

- Are these charges intended to cover the costs of plan development and/or the costs of plan administration and enforcement? Table 1.2 suggests an annual fee for both *planning and implementation*, but clarification is sought.
- Is there a significant variation in resource intensity and administrative effort between planning and/or administration and enforcement for different catchments that should see costs apportioned accordingly? For example, it is most likely that surface water catchments in which a large number of land uses exist are likely to demand a much greater planning and enforcement effort than small, isolated catchments. It is recommended that there should not be cross-subsidisation of these costs where the cost profiles are likely to be substantially different.
- There is uncertainty regarding the retrospective application of these charges for plans that are already in place. If they are not to be retrospective, then how do the charges proposed in Table 1.2 distinguish between charges relating to new water source protection plans and the ongoing costs of administering and enforcing existing plans?

Rio Tinto seeks clarification from the Authority on all of the above issues.

#### **Ongoing review of efficient costs**

In its submission to the *Issues Paper*, Rio Tinto highlighted the danger in directly linking fees and charges to the cost of the provision of certain services that are provided by a single supplier (in this case Government). Effective limits need to be placed on the costs of the provision and proper scrutiny established to ensure the efficient delivery of services, so that the cost burden does not grow unchecked.

Rio Tinto specifically advocated for periodic independent review of water resources management and planning charges to prevent uncontrolled increases in the cost burden to those affected by the charges.

Rio Tinto therefore endorses the proposal for the Authority to review costs in 3 years time. However, Rio Tinto believes that the Authority has an *ongoing* role in the periodic review of the Department of Water's performance of services for which fees and charges are levied on private users. Rio Tinto considers that such a role for the Authority is appropriate and consistent with its principle Act (*Economic Regulation Authority Act 2003*) and should be expressly reflected in the recommendations of the *Final Report*.

Rio Tinto reiterates that this scrutiny should not just determine whether charges for water resource management and planning are delivered efficiently, but should also consider and make recommendations to ensure these services are being delivered to a level that is appropriate to the water resource management needs of the catchment in question.



Please contact Mike Harold on 08 9366 5641 or [mike.harold@riotinto.com](mailto:mike.harold@riotinto.com) if you wish to discuss or clarify any issues raised in this letter.

Yours sincerely



**Leon Staude**  
**A/General Manager Climate Change Water and Environment**