

Inquiry into Water Resource Management Charges
Economic Regulation Authority
By Email to: watercharges@era.wa.gov.au

SUBMISSION ON ERA DISCUSSION PAPER 'INQUIRY INTO WATER RESOURCE MANAGEMENT AND PLANNING CHARGES' OF 6 AUGUST 2009

PREFACE

This submission is made on behalf of the Manjimup and Pemberton Landowners group of representatives of agriculture in Manjimup and Pemberton based on 'self-supply' water in privately funded 'farm dams'. This area is regarded as the 'food bowl of the South West' with annual agricultural production valued at over \$100 million, twice the value of production of the Ord River irrigation district which is heavily subsidised by the public (most recently by \$415 million in July 2009). We don't require subsidies, but we are not soft targets for unjustified fees and charges.

Manjimup and Pemberton Landowners made a detailed submission to the ERA's Inquiry on 12 June 2009 and we await the ERA's scheduled September 2009 (now October 2009) report which may indicate the quantum of possible water licence fees and water resource management and planning charges, upon we will make further detailed submission. Here we make specific comment on the Case Study in the ERA discussion paper at 4.1 'Surface Water Allocations in the Warren-Donnelly River Systems' (pages 16 – 20).

COMMENT ON ERA CASE STUDY 'SURFACE WATER ALLOCATIONS IN THE WARREN-DONNELLY RIVER SYSTEMS'

1. ERA REF: '*Irrigated agriculture is the highest user of surface water resources.*' COMMENT: under the ERA 'goods' model water for the environment is a use. In the Warren and Donnelly River catchments 40 gegalitres (5%) of the 742 gegalitres mean annual outflow is allocated to surface water licences for agriculture and other uses and the balance is water for the environment flowing into the Southern Ocean. Clearly, the environment is the dominant use of water (95%), applying ERA jargon in the *Discussion Paper*, 95% of the water is 'public goods'.
2. ERA REF: '*Dam water is used for a wide range of agricultural production, including wine, fruit, vegetables, pasture, aquaculture, and truffles.*' COMMENT: Dam water is not used for pasture in the Warren-Donnelly river systems. In contrast the publicly subsidised Harvey irrigation system allocated 153 gegalitres in water licences irrigates 6,486ha of pasture within the total of 7,603ha irrigated. Subsidies at Harvey are anti-competitive to pasture based agriculture in the Warren-Donnelly area, and the \$9,000 in water licence fees for Harvey relative to \$257,000 for the Warren-Donnelly area was a gross anomaly in the previous flawed water licence fees that were twice disallowed by State Parliament in 2007 and 2008.
3. ERA REF: '*The Warren River was proclaimed in 1959 and the Donnelly River in 1968 under the Rights in Water and Irrigation Act 1914 (RiWI Act). Proclamation was prompted by increasing demand for water from agricultural developments in the area, and in response to disputes between users relating to the impacts of proposed dams on flows to other water users, resulting in the Department of Water being requested to arbitrate. Since proclamation, there has been an acceleration of on-stream dams in the cleared areas of the Warren and Donnelly systems.*' COMMENT: This statement implies a major role for the Department of Water in resolution of disputes in regard to dams which may be misleading and imply a continuing major role in regard to disputes over dams, which is incorrect. The driver for proclamation related to practical limits on pumping water for irrigation direct from summer flows in streams (eg Lefroy Brook, Smith Brook). Once that practice was regulated by proclamation and applicable law the State Government encouraged property owners to construct in-stream dams to capture the abundant water in winter to use for irrigation in summer. Property owners

were encouraged by the State Government to construct the largest dams they could afford so they could 'drought proof' the area, and for a period in the 1970's the Commonwealth Government provided tax deduction incentives for dam construction, reflecting Government promotional policy. The Department of Agriculture and Food is presently promoting construction of large water 'self-supply dams' in the 'Woolbelt' for new agriculture (hyperlink reference [New Woolbelt Opportunities Scoping Study, 2008](#)); they are encouraging hundreds of dams within the range of 100 to 400 megalitre catchments identified, without any regulatory involvement of the Department of Water. If the Department of Water is irrelevant to agriculture in the Woolbelt, it is far less relevant in the water abundant 'food bowl of the south west' in the catchments of the Warren and Donnelly Rivers.

4. ERA REF: '*Placing a dam, or multiple dams, on a water course can reduce summer and winter stream flows below the flow rates that would occur naturally. This can lead to reduced security of supply for other water users downstream and potential environmental damage from the river being in a drier state that it would otherwise be.*' COMMENT: These are statements without supporting evidence that appear to raise a requirement for a regulator (Department of Water). The *Rights in Water and Irrigation Act and Regulations* prohibit impedance of summer stream flows, they must be bypassed, and there is abundant winter stream flow to both fill dams (5% of Warren and Donnelly outflow) and support the environment (95% of outflow). The '*...flow rates that would occur naturally.*' are probably lower where the land is natural dense karri forest than after it has been cleared and used for agriculture. In general, clearing reduces interception by trees and increases run off and stream flow. There is no defined 'natural' baseline flow in areas which have been substantially cleared (eg Upper Lefroy, Smith Brook); the baseline flow now is probably greater than the previous 'natural' flow, notwithstanding lower average rainfall. In contrast to the lack of evidence of environmental damage caused by dams, the dams are refuge habitat for more than 20 species of native water birds (typical) and for native freshwater fish and Marron that wouldn't occupy an otherwise dry paddock; some of the birds (eg Black Swan) are 'refugees' from wetlands in other distant areas which have been urbanised and depleted of water (eg Perry Lakes). The Department of Water ignores these major environmental attributes of 'farm dams' in their consideration of water for the environment.
5. ERA REF: '*As consumptive use in the area increases, other disputes related to the use of water and water rights are likely to arise. One issue in the area is the water used by tree plantations, which do not require water licences under the current legislation. To the extent that such plantations make use of surface water resources (rather than groundwater resources, which are not proclaimed), it could be argued that they should require a water allocation.*' COMMENT: There are negligible disputes related to the use of water, other than those created by the Department of Water by refusing reasonable applications for additional water licences as the location and nature of agricultural production within the area changes with market demand for produce types and output. Conflicts do arise with juxtaposition of tree plantations with priority agriculture, but the Department of Water has been moribund in resolving them and hasn't delivered the *Water Resources Management Bill and Act* or taken other measures to address the issue.
6. ERA REF: '*Department of Water's Activities in the Warren-Donnelly Area*'. COMMENT: The *Discussion Paper* lists 'activities' of the Department of Water, but few if any can be regarded as services that add value to agriculture in the Warren-Donnelly area. Only a small minority of the 380 surface water licence holders would interact with the Department in a 10 year licence period, and water licence renewal is a simple form letter received in the mail. Since publication of the '*Blueprint for Water Reform*' in 2006 based on the National Water Initiative and its adoption by the State Government in 2007, stakeholders have been in conflict with the Department of Water on the major recommendations of the *Blueprint*, with the most obvious conflicts being (a) rejection of irrational and unfair water licence fees, the regulations for which were twice disallowed by State Parliament in 2007 and 2008, and (b) response to new water allocations policy imposed without consultation in mid 2008. The basis of our rejection of the water licence fees is detailed in appendices to our 12 June 2009 submission to the ERA. The change to water allocations policy in 2008, without any consultation with the Warren Donnelly Water Advisory Committee appointed by the Department of Water, has caused demonstrable economic harm and forced us to appeal directly to the Minister for Water. Please see in an APPENDIX A to this submission letters to the Minister for Water of 10 November 2008 on

'WATER ALLOCATION LIMITS: IMPLICATIONS FOR MANJIMUP AND PEMBERTON' and of 24 April 2009 on 'WATER ALLOCATION LIMITS SET FOR WARREN DONNELLY CATCHMENTS'. Additional Department of Water policy of major concern to us is separation of water entitlement from land title (allegedly to facilitate water trading, that we don't require) and related mandatory metering of water use. Clearly, we are dissatisfied customers, and any 'goods' the Department of Water is alleged to have recently provided agricultural water users have mostly been returned as unsatisfactory. The Department of Water has not included the Warren Donnelly Water Advisory Committee in planning future water allocations beyond the failed policy applied in 2008 and thus the prospect of stakeholder/customer acceptance of the Warren-Donnelly surface water allocation plan due in October 2009, mentioned in the *Discussion Paper*, is low. In regard to the cited '*Activities*' of the Department of Water of stream flow measurement and gauging, the most intensive use of water for agriculture in the Warren and Donnelly catchments is in the Upper Lefroy aspect of Lefroy Brook, yet the Channybearup Road stream flow gauging station for that sub-catchment was removed by the Department of Water in 1999 (records are for 1970 to 1999 only). The cited '*Activities*' include salinity management and recovery in the Warren River catchment; it should be noted this costly tree plantation based activity is directed at the unlikely prospect of piping and pumping potable water to Perth from a dam on the Warren River; it is not for the benefit of agriculture.

7. ERA REF: '*Approach to Internalising Externalities; 'Public Goods'; 'Private Goods'*'. COMMENT: The use of such jargon as '*Internalising Externalities*', and similar throughout the *Discussion Paper*, brings into question whether the ERA is suited to reviewing a subject that affects the viability of thousands of small agricultural businesses throughout WA to which such terms are nonsense. Perhaps the large public utilities and energy and other monopolies the ERA was set up to regulate, with substantial policy units, may understand those terms, but we will reiterate our position in common language.

FEES AND CHARGES

We restate our 12 June 2009 submission on potential fees and charges raised in the *Issues Paper* for the Inquiry, plus make an addition (at V):

- I. Water is vital to all communities and most economic activity in regional WA. In general, water is owned by the Crown and the Government should fund resource management and planning from the General Fund derived from State and Commonwealth taxes we pay. Specific charges imposed on water licence holders for 'water resource management' (including planning) are opposed. Apart from the fact that water is vital to life and that management of water resources should be a core function of Government, there is demonstrable diversity between water resource regions and uses in WA such that the extent and process of management remains to be determined by Statutory Water Management Plans for each water resource region, developed with stakeholder/customer input. There is no simplistic revenue raising 'formula' for water resource management charges that can be applied rationally and equitably across all water resources and use regions.
- II. Where an allocation of or entitlement to water is sought, an 'Application Assessment Fee' could be required which reflects the complexity of Department of Water assessment for the particular dam or bore and water resource; with the applicant to receive a quote for assessment related to hours of service and fee per hour, and be able to appeal to a senior officer of the Department if the quote is unacceptable. The cost incurred by the Department of Water for assessment of an application for an allocation (new licence) must not be spread across existing water licence holders by inflating the 'Water Licence Fee' for administration of a licensing database. This cross-subsidy was the fundamental flaw in the previous water licence fees twice disallowed by State Parliament.
- III. Upon allocation of water, a 'Water Licence Fee' could be required which reflects cost recovery of administration of a licensing database. The licence holder could opt to pay either annually or 10 years in advance (analogous to a drivers licence). The Drivers licence fee is an established benchmark for administration of a licensing database and is either \$36.60 annually or \$116 for five years in advance. A 'Water Licence Fee' at a higher cost than a Drivers licence fee is opposed. If a higher cost fee is recommended by the ERA, it must only apply to the component

of a water allocation that is 'used' or dispersed by irrigation, not to the 'storage' component of surface water in a dam which is a buffer against a dry winter fill season and is effectively re-available to stream flows at commencement of winter. The situation with a surface water licence for water captured in a dam contrasts with underground water drawn by a bore, where all of the water abstracted by pumping to the surface is 'used'.

- IV. A 'Licence Renewal Fee' at end of licence duration (usually 10 years) could be required; this would re-present the 'Water Licence Fee' (analogous to the renewal of a Drivers licence). If a relevant Statutory Water Management Plan identified a particular water resource was over-allocated because of diminished resource, a re-assessment could be required and be subject to the same transparent fee process as an initial application.
- V. An 'Arbitration Fee'; in the rare event a dispute arises between water users, the water users could seek conciliation and arbitration services of the Department of Water and the Department apply a reasonable charge to recover officer's time for conciliation and arbitration.

UNCERTAINTY OF LAWS WITHIN WHICH WATER RESOURCE MANAGEMENT AND PLANNING CHARGES MIGHT APPLY

Our 12 June 2009 submission on the ERA *Issues* paper at 'PREEMPTION OF LEGISLATION' made a case that this Inquiry should not be conducted until the *Water Resources Management Bill* - redefining Crown water resources and the extent of regulation, and determining the scope of potential fees and charges - is public, debated and enacted by State Parliament. Our submission identified potential Government actions and inactions that would be anti-competitive to our commercial interests, and these issues, at least, should be of concern to the ERA. Our position remains unchanged on this crucial matter and we believe the Inquiry is fundamentally flawed because of uncertainty on applicable legislation. Please see in APPENDIX B to this submission letter to the Minister for Water of 11 May 2009 on 'RELATIONSHIP OF THE 'INQUIRY INTO WATER RESOURCE MANAGEMENT AND PLANNING CHARGES' TO THE *WATER RESOURCES MANAGEMENT BILL*', and the Ministers reply of 16 June 2009; and letter to the Minister for Water of 7 July 2009 on 'SCOPE OF WATER LICENCE FEES AND WATER RESOURCE MANAGEMENT CHARGES', and the Minister's reply of 5 August 2009. Remarkably, the Minister's reply of 5 August 2009 says the Government is issuing a policy paper before recommending drafting of the *Water Resources Management Bill*. Surely that further vindicates our concern in regard to the uncertainty of applicable legislation within which any water resource management and planning charges might apply. Further, and highly relevant to this Inquiry is that there is doubt that the *Rights in Water and Irrigation Act 1914* provides the head of power to apply water resource management and planning charges, as alluded to in the ERA *Issues* paper (April 2009, page 40): '*Future legislation governing the management of water resources would need to provide for the recovery of the costs of water resource management and planning from water users.*'

We wish to advise that any fees or charges proposed by the State Government that are in excess of the cost of direct services specifically required by agricultural water users in the Warren and Donnelly catchments will be regarded by us as a tax, and such a water tax grab will be vigorously opposed.

Neil Bartholomaeus
Convenor
Manjimup and Pemberton Landowners
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Appendices A & B

APPENDIX A

Neil Bartholomaeus
PO Box 534
Manjimup WA 6258
10 November 2008

Hon Dr Graham Jacobs MBBS FRAGP MLA
Minister for Water
12th Floor, Dumas House
2 Havelock St, West Perth WA 6005

Dear Minister

WATER ALLOCATION LIMITS: IMPLICATIONS FOR MANJIMUP AND PEMBERTON

I write on behalf of the 'Manjimup and Pemberton Landowners' group, an informal association of representatives of agribusiness sectors in the Manjimup and Pemberton area dependent on water from the Warren and Donnelly River catchments captured in private dams. Our group convened in March 2007 to respond to water reforms proposed by the previous State Government; the initial challenge was responding to harsh water licence fees. Here, we wish to express our concern regarding recent radical change by the Department of Water in the approach to allocation of surface water licences, and to request you review the new allocation limits which, in our view, are biased towards water for the environment to the detriment of water for agriculture. We also request you meet in Manjimup with members of our group who represent the range of water-related agribusinesses.

Prior to mid-2008, the Department of Water had given landowners and agribusinesses assurances that surface water was not overallocated, and that the system for determining allocations was reliable. However, during July 2008, the Department began advising applicants for surface water licences they would not receive allocations from certain catchments. The changes mean that 89% of the winter flow of streams is allocated to the environment and only 11% is available to agriculture and other uses. The dramatic effect of this new policy means the Upper Lefroy is 493% overallocated, Smithbrook is 199% overallocated, Eastbrook is 171% overallocated, Wilgarup 163% overallocated and Manjimup Brook/Yanmah-Dixvale is 212% overallocated. The effect of this changed approach to allocations is to stop growth of agriculture in some priority agriculture area catchments and limit growth in other catchments. Further, the new 89% bias of water allocation in the Warren and Donnelly catchments towards the environment, at the expense of agriculture, is so extreme that existing surface water licence holders have no margin for comfort that their allocations are secure.

The proposed allocation limits are based on the '*Estimation of Sustainable Diversion Limits for Catchments in South West Western Australia*' report published by consultants SKM in August 2008. The environmental bias context of the Sustainable Diversion Limits is made clear in the report's introduction, being "*The diversion potential represents an upper limit beyond which there is an unacceptable risk that additional extractions may degrade the riverine environment.*" (Part 2, page 1). The expert panel that provided direction for the study and report didn't include any agricultural scientists, causing a fundamental flaw in the process. It appears the claimed overallocations to agriculture reflect the SKM conclusion that "*If the recommended SDL rules are implemented, the median SDL for the unregulated catchments of south-west Western Australia is 11.0% of mean winterfill period flow.*" (Part 1, page 78); which means massive volumes of fresh water will flow into the Southern Ocean during winter and spring that could otherwise be captured and used for growth of agriculture in what is regarded as the 'food bowl of the south west'.

Ironically, while these restrictive limits are proposed to apply to water for agriculture in private dams in the unregulated Warren and Donnelly catchments, public dams on regulated streams in the Darling Range (eg Harvey, South Dandalup) will not be limited (to enable provision of water for the environment) to the same extent. Minister, please consider the contrast in 89% provision for

water for the environment in 'unregulated catchments' (per Warren and Donnelly) and no apparent consideration for water for the environment in 'regulated' catchments, some examples being:
CANNING RIVER: Pre-regulation average annual streamflow 58GL, now, following dam construction, average annual streamflow is 1.2GL, being a 98% reduction in stream flow
WUNGONG BROOK: Pre-regulation average annual streamflow 27GL, now, following dam construction, average annual streamflow is 1.7GL, being a 94% reduction in stream flow
SERPENTINE RIVER: Pre-regulation average annual streamflow 64GL, surface water licence (SWL) allocations to the Water Corporation are 54GL
SOUTH DANDALUP RIVER: Pre-regulation average annual streamflow 36GL, SWL allocations to the Water Corporation are 27GL
NORTH DANDALUP RIVER: Pre-regulation average annual streamflow 29GL, SWL allocations to the Water Corporation are 22GL
HELENA AND DARKIN RIVERS: Pre-regulation average annual streamflow 44GL, SWL allocation to the Water Corporation is 22GL
COLLIE RIVER (at Wellington Dam): Since 2001 average annual streamflow 74GL, SWL allocation to irrigation is 68GL
ORD RIVER: Pre-regulation average wet season flow 5,600GL, post-regulation 1,890GL, being a 67% reduction
HARVEY RIVER: below the Harvey Dam, the post-regulation Harvey River is referred to as the 'Harvey drain', after yielding 53GL commitment to SWLs for irrigation and to Water Corporation
It is worth noting that 85% of the land irrigated in the Harvey Irrigation Area (SWLs of 153GL) is for pasture and only 11% for vegetables, citrus and grapes; in contrast, the dominant use of water in the Warren and Donnelly catchments (SWLs of 40GL) is for high value horticulture (vegetables, fruit, vines), virtually none is used for pasture. Similarly, with water supplied from regulated catchments in the Darling Ranges, 38% of water supplied to homes is applied to lawns and gardens.

The bias towards water for the environment at the expense of water for agriculture has been implemented by the Department of Water without appropriate opportunity for input from agribusiness in our community. There was no consultation by the Department with the longstanding Warren Donnelly Water Advisory Committee in regard to the radical change to allocation limits. Several members of our Manjimup and Pemberton Landowners group are also members of the Committee, representing the community of water users. Remedies through water trading in the Warren and Donnelly catchments suggested by the Department of Water at a public meeting in August 2008, are both commercially unattractive and of dubious legal status until the proposed *Water Resources Management Bill* is enacted, perhaps providing required legal clarity. The net effect of water trading here would be to artificially increase the cost of water, to the detriment of agriculture, while massive volumes of high quality water would be unnecessarily lost into the Southern Ocean.

Minister, in our view, there is urgent need for you to review the new allocation limits and their major implications for water-related agribusiness in the Manjimup and Pemberton area. We invite you to visit the Manjimup and Pemberton area to meet with members of our group who represent the range of water-related agribusinesses, to discuss solutions on water allocations to both sustain the stream environments and enable the exciting potential for further growth of the 'food bowl of the south west'.

We trust you can agree to meet with us in Manjimup and visit some of the agribusinesses exemplifying sustainable and productive use of surface water from private dams.

Yours sincerely

Neil Bartholomaeus
Convenor
Manjimup and Pemberton Landowners

cc Member for Blackwood-Stirling

APPENDIX A

Neil Bartholomaeus
PO Box 534
Manjimup WA 6258
24 April 2009

Your Ref: 37-00727

Hon Dr Graham Jacobs MBBS FRAGP MLA
Minister for Water
12th Floor, Dumas House
2 Havelock St, West Perth WA 6005

Dear Minister

WATER ALLOCATION LIMITS SET FOR WARREN DONNELLY CATCHMENTS

I refer to our letter on water allocations from the Manjimup and Pemberton Landowners group of 10 November 2008 and your reply of 28 November 2008. Our letter expressed concern regarding radical change by the Department of Water in the approach to allocation of surface water licences in mid 2008, meaning that 89% of the winter flow of streams is allocated to the environment and only 11% is available to agriculture and other uses. We requested you review the new allocation limits which are detrimental to water for agriculture.

In reply you advised the Department of Water would discuss the matters we raised at the then pending meeting of the Warren Donnelly Water Advisory Committee of February 2009. Your letter of 10 November 2008 identified overlap between our informal Manjimup and Pemberton Landowners group, and the Warren Donnelly Water Advisory Committee administered by the Department of Water; seven members of the Landowners group are members of the nine member Advisory Committee. Here, we wish to advise the Minister that the February meeting of that Committee provided no relief, and exacerbated the problem; however, the subsequent April meeting of the Committee provided an opportunity to go forward with an approach to water allocation that satisfies water for the environment (at 60% of yearly flow) and other uses (at 40% of yearly flow).

The 9 February 2009 meeting of the Advisory Committee failed to progress the impasse on water allocations. The meeting was presented with a proposed water trade in the alternative to the granting of a new licence for 110ML of water in the upper Lefroy Brook catchment for a 50 hectare apple and stone fruit orchard. The minutes record "Two members supported in principle the trade in response to the information provided. A suggestion was put forward to use the trade as a test case to gain further information. Six members did not support the trade but wanted the Department to provide a standard licence to the proponent to ensure that the development took place.". The Department did not accept the advice of the Committee and instead progressed their flawed water trade strategy which was rejected by the orchard developer and the \$5 million development regrettably did not proceed.

The 20 April 2009 meeting of the Advisory Committee considered the aftermath of the failed water trade and that landowners were constructing large expensive unregulated 'run-off' dams to overcome the restrictions on new licences for 'in-stream' dams. The Advisory Committee identified the potential for large unregulated 'run-off' dams to have a significant impact on stream flows and thus security of water for licensed 'in-stream' dams, and water for the environment. Fortunately, a review by the Department of Water of '*Ecological water requirements for Lefroy Brook*' (January 2009) tabled at the meeting has identified the environment may be protected with 60% of yearly flow with the potential to allocate 40% of yearly flow to other uses, including agriculture. If the 60/40 water balance was adopted as a basis to go forward, the crisis caused in mid-2008 would be overcome and there would be potential to grant additional surface water licences for 'in-stream' dams in the catchments that are also priority agriculture areas. Significantly, the Lefroy Brook study

doesn't distinguish 'upper' and 'lower' Lefroy which then opens the potential to identify which aspects of a streams length are priority for protection of stream environs (in State Forest and other reserves) while cleared tributaries could be approached with the priority being security of water for existing and new users.

Minister, we request you encourage the Department of Water to extend the reasonable 60/40 water balance approach to other streams in the Warren and Donnelly River catchments in advance of the 2009/2010 summer period for constructing dams, to maintain the exciting growth of agriculture in this area that is the 'food bowl of the South West'.

In your letter of 28 November 2008, you advised you would meet with our Manjimup and Pemberton Landowners group to discuss these matters; we look forward to such a meeting in Manjimup.

Yours sincerely

Neil Bartholomaeus
Convenor
Manjimup and Pemberton Landowners

cc Member for Blackwood-Stirling

APPENDIX B

Neil Bartholomaeus
PO Box 534
Manjimup WA 6258
11 May 2009

Hon Dr Graham Jacobs MBBS FRAGP MLA
Minister for Water
12th Floor, Dumas House
2 Havelock St, West Perth WA 6005

Dear Minister

RELATIONSHIP OF THE 'INQUIRY INTO WATER RESOURCE MANAGEMENT AND PLANNING CHARGES' TO THE *WATER RESOURCES MANAGEMENT BILL*

I write on behalf of the 'Manjimup and Pemberton Landowners' group, an association of representatives of agribusiness sectors in the Manjimup and Pemberton area dependent on water from the Warren and Donnelly River catchments captured in private dams. Our 'self-supply' water user group convened in March 2007 to respond to water reforms proposed by the previous State Labor Government; the initial challenge was responding to harsh water licence fees. Here, we wish to express our serious concern that the State Liberal-National Government has initiated the 'Inquiry into Water Resource Management and Planning Charges' by the Economic Regulation Authority before the *Water Resources Management Bill*, determining the scope of potential fees and charges, is either public, debated or enacted by State Parliament. We request the Inquiry be halted until there is the necessary *Water Resources Management Act* defining regulated water resources in Western Australia.

We and others argued during the previous controversy over water licence fees that there should be no introduction of fees or charges until the antiquated *Rights in Water and Irrigation Act 1914* is replaced by the *Water Resources Management Bill*, detail for which the Department of Water says was submitted in September 2008 for drafting by Parliamentary Counsel. The Terms of Reference for the Inquiry provided by the Treasurer to the Economic Regulation Authority (ERA) make no mention of the *Water Resources Management Bill* which could massively increase the number of self-supply water users in agriculture that will be regulated and required to pay fees and charges, and the amount they pay.

The only public document indicating detail in the pending *Water Resources Management Bill* is the '*Water Resources Management Bill: Recommended Legislative Framework*' published in April 2007 by the Department of Water. Based on the content of the '*Water Resources Management Bill: Recommended Legislative Framework*', we urgently seek vital information to establish the realistic impact of the proposed fees and charges subject of the Inquiry. Minister, please provide answers to the following highly relevant questions:

1. Will the *Water Resources Management Bill* extend licensing from in-stream dams to include dams capturing springs and overland flow or runoff as proposed in the *Recommended Legislative Framework*? [There are approximately 380 surface water licences in the Warren and Donnelly catchments associated with in-stream dams on 'watercourses' defined under the *Rights in Water and Irrigation Act 1914*; dams capturing water from springs and overland flow or runoff are not required to be licensed. If dams capturing springs and overland flow or runoff are required to be licensed, the number of surface water licences could exceed 800, doubling the cost of water licence fees and water resource management charges for what are in the majority family run agribusinesses. Conversely, if the scope of legislation isn't expanded to include dams on springs and capturing runoff, there will be justified claims of inequity in applying fees and charges.]

2. Will the *Bill* include a requirement for a water licence for water accessed by tree plantations as proposed in the *Recommended Legislative Framework*? [The *Framework* recommends tree plantation interception of water be included in the scope of water resource planning, use and regulation, and potentially require a licence to take water and be subject to any fees and charges that may be applied to other water licence holders. Consider the present scenario in the Upper Lefroy where a surface water licence for an in-stream dam for a 50 ha fruit orchard has been declined by the Department of Water, yet a 50 ha Tasmanian bluegum plantation could be planted on the same property and intercept a greater volume of water; there is no power to regulate this under the *Rights in Water and Irrigation Act 1914*. Further, while orchards, truffle farms, vineyards and others requiring surface water licences surrounding the hypothetical Tasmanian bluegum plantation are likely to be subject to both water licence fees and water resource management charges in 2010 post the ERA Inquiry, the operators of the hypothetical Tasmanian bluegum plantation would pay no such fees and charges relating to water use. The anomaly of water use by plantations or 'tree farms' not requiring a water licence must be addressed.]
3. Will the requirement for a water licence for tree plantations apply to both existing and new tree plantations if the same approach is to apply to both existing and new dams on springs and capturing runoff?
4. Will the *Bill* extend water licensing statewide beyond the proclaimed Warren and Donnelly catchments in the Manjimup and Pemberton area to include Bridgetown, Nannup, Frankland, Boyup Brook, Denmark, Mount Barker, Albany, Williams and many other farming areas that are not proclaimed areas, as proposed in the *Recommended Legislative Framework*? [It will be anti-competitive if water licence fees and water resource management charges are added to cost of production of wine, fruit, potatoes, vegetables, marron etc in Manjimup and Pemberton while producers using water in other areas are not subject to the same fees and charges. Further, by the ERA Inquiry omitting potential application to all self-supply water users statewide, there will be thousands of farming families that may think the fees and charges won't apply to them and may not give sufficient attention to the Inquiry.]

These are some of the many complex legislative issues to address before considering the scope and equitable application of fees and charges to self-supply water users; these issues must be debated by State Parliament, not ignored by the Inquiry because they are not specifically within the Terms of Reference. Given the scope of application of proposed water fees and charges can't be determined with legislative certainty at present, we respectfully request the State Government halt the Inquiry by the Economic Regulation Authority and not re-visit water fees and charges until there is a *Water Resources Management Act*.

Yours sincerely

Neil Bartholomaeus
Convenor
Manjimup and Pemberton Landowners

cc Member for Blackwood-Stirling



Minister for Water; Mental Health

Our Ref: 37-03171

Mr Neil Bartholomaeus
Convenor
Manjimup and Pemberton Landowners
PO Box 534
MANJIMUP WA 6258

Dear Mr Bartholomaeus

RELATIONSHIP OF THE INQUIRY INTO WATER RESOURCE MANAGEMENT AND PLANNING CHARGES TO THE WATER RESOURCES MANAGEMENT BILL

Thank you for your letter dated 11 May 2009 regarding the relationship between the Economic Regulation Authority's (ERA) Inquiry into Water Resource Management and Planning Charges and the Water Resources Management Bill.

I am committed to continuing the development of the Water Resources Management Bill. To ensure that stakeholders are widely consulted on the Bill, I plan to release a policy paper defining the Government's position on water resources management, including many of the issues raised in your letter. The policy paper will provide ample opportunity for wide-ranging discussion and input before the Government makes any final decisions on the way forward.

I also plan to release the Water Resources Management Bill as a Green Bill to enable further consultation on the Bill before it is introduced into Parliament.

While I appreciate your concerns, I do not believe there is a case for suspending the ERA's Inquiry until the Bill is enacted. Once the Government has considered the Inquiry's recommendations it will determine a policy for cost recovery that will take into account the fairness and equity of any proposed charges.

You may wish to draw to the ERA's attention the issue of potential inequities in the proposed fees and charges you identified in your letter. Initial submissions on the Issues Paper released by the ERA as part of the Inquiry are due on 12 June 2009. There will be a further opportunity for input into the ERA's Inquiry through a submission on the Draft Report, to be released in September 2009.

I look forward to the ongoing involvement of the Manjimup and Pemberton Landowners Group in the development of the new water resources management legislation. Should you wish to discuss any aspect of the legislation reform program, please contact Mr John Roberts, Project Director – Water Law Reform, at the Department of Water on telephone (08) 6364 7120.

Yours sincerely

DR GRAHAM JACOBS MLA
MINISTER FOR WATER; MENTAL HEALTH

Level 12, Dumas House, 2 Havelock Street, West Perth Western Australia 6005
Telephone: +61 8 9213 6900 Facsimile: +61 8 9213 6901 Email: Minister.Jacobs@dpc.wa.gov.au

APPENDIX B

Manjimup and Pemberton Landowners
PO Box 534
Manjimup WA 6258
7 July 2009

Hon Dr Graham Jacobs MBBS FRAGP MLA
Minister for Water
12th Floor, Dumas House
2 Havelock St, West Perth WA 6005

Dear Minister

SCOPE OF WATER LICENCE FEES AND WATER RESOURCE MANAGEMENT CHARGES

I write on behalf of our 'Manjimup and Pemberton Landowners' group, an association of representatives of agriculture in Manjimup and Pemberton based on water in privately funded 'farm dams'; this area is regarded as the 'food bowl of the South West' with annual production valued at over \$100 million, twice the value of production of the Ord River irrigation district which is heavily subsidised by the public.

On 11 May 2009, out of concern for the cost impacts of water licence fees and water resource management charges subject of inquiry by the Economic Regulation Authority, we sought information from you in regard to the types of 'farm dams' (including runoff or overland flow dams) potentially subject to licensing, if tree plantations would be included in licensing, and if licensing would be extended beyond proclaimed areas such as ours to include all 'farm dams' statewide. On 16 June 2009 in reply to our specific questions relating to 'farm dams' and tree plantations you provided no specific answers and instead said there will be a policy paper which will "...provide ample opportunity for wide-ranging discussion and input before the Government makes any final decisions on the way forward."

Your reply to us of 16 June 2009 contradicts the Government of Western Australia's November 2008 progress report to the Commonwealth Government on '*Western Australia's achievements in implementing the National Water Initiative*' (3.7 'Interception' on pages 33 and 34) which said in regard to 'farm dams' (including storing overland flow or runoff) and tree plantations that achievements were 'Policy position papers finalised', 'Targeted consultation process completed', 'Policy position statement completed and signed off', and 'Drafting instructions to Parliamentary Counsel'.

Minister, please reply and clarify which statement is correct, your advice to us in June 2009 that policy on these matters remains open to wide-ranging discussion and input, or the progress report to the Commonwealth Government in November 2008 which states that in regard to the same matters the consultation process and policy is completed, and drafting instructions for legislation has been provided to Parliamentary Counsel? It appears to us that we are being told the scope of potential regulation and associated fees and charges is open to discussion to appease agriculture and plantation forestry, yet on the same regulatory matters the State Government is advising the Commonwealth Government it is in compliance with the National Water Initiative to qualify for related Commonwealth grants including \$195 million associated with the Ord River irrigation district announced last week, \$35 million for the Harvey irrigation district in June 2009, and \$2.46 million for groundwater studies in April 2009.

Remarkably, the Economic Regulation Authority wrote to us on 29 June 2009 and said it will provide its advice to Government within the context of existing legislation, yet the Terms of Reference for their inquiry state options for fees and charges include "...opportunities for implementation under both the existing legislative responsibilities of the Department of Water as well as those specified by the National Water Initiative."; which includes the specifications on 'farm dams' and tree plantations in the State Governments November 2008 report on the National Water Initiative. There is demonstrable confusion; the inquiry by the ERA must be halted until the pending *Water Resources Management Bill* is enacted.

Yours sincerely

Neil Bartholomaeus
Convenor
Manjimup and Pemberton Landowners



Minister for Water; Mental Health

Our Ref: 37-03946

Mr Neil Bartholomaeus
Convenor
Manjimup and Pemberton Landowners
PO Box 534
MANJIMUP WA 6258

Dear Mr Bartholomaeus

SCOPE OF WATER RESOURCE MANAGEMENT AND PLANNING CHARGES

Thank you for your letter dated 7 July 2009 regarding the scope of water resource management and planning charges.

The November 2008 progress report to the Commonwealth Government on Western Australia's achievements in implementing the National Water Initiative (NWI) reflected the policy positions of the previous Labor Government. As a new Government we reserve the right to reshape the policy direction of water reform, rather than simply adopt the policies of the previous Government. However, as a signatory to the NWI, this Government's reform agenda will remain broadly consistent with the NWI principles.

Since coming into Government I have met with a number of stakeholder groups about water reform and the new legislation. Although stakeholders are generally supportive of the reform agenda, some expressed concerns about particular issues. I am keen ensure that their concerns are given due consideration when formulating this Government's position on water resources management and re-commencing drafting of the Water Resources Management Bill. Hence my plan to release a policy paper setting out the Government's position on a wide range of issues to be covered in the new legislation.

However, I must reiterate, this course of action does not provide a reason for suspending the Economic Regulation Authority's (ERA) Inquiry into Water Resource Management and Planning Charges until the Water Resources Management Bill is enacted.

Thank you for your ongoing interest in this matter. Please do not hesitate to contact Mr John Roberts, Project Director, Water Law Reform at the Department of Water on telephone 6364 7120 if you wish to discuss any aspect of the legislation reform program.

Yours sincerely

DR GRAHAM JACOBS MLA
MINISTER FOR WATER; MENTAL HEALTH

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