

20 December 2010

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

SUBMISSION ON ERA SECOND DRAFT REPORT 'INQUIRY INTO WATER RESOURCE MANAGEMENT AND PLANNING CHARGES' OF 2 NOVEMBER 2010

SUMMARY

1. The Economic Regulation Authority (ERA) has materially ignored three previous submissions made to the Inquiry by self-supply water users in agriculture in Manjimup and Pemberton. The ERA has also ignored recent history of disallowance in State Parliament of water licence fees and charges because they were unfair to self-supply water users in agriculture.
2. The ERA contracted a consultant to conduct a case study of water allocation planning in the Warren and Donnelly catchments which contradicts the \$1,520 annual charge proposed by the ERA by suggesting cost recovery would be an average of \$134 annually per water licence.
3. The ERA has identified \$29.2 million of the annual budget of the Department of Water for cost recovery from water users. This amount for cost recovery is five times the \$5.8 million cost recovery sought by the Department of Water in 2007–2008, which was twice disallowed by State Parliament because the associated fee structure was irrational and unfair. The previous flawed attempt at cost recovery was particularly unfair to self-supply water users in agriculture. Now the ERA proposals are similarly flawed but the cost implications are five times as great. The Draft Report proposes many self-supply water users pay annual water resource management and planning charges of \$1,670 for each licence, and renewal fees of \$1,056 for what is usually a 'rubber stamping' process. Applying for a new licence for a dam or bore will cost between \$3,762 and \$5,532. The ERA gives examples of a small winery using 11 ML of water and a small horticulture using 18 ML being subject to an annual charge of \$1,670, yet a large winery using 360 ML and an irrigator using 55,000 ML have the same \$1,670 in water resource management and planning charges. This is irrational and unfair.
4. ERA has changed their mind on fees and charges for the 177,000 garden bores in Perth using 120,000 megalitres of water, saying the bores reduce the demand for piped scheme water and the water from bores would generally not be used otherwise. The same rationale can be applied to self-supply water users in agriculture with their own dams and bores; they don't demand water piped from Government irrigation dams as at Harvey and the Ord, and the water in private farm dams would otherwise flow into the ocean and not be used. The ERA is inconsistent and unfair.
5. An alternative fee structure for self-supply water users is reiterated.

1. PREFACE AND BACKGROUND

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 are located in the Warren and Donnelly River catchments where 33 gigalitres (4%) of the 742 gigalitres mean annual outflow is allocated to 484 surface water licences and the balance is water for the environment flowing into the Southern Ocean.

First Submission to ERA: Manjimup and Pemberton Landowners made a first detailed submission to the ERA's Inquiry on 12 June 2009 and submitted that it was irrational and improper that this Inquiry was being conducted before the *Water Resources Management Bill* - redefining Crown water resources and the extent of regulation, and determining the scope of potential fees and charges -

was public, debated or enacted by State Parliament. The ERA continues to ignore these and other highly relevant legislative issues which should have been resolved by State Parliament before the ERA Inquiry was requested by the Treasurer. The submission appended detailed relevant submissions to the Legislative Assembly Economics and Industry Standing Committee: Inquiry into Water Licensing and Services (2008), and to the Auditor General (2007). There is little evidence that the ERA has considered this relevant background as it now repeats fundamental flaws in previous attempts to introduce water licence fees and charges.

Second Submission to ERA: Manjimup and Pemberton Landowners made a second detailed submission to the ERA's Inquiry on 31 August 2009 in which we made specific comment on a Case Study relating to 'Surface Water Allocations in the Warren-Donnelly River Systems' in the ERA Discussion Paper of August 2009. Our comment turned upon overstatement by the ERA of the extent of services provided by the Department of Water to self-supply water users, and our dissatisfaction as customers with the quality of services provided by the Department of Water. The submission also appended detailed letters to the Minister for Water on the scope of the ERA Inquiry, and the unsatisfactory responses.

Third Submission to ERA: Manjimup and Pemberton Landowners made a third detailed submission to the ERA's Inquiry on 26 February 2010 in which we made specific comment on the ERA's Draft Report of December 2009 and further commented on our proposed alternative fees and charges for self-supply water users. The submission also appended and commented on relevant detailed submission to the Department of Water and letters to the Minister for Water regarding changes to water legislation and water allocations.

Fourth Submission to ERA: The ERA Inquiry is running more than a year late in relation to the initial reporting date of 2 January 2010, with it now reporting to the Treasurer on 28 February 2011. This delay has been caused by the inefficiency of the Department of Water and ERA. Most of the water licences subject to the Inquiry are related to agriculture. It is either thoughtless or mean spirited that the date for submissions on the Draft Report is 20 December 2010, five days before Christmas. December is the busiest time of the year for many food producers, including harvesting food for the peak market demand of the Christmas and New Year holidays. We and other submitters have met previous deadlines set for submissions, and will continue to do so. However, the 20 December deadline for submissions increases antipathy amongst stakeholders towards this Inquiry, the ERA and associated Ministers.

In a media release of 13 August 2007 Terry Redman MLA, now our local Member for Blackwood-Stirling, titled "*Department of Water must shift focus off spin and onto city bore users*" said "...the State Government is literally pouring taxpayers money down the drain in its vain attempt to convince farmers that new water license administration fees are fair and reasonable." and "No matter how much public money this Government pours into its water fee spin doctoring, they will never convince farmers that water charges which single them out whilst leaving city bore users untouched, are fair." In our view, the comments of Mr Redman in 2007 are applicable to the ERA Inquiry now, and the ERA. However the 'spin doctoring' now surrounds \$29.2 million in proposed fees and charges, five times the \$5.8 million Mr Redman was referring to in 2007. Mr Redman, who is now also Minister for Agriculture and Food, went on in the same media release to say "*It's an irony that here in Western Australia, a state in which agriculture is so important to our domestic and export markets, we have a Government which appears hell bent on making it tougher for fruit and vegetable producers to remain viable in the face of competition from interstate and overseas.*".

This fourth submission comments on the specific ERA 'Case Study on the Warren-Donnelly Catchments', the ERA recommended fees and charges, the anomaly of Perth garden bores, ability to pay, and reiterates an approach to water licence fees and charges acceptable to self-supply water users in agriculture. We include an APPENDIX highly relevant to this submission being a submission of 6 September 2010 to the Department of Water on the '*Warren-Donnelly Surface Water Allocation Plan*'. Low allocations of water for agriculture in the Warren and Donnelly catchments compared to the environment, means water licences in the Warren and Donnelly catchments are subject to the highest water resource management and planning charges proposed by the ERA.

2. ERA 'CASE STUDY ON THE WARREN-DONNELLY CATCHMENTS

The ERA contracted a consultant (Resource Economics Unit) to conduct a case study of water allocation planning for the Warren and Donnelly catchments which contradicts the \$1,520 annual charge proposed by the ERA by suggesting cost recovery would be an average of \$134 annually per water licence in the Warren and Donnelly catchments.

The ERA separates its proposed Category C of charges for 'Providing water allocations and managing the ongoing use of water' into two classes (Table 1.2, page iii of Report). The first is 'Water Licensing Policy and Enforcement' with a \$112 annual 'Water licensing policy charge' and a \$38 annual 'Enforcement' charge (on page 55 of the Report they are erroneously added as \$149, when in fact they are \$150 in total). The second is a \$1,520 annual charge for 'Water Allocation Planning and Management' for water resources associated with 90% of the 484 licences in the Warren and Donnelly catchments.

The Resource Economics Unit contracted by the ERA to conduct the case study of costs associated with the development by the Department of Water of the 'Warren Donnelly surface water allocation plan' (June 2010) concluded:

- *Therefore, for illustrative purposes the total cost over three years for allocation planning and implementation for the Warren-Donnelly has been taken as \$1.0 million.*
- *The annual value of all costs incurred by the Department in water allocation planning for the Warren-Donnelly basins has been estimated by the author to be \$ 0.133 million/yr (i.e \$1 million annualised over 10 years using a 7% real discount rate, assuming that the new Warren-Donnelly Surface water Allocation plan will have a lifetime of ten years). A half of these costs has been assumed to be for public interest purposes, notably environmental protection, implying that the cost of departmental activities undertaken in the interest of protecting flows for irrigators is approximately \$ 0.065 million/yr.*

When the annualised \$65,000 is notionally shared by 484 licence holders, the cost would be \$134 annually, not the \$1,520 the ERA proposes be charged.

It should also be noted the Resource Economics Unit considered that half of the costs of allocation planning should be apportioned to public environmental interests, whereas the ERA Report (p54) only assigns 30% of this category of cost to 'public good'.

The \$134 annual cost determined by the Resource Economics Unit is a much smaller number than \$1,520 as part of the proposed annual \$1,670 charge for 'Providing water allocations and managing the ongoing use of water'. However, is the 'Warren Donnelly surface water allocation plan' (June 2010) even worth \$134 a year to water licence holders? In our view, no! Please see APPENDIX being submission by Manjimup and Pemberton Landowners of 6 September 2010 where we submitted to the Department of Water that we "...do not support the Allocation Plan because it doesn't provide sufficient water for agriculture in terms of security for existing water users in agriculture and for potential growth in agriculture in the 'food bowl of the South-West'".

The ERA Report (page 30) comments on the Resource Economics Unit study as if self-supply water users with dams are committing some sort of crime in using some water for agriculture:

"Two studies on the impact of farm dams on stream flows in the Manjimup area have been undertaken by Sinclair Knight Merz Consulting (SKM), one in 2007 and the other in 2008. In both studies, a modelling software package was used to estimate the effect of farm dams on surface water flows. The studies undertaken by SKM concluded that the farm dams in the Upper Lefroy Brook Catchment are significantly affecting stream flow at the Channybearup Gauge. It estimated that the annual flow is reduced by 22 per cent on average, with the largest volumetric reductions occurring during the months of April, May and June."

Do the ERA, Resource Economics Unit and SKM expect owners of cleared land to watch freshwater flow through their properties to the ocean and only run cattle, when they can capture water in dams in

winter to grow vegetables, fruit, truffles, avocados, grapes for wine and other produce in summer in the fertile soils of the Manjimup and Pemberton area? And, incidentally, but importantly, provide habitat for water birds that are refugees from dried habitat elsewhere.

The Resource Economics Unit report fails to recognise that, based on Department of Water data from the Upper Lefroy, the Department concludes that interception of water by farm dams is less than the increased run-off following clearing, with the exception of the driest year (1987) since 1975 (*'Warren-Donnelly surface water allocation limits report'*, Report 40 of May 2010, page 18). SKM outrageously refers to the flows post clearing as 'natural' flows in their study of 2008 and use a 'formula' to calculate stream flows for their study years beyond 1998 because the Channybearup Gauge on the Lefroy was removed in 1999. However, the fundamental flaw in the SKM 2008 study was that they used Pemberton rainfall average of 1133mm over the 1975-2006 modeling period to determine impacts of farm dams in the Upper Lefroy on reduction of stream flow at the Channybearup Gauge. The Water Corporation operates Manjimup Dam and Phillips Dam for public water supply for Manjimup, both dams are located in the Upper Lefroy catchment near Manjimup. The Water Corporation says the average rainfall of 935mm over the period 1975 to 2004 for Manjimup is what is relevant to climate for their dams in the Upper Lefroy (*'Manjimup Dam and Phillips Creek Dam Catchment Areas Drinking Water Source Protection Assessment, Water Corporation'*, 2004). Using 1133mm rainfall for the Upper Lefroy rather than the applicable 935mm invalidates the SKM 2008 study because the expected outflow from the catchment is based on the 17% higher rainfall of Pemberton, and the lower outflow is attributed to farm dams when it is more likely due to the lower rainfall of Manjimup. The flawed SKM study is used by the Resource Economics Unit, and then the ERA, to portray self-supply water users as water robbers requiring regulation.

We can't leave the ERA's 'Case Study on The Warren-Donnelly Catchments' without making four further observations:

- SKM were the consultants to the Department of Water in 2008 that prompted absurd changes to water allocations that meant 89% of the winter flow of streams was allocated to the environment and only 11% was available to agriculture and other uses (see APPENDIX at 1).
- If the State Government, of which the ERA are part, believe the Upper Lefroy is a model for study of regulatory intervention and associated fees and charges, then why has this important catchment been without a gauging station at Channybearup since 1999?
- The report of the Resource Economics Unit at page 4 says:

"Average stream flows in the Study Area as a whole are very much in excess of diversions. Mean annual runoff of the Warren and Donnelly Rivers combined was 772,000 ML between 1975 and 1998. Total water use is expected to be around 35 ML in 2009-10."

We assume the Resource Economics Unit meant '*...around 35,000 ML...*'. The disturbing aspect of this error is that the ERA repeats the thousand fold magnitude error on page 29 of their Report, reflecting poor understanding of the subject they are inquiring into and advising the Treasurer and Parliament on.

- The study conducted by the Resource Economics Unit was contracted by the ERA because of submissions to the ERA from Manjimup and Pemberton Landowners that challenged the value of water allocation planning and management by the Department of Water in the Warren and Donnelly catchments. However, the Resource Economics Unit made no contact with us and would not have seen the highly relevant APPENDIX here as they conducted their 'desktop study'.

3. ERA PROPOSED WATER LICENSING FEES AND CHARGES

Table 4.11 on page 60 of the ERA report sets out a 'Summary of Proposed Water Licensing Fees and Charges' and here we comment on each of the proposals.

New 5C Licence: three fee classes: Low \$2,101, Medium \$3,860 and High \$3,350.

The Report says there is insufficient information available to classify assessment of applications for a 5C licence for surface water as Low, Medium or High but nevertheless does it. Report Table 4.1 says

an average of 12.83 hours is required to assess a new 5C licence for surface water, making the hourly rate \$300.85 for the \$3,860 fee. Applying the average 12.83 hours to the 'Low' \$2,101 fee gives and hourly rate of \$163.75 an hour.

Parliamentary Question 4958 of 19 June 2007 established the average time 'to assess an application for groundwater or surface water in 2005-06 was 14 hours.'. Information made available by the Department of Water in 2007 on how the then fees were calculated indicated the hourly rate for Department of Water services for cost recovery of licensing was \$29.73 an hour. The disallowed *Rights in Water and Irrigation Amendment Regulations (No. 3) 2007* set a \$200 fee for application for a 5C licence. While the \$200 was less than recovery of the then \$416.22 cost, the increase between values and costs in 2007 and fee proposed by the ERA in 2010 are unacceptable. Applying 3% annual increase to salary hourly rate since 2007 would put the rate at \$32.48 in 2010; however, for the purposes of further consideration of fees and charges below, we will apply an hourly rate of \$40, equating to an annual salary of \$77,792 for officers involved in licensing, water resource planning and management. There is no way 'overheads' can explain the differential between \$40 an hour and the \$163.75 and \$300.85 an hour the ERA proposes for 5C licensing services.

Manjimup and Pemberton Landowners have consistently submitted that 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 Draft Report says the Department of Water is not able to provide specific quotations for services, so the ERA is proposing a crude \$2,101 to \$3,860 for a 5C licence, at up to \$300.85 an hour for service. This is irrational and unfair. The Department must improve its operations to provide quotations that are normal practice for commercial services in the private sector.

Licence Renewals: three fee classes: Low \$825, Medium \$1,056 and High \$992

The Reports says the Department of Water can't explain their costs associated with renewal of licences so the ERA is applying a fee of up to \$1,056 for what is usually a 'rubber stamping process' and then is perversely re-distributing 60% or \$1.2million of what the Department of Water estimates for renewals across to water allocation planning to be recovered by annual charges.

Surely the Department of Water doesn't take 26.4 hours at \$40 an hour to 'rubber stamp', print and post a reissued 5C licence?

We reject this approach and will pay no more than required for 'desktop' renewal of a Drivers licence, a benchmark in public administration in WA. If in some circumstances a change in water resource requires a re-assessment of the allocation to a licence, the quotation system we suggest for an initial 5C application should apply.

Amendment of a licence to take water: \$2,380

Here the ERA report crudely applies simple arithmetic to costs stated by the Department of Water to arrive at a \$2,380 fee, with no qualitative analysis of 'amendment' services. The ERA makes no attempt to explain what an 'amendment' might be. In some instances it might be as simple as changing the specified use on the licence from horticulture to aquaculture.

Surely the Department of Water doesn't take 59.5 hours at \$40 an hour to amend a 5C licence?

The disallowed *Rights in Water and Irrigation Amendment Regulations (No. 3) 2007* set a \$200 fee for amendment of a 5C licence

We reject this absurd \$2,380 fee; the ERA must identify a schedule of 'amendment' services and associated specific fees.

Trade or transfer of a licence to take water: \$2,933

Again the ERA report applies simple arithmetic to costs stated by the Department of Water to arrive at a \$2,933 fee with no qualitative analysis of 'trade' or 'transfer' services. The most common service under this category would be transfer of a 5C licence to a new owner of a freehold property, usually with no amendment to the licence other than name of holder.

Surely the Department of Water doesn't take 73 hours at \$40 an hour to transfer a 5C licence from person/holder A to person/holder B on the same property?

The most common 'trade' of water is a temporary transfer to assist a neighbour. There are few permanent trades in WA, and none of surface water in the Warren and Donnelly catchments. Again, surely the Department of Water doesn't take 73 hours at \$40 an hour to acknowledge a simple temporary transfer of water between neighbours?

The disallowed *Rights in Water and Irrigation Amendment Regulations (No. 3) 2007* set a \$200 fee for application for transfer of a 5C licence, entitlement or agreement.

The 'flat' \$2,933 fee is opposed; the ERA must identify a schedule of 'trade or transfer' services and associated specific fees.

Permit to interfere with bed or banks: \$1,672

This permit relates to construction of a dam on a stream to hold water for a 5C licence. In some instances it may take more time to assess a site for issue of the permit (eg impact on native vegetation, intrusion onto State forest) than to issue the associated 5C licence.

The disallowed *Rights in Water and Irrigation Amendment Regulations (No. 3) 2007* set a \$200 fee for application for a permit.

As we suggest for application for a 5C licence, the applicant for a permit should 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.

Licence to construct or alter a well: \$1,661

It is implausible that issuing a permit to drill a bore would take the Department of Water 41 hours at \$40 an hour. Noting that the service is distinct from what may be a related 5C licence for underground water.

The ERA proposed \$1,661 fee to drill a bore for water for agriculture is in stark contrast to no fee to drill 177,000 garden bores in Perth, many of which received a \$300 subsidy from the Department of Water. This is objectionable hypocrisy.

The disallowed *Rights in Water and Irrigation Amendment Regulations (No. 3) 2007* set a \$200 fee for application for a permit.

As we suggest for application for a 5C licence, the applicant for a permit should 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.

Water licensing policy: \$112 annual

Here the ERA has crudely applied simple arithmetic dividing a claimed \$1.538 million annual expenditure of the Department of Water on policy by 13,796 water licence holders to arrive at an annual fee for each of \$112.

Surely the Department of Water doesn't annually apply 2.8 hours of policy time at \$40 an hour to a 20 megalitre dam for a small viticulture in the Manjimup, Pemberton or Margaret River areas? On the other hand, surely the Department of Water spends more than 2.8 hours annually on policy related to 353 gicalitres of water associated with the Ord Irrigation Scheme to justify \$415 million in State and Commonwealth subsidies granted in July 2009? Noting the real-politic of the lavishing of the Ord with \$415 million in subsidies is about winning the State Electorate of Kimberly, perhaps the State Government doesn't want to much analytical policy time applied to that huge 'pork barrel'.

Again the ERA has taken a slack and irresponsible approach, with no attempt to evaluate the qualitative nature of policy development and delivery, and the extent to which there is stakeholder input that may justify any fee for policy.

The APPENDIX here at 6. '*Consultation and the need for a Water Resource Management Committee*' turns upon serious deficiency in policy development processes related to the services of the Department of Water.

The Waters and Rivers Commission established by legislation in 1995 was abolished in 2007, along with any statutory input by stakeholders on the Commission to water resource management. Six of the seven members of the Waters and Rivers Commission were non-Department of Water persons, and represented stakeholders.

Section 26GK of the *Rights in Water and Irrigation Act* 1914 provides for Water Resource Management Committees. Section 26GK and related provisions empower a Management Committee with many relevant functions, including functions exercised by the Minister which the Minister can delegate to the Committee. When new members were appointed to the local Warren Donnelly Water Advisory Committee in 2007, briefing papers provided to them said the relevant legislation for their appointment was section 26GK of the *Rights in Water and Irrigation Act* 1914. The briefing papers were incorrect and misleading, no Water Resource Management Committee has been appointed under provisions of section 26GK of the *Act*.

There are no statutory processes being utilised for stakeholder input to water resource management policy in WA. The Department of Water and responsible Minister use self-serving policy development processes. Until such time as there are statutory opportunities for stakeholder participation in policy development, fees or charges for water licensing policy are opposed. Further, what are the limits to State Government charges for 'policy' across the range of service areas, eg industry policy, occupational health and safety policy, industrial relations policy, environmental policy, agriculture policy? Water is vital to all community and economic activity; it is not an 'optional extra', and water policy should be a amongst core functions of the State Government.

Enforcement: \$38 annual

The ERA proposed \$38 annual fee for Enforcement at \$40 an hour for service applied to the 484 surface water licence holders in the Warren and Donnelly catchments translates to 460 hours of enforcement, or 1.8 hours a day of enforcement activity from the two person Manjimup office of the Department of Water. This does not fit facts. The majority of the 484 licence holders would not see a Department of Water officer on their property during the course of a ten year licence period. As far as we are aware, there have been no prosecutions under the *Rights in Water and Irrigation Act* 1914 of 5C licence holders in the Warren and Donnelly catchments. In our view, there is a high level of compliance through self-regulation and negligible attention to enforcement by the Department of Water.

Does the State Government intend to add a \$38 Enforcement fee to the annual \$36.60 Drivers licence fee? No! Is the ERA proposing a \$38 Enforcement fee for garden bores in Perth? No!

On 9 December 2010 the Department of Water issued a media release titled 'Crackdown on bore water users' stating:

"Almost a thousand garden bore users in the Perth metropolitan area have been caught breaching restrictions in the past two months.

Since the beginning of October the Department of Water has issued 220 infringements for bore owners directly observed breaching restrictions by Water Corporation officers in the field."

It is blatantly inconsistent of the ERA to be requiring a \$38 annual Enforcement fee from self-supply water users in agriculture while there is neither a licence nor enforcement fee proposed for 177,000 garden bores in Perth using 120 gigalitres of water unsustainably.

To repeat previous submissions we have made to the ERA, the Department of Water have no performance indicators for enforcement and their negligible enforcement activity amongst 5C surface water licence holders doesn't justify a \$38 specific annual charge for Enforcement.

Water allocations and management of use: \$97 to \$1,520

The ERA proposes a 'Water allocations and management of use' charge of up to \$1,520 be combined with the \$112 Policy and \$38 Enforcement charges for an annual charge to many self-supply water users in agriculture of \$1,670 for 'Ongoing Services to Licence Holders'.

The terminology used by the ERA for this combined charge is poor, but it appears the \$1,520 relates to water allocation planning and the \$150 relates to management of the resource and licences operating within the resource.

We estimate 90% of the 484 licences in the Warren and Donnelly catchments being subject to the \$1,670 charge (\$727,452), the 10% balance may be \$540 annually. However, the estimate of more than \$700,000 is based on the 5C licenced in-stream dams; the Department of Water proposes to licence run-off, headwater and spring fed dams, which could take the annual cost to over \$1 million. This is before considering costs associated with water entitlements for tree plantations, of which there may be resurgence if an Emissions Trading Scheme is introduced. The charges for 'Ongoing Services to Licence Holders' will be a substantial negative impact on the livelihood of farming families and the Manjimup and Pemberton regional economies. The negative impact will be repeated throughout regional WA where agriculture is based on water self-supply while large irrigation schemes will not be affected.

As submitted at 2 above, the Resource Economics Unit considered that half of the costs of allocation planning should be apportioned to public environmental interests, whereas the ERA Report (p54) only assigns 30% of this category of cost to 'public good'. This gap has substantial cost implications for the 'Ongoing Services to Licence Holders' charge. We have consistently submitted that 100% of water allocation planning is for the 'public good' of ensuring effective use of vital water resources and the cost should be met from the consolidated fund derived from State and Commonwealth taxes we pay.

The ERA gives examples of a small winery using 11 megalitres of water and a small horticulture using 18 megalitres being subject to an annual charge of \$1,670, yet a large winery using 360 megalitres and an irrigator using 55,000 megalitres have the same \$1,670 in water resource management and planning charges. This is irrational and unfair.

We estimate the annual 'Ongoing Services to Licence Holders' or water resource planning and management charges in the Manjimup and Pemberton area could be more than \$700,000 for the 33 gigalitres of water in private dams, yet at Harvey it appears they may only pay \$5,010 for 136 gigalitres in three licences, and at the Ord just \$1,670 for the one 335,000 gigalitres licence. Similarly, the Water Corporation will be subject to charges of \$1,670 for each of the water licences associated with the Serpentine (51 gigalitres licence), Canning, South Dandalup and other huge dams in the over-allocated Darling Range catchments, the same as for a relatively tiny dam in

Manjimup or Pemberton. The cross-subsidy to multinational mining companies with dams in the same Darling Range catchments, and bores nearby, will also be huge.

It is incredulous that the ERA could repeat the massive cross-subsidy of large water users by relatively small self-supply water users in agriculture. Is the ERA oblivious to the twice disallowance of the *Rights in Water and Irrigation Amendment Regulations* in 2007 and 2008 because the annual 'water licence administration fee' was based on massive cross subsidy of large water users at the expense of self-supply water users in agriculture?

Metering: \$935 annual

The proposed \$935 annual fee for meter maintenance and reading is excessive relative to commercial experience. A licence holder can read a water meter and provide a return to the Department of Water in the same way an electric power meter, that supplies water to a pump, is read.

Manjimup and Pemberton Landowners do not support mandatory metering of water use. Alternatively, in April 2007, the then Warren Water Management Area Advisory Committee agreed use of an annual '*Surface Water Licence Report*' based on estimate of use, evaporation and seepage from dams by reading a contour map of surveyed dams, or by accepted standard calculations of water volume of non-surveyed dams.

4. THE GROSS ANOMALY OF PERTH GARDEN BORES

Manjimup and Pemberton Landowners do not wish Government 'red tape' and associated fees and charges on anyone, but the gross anomaly between 'red tape', fees and charges for self-supply water users in agriculture and no licensing of Perth garden bores must be addressed.

The ERA in its Report changed their mind on fees and charges for the 177,000 garden bores in Perth using 120,000 megalitres of water, weakly saying the bores reduce the demand for piped scheme water and the water from bores would generally not be used otherwise, page 11:

“After considering the feedback from stakeholders, the Authority believes that there are benefits associated with garden bores, as they reduce the demand for water from the IWSS and the water from garden bores would generally not be used otherwise. Furthermore, there may be some difficulty in identifying the bore owners and the administrative costs of licensing bores would likely outweigh any revenues from charging bore owners.”

The same rationale can be applied to self-supply water users in agriculture with their own dams and bores; they don't demand water piped from Government irrigation scheme dams as at Harvey and the Ord, and the water in private dams would otherwise flow into the ocean and not be used. Efficient growers/producers in Manjimup and Pemberton didn't ask the State Government to dam Lefroy Brook, Manjimup Brook, Wilgarup River, Smith Brook and East Brook to then pipe the water to their properties as occurred at Harvey/Collie and the Ord. They made their own investment in water infrastructure and are now to be penalised for that.

The unregulated 177,000 garden bores in Perth are destroying the urban wetlands and now the Black Swans and other water birds take refuge on the farm dams in the South-West that are targeted for a water tax grab. When it comes to a test, the Department of Water and ERA don't care about water for the environment.

The ERA says there may be difficulty identifying bore owners and administrative costs of licensing may exceed revenue. Such challenges didn't deter the Minister for Fisheries from introducing a \$30 Recreational Fishing from Boat Licence in March 2010, applying to over 150,000 fishers. It would be far more difficult to identify occasional fishers than fixed bores at homes, and the petty \$30 didn't concern administration at the Department of Fisheries.

We don't want to see a petty \$30 licence fee on Perth garden bores then justify \$1,670 annual fees on self-supply water users in agriculture. However, we make these points to demonstrate the illogicality, inconsistency and unfairness of the ERA in this Inquiry.

5. ABILITY TO PAY CONSIDERATIONS

The Terms of Reference issued by the Treasurer for the Inquiry include: "*the implementation impacts for various types of users, including a sensitivity analysis on capacity to pay assumptions*".

The ERA has given scant regard to this reference. In response on page 78 of the Report the ERA says:

"There is no actual income data available to the Authority to assess the affordability of fees and charges for agricultural water users. However, given the scale of the proposed charges, the Authority would be surprised if the indicative fees and charges resulted in any farms becoming unviable. If such a small cost does cause financial problems for a user, then it is likely that the user would be very vulnerable even if these charges were not imposed."

That is a statement by public servants in an ivory tower with secure high salary, with no experience in regional communities dependent on agriculture. The average taxable annual income in Manjimup was \$34,726 in 2008, compared to \$107,520 in Cottesloe and \$88,000 in Nedlands (Australian Bureau of Statistics). Most of the senior public servants pontificating on this inquiry live in such relative affluence in Perth. They obviously have no concept of the 'vulnerability' of agricultural income influenced by weather, pests, local, national and international market competition. In agriculture, addition of further fixed cost fees and charges by Government will certainly influence the income of farming families where it is often a struggle to survive with irregular incomes. Even previously stellar viticulture and wine businesses are battling to survive and cannot afford increased fixed costs that don't apply to competitors within WA (eg unproclaimed Blackwood Valley, Frankland and Mount Barker), nationally and internationally.

As quoted at 1 PREFACE AND BACKGROUND above, Terry Redman MLA, who is now Minister for Agriculture and Food, said on this subject in 2007, "*It's an irony that here in Western Australia, a state in which agriculture is so important to our domestic and export markets, we have a Government which appears hell bent on making it tougher for fruit and vegetable producers to remain viable in the face of competition from interstate and overseas.*". We agree with Mr Redman.

Many of the 484 surface water licences in the Manjimup and Pemberton area are held by seniors who are not actively engaged in horticulture and other production. They may have a small income from agistment to offset some costs of maintenance of the property they wish to live on. Such persons cannot afford annual \$1,670 charges for 'Ongoing Services to Licence Holders', which are greater than shire rates, for which they at least receive some material services. They constructed their dams at considerable personal sacrifice decades ago, and were efficient horticulturalists. They should not be driven from their properties by irrational and unfair charges for 'Ongoing Services to Licence Holders' designed on a desktop PC in the office of the ERA.

The economic rationalists at the ERA are completely out of touch with socioeconomic factors in regional WA. This is not surprising given the ERA was set up to regulate activity by monopoly private industry in the energy sector and large public trading enterprises/utilities, not small family owned businesses in regional WA.

6. ALTERNATIVE ACCEPTABLE FEES AND CHARGES

We re-submit for the fourth time the following in relation to services to self-supply water users:

1. Water is vital to all communities and most economic activity in WA. The State Government should fund water resource management and planning from the consolidated fund derived from State and Commonwealth taxes we pay. Specific charges of \$1,670 imposed on water licence holders for water resource management and planning are opposed. The simplistic revenue raising

formula for water resource management and planning charges the ERA proposes cannot be applied rationally and equitably across all water resources and use regions. The ERA says the State Government should cover the water resource management charges of water for the environment, but fails to recognise the value self-supply water users in agriculture add to the economy, especially in regional WA. This is irrational and unfair.

- 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 ERA Report says the Department of Water is not able to provide specific quotations for services, so the ERA is proposing a crude \$2,101 to \$3,860 for a 5C licence; plus \$1,672 for a permit to construct a dam or \$1,661 for a bore. Again, irrational and unfair. The Department must improve its operations to provide quotations that are normal practice for commercial services in the private sector.
- III. Upon allocation of water, a 'Water Licence Administration 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 Administration Fee' at a higher cost than a Drivers licence fee is opposed.
- 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 Water Allocation Plan identified particular water resource was over-allocated, a reassessment could be required and be subject to the same transparent fee process as an initial application. The ERA proposed Licence Renewal fee of \$1,056 for what is a 'rubber stamping' process is unacceptable.
- V. The proposed annual charge of \$935 for water meter reading by the Department of Water is opposed. Water licence holders should 'self report' water use measured by metering or methods such as the 'surface water licence report' based on surveyed dams or simple calculation of dam volume.

We trust this submission is given more attention by the ERA than our previous three.

Neil Bartholomaeus
Convenor
Manjimup and Pemberton Landowners
www.watertaxgrab.com

APPENDIX

South West Region
Department of Water
PO Box 261
Bunbury WA 6231

SUBMISSION ON WARREN-DONNELLY SURFACE WATER ALLOCATION PLAN

Summary of Submission

Manjimup and Pemberton Landowners represent surface water licence holders subject to the *Warren-Donnelly Surface Water Allocation Plan (Allocation Plan)* which is open to public comment. Manjimup and Pemberton Landowners do not support the *Allocation Plan* because it doesn't provide sufficient water for agriculture in terms of security for existing water users in agriculture and for potential growth in agriculture in the 'food bowl of the South-West'.

In the alternative to the low amounts of water for agriculture in the *Allocation Plan*, Manjimup and Pemberton Landowners propose a greater percentage of water being allocated to agriculture, as proposed in the Table in this submission, at column 6. The Table proposes that water for agriculture in relevant sub-catchments in the Warren River catchment be increased from an average of 20% to 37% of annual flow, and in the Donnelly River catchment from 14 % to 28% of annual flow. For major agricultural sub-catchments, the allocations to agriculture are substantially increased, for the Wilgarup River from 31% to 60% of annual flow, for Smith Brook from 30% to 60%, for East Brook from 29% to 50%, and for Manjimup Brook / Yanmah-Dixvale from 29% to 60% of annual flow.

Further, and importantly, in proposing increased water allocations to agriculture, only some of the increased provision of water should be granted to new entitlements. As a precaution against a drying climate, a substantial component of the allocation to agriculture should be reserved and held for review and possible allocation ten years after introduction of the *Allocation Plan*, and beyond.

A Water Resource Management Committee, provided for at section 26GK of the *Rights in Water and Irrigation Act 1914* should be appointed to plan for and manage water allocations in the Warren and Donnelly River areas.

1. Introduction and Background

Our 'Manjimup and Pemberton Landowners' group is an informal association of representatives of agricultural sectors in the Manjimup and Pemberton area using water captured in private 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). Our group convened in March 2007 to respond to water reforms proposed by the former State Government; including response to harsh water licence fees that were subsequently twice disallowed by the Legislative Council. Manjimup and Pemberton Landowners have made submissions to the current State Government's inquiry into water resource management and planning charges, and preparation for the *Water Resources Management Bill*. Manjimup and Pemberton Landowners group members hold surface water licences and substantially represent surface water licence holders subject to the *Warren-Donnelly Surface Water Allocation Plan (Allocation Plan)* which is open to public comment.

Until mid-2008 water allocation process in the Warren and Donnelly River catchments was generally non-controversial. Prior to mid-2008, the Department of Water had given landowners and agriculture assurances that surface water was not over-allocated, 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 several catchments. The new allocation limits enforced by the Department were 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 was 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 changes meant that 89% of the winter flow of streams was allocated to the environment and only 11% was available to agriculture and other uses. The dramatic effect of the new policy meant the Upper Lefroy was 493% overallocated, Smithbrook was 199% overallocated, Eastbrook was 171% overallocated, Wilgarup 163% overallocated and Manjimup Brook/Yanmah-Dixvale was 212% overallocated. Manjimup and Pemberton Landowners wrote to the Minister for Water on 10 November 2008 requesting the Minister's intervention to achieve a solution 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' (see letter to Minister for Water in [Appendix](#)). The changed policy on water allocations had an immediate negative impact on the local economy and economic outlook, with some substantial agricultural ventures unreasonably denied water allocations. It remains open to speculate just how much damage the Department of Water would have caused to local agriculture if Manjimup and Pemberton Landowners and others hadn't protested to the Minister for Water, and to other relevant Ministers and members of Parliament.

2. Warren-Donnelly Surface Water Allocation Plan (Allocation Plan)

The *Allocation Plan* published in June 2010 for public comment is not a product of a development process with genuine inclusion of stakeholders. More comment will be made on consultation and management processes below at 6.

The *Allocation Plan* is accompanied by the '*Warren-Donnelly surface water allocation limits report*' (Report 40 of May 2010) which converts the principles embodied in the 'Sustainable Diversion Limits' of 2008 into 'Ecologically Sustainable Yield' (ESY) which the *Allocation Plan* at page 23 says is the "Amount of water that can be abstracted over time from a water resource while maintaining the ecological values (including assets, functions and processes)". The science underpinning ESY is weak, and other submitters may be challenging ESY in detail. However, if the Department of Water believes its science and value judgments for ESY, then adherence to ESY locks in 'water for the environment' and locks out agriculture from accessing water in that component.

For purposes of our comment on the *Allocation Plan* we refer to 'Mean Annual Flow' which is the measurement derived from stream monitoring stations before application of values of dubious scientific basis relating to ESY and 'Ecological Water Requirement' (Report 40, p 45). Based on data from the Upper Lefroy, Report 40 concludes that interception of water by farm dams is less than the increased run-off following clearing, with the exception of the driest year (1987) in the study period. This conclusion negates the misguided view that farm dams are bad for the environment. 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) through mismanagement of the resource. The Department of Water ignores these major environmental attributes of farm dams in consideration of water for the environment.

The 'Water Information Sheet' distributed to by the Department to surface water licence holders in June 2010 summarising the *Allocation Plan* doesn't show Mean Annual Flow, present licensed water volume, additional water for agriculture and other uses, and planned allocation for agriculture as a percentage of Mean Annual Flow. These are vital data to make informed decisions. The 'Water Information Sheet' provides the 'Allocation limit', which is meaningless out of context.

3. Water Allocations Proposed by Manjimup and Pemberton Landowners

Manjimup and Pemberton Landowners have prepared the Table below as a basis for informed decision making on allocations of water to agriculture in streams and sub-catchments important for agriculture in the Warren and Donnelly River catchments. We advocate a greater percentage of water being allocated to agriculture, as proposed in column 6; being the 'proposed percentage of Mean Annual Flow that should be allocated to General Licensing, including Agriculture'.

Table: Warren-Donnelly Surface Water Allocation Plan: Streams and sub-catchments important for Agriculture

	(1)	(2)	(3)	(4)	(5)	(6)
	Mean Annual Flow ML	Licensed ML Mar-10	<i>Allocation Plan</i> Limit ML	<i>Additional ML</i> General (inc Agric)	<i>Allocation Plan</i> Percentage of Flow	MPL Proposed Percentage of Flow
Warren River basin						
Perup River	11405	478	1571	956	14	20
Wilgarup River	25881	5637	8027	1713	31	60
Upper Warren	42623	1172	4368	2312	10	20
Quinninup Brook	20302	368	1422	899	7	20
Smith Brook	14601	3139	4362	606	30	60
Diamond Tree Gully	4767	253	682	370	14	30
Upper Lefroy	13609	5967	6975	0	51	60
East Brook (see note below)	12576	2477	3627	781	29	50
Lefroy Brook	12312	1546	2905	562	23	40
Four Mile Brook / Big Brook	20852	3244	5294	1261	25	30
Treen Brook	14015	799	2570	1546	18	30
Lower Warren	20015	312	1965	1478	10	20
Warren River sub-catchments total	212958	65318	41803	12484	20	37
Donnelly River basin						
Upper Donnelly	39314	370	3906	3188	10	20
Manjimup Brook / Yanmah-Dixvale	22318	4728	6441	1172	29	60
Middle Donnelly	12267	1115	2366	1047	19	30
Beedelup Brook (see note below)	12271	739	806	0	6	15
Fly Brook (see note below)	17359	795	867	0	5	15
Donnelly River sub-catchments total	103529	7747	14386	5407	14	28

(1) Mean Annual Flow 1975 to 2007 in megalitres (ML)

(2) Licensed entitlements as at 24 March 2010, it includes some additional allocation made in the Upper Lefroy in 2010

(3) Plan Allocation Limit ML includes public water supply and unlicensed dams of less than 8ML, but not major stream headwater dams and run-off dams

(4) Additional ML of water for General Licensing, including agriculture; the 781ML in East Brook is committed to pre-Plan licence applications

(5) Water allocated under Plan as a percentage of Mean Annual Flow

(6) Manjimup and Pemberton Landowners (MPL) proposed percentage of Mean Annual Flow that should be allocated to General Licensing, including Agriculture

The proposed alternative allocation as a percentage of stream flow reflects the experience of water users who have lived in the particular sub-catchments for all of their lives. Even though 2010 has been one of the driest years on record, there is still plenty of water for the environment flowing from the Upper Lefroy after dams have been filled and are still filling. Please see image below taken at a waterfall on Lefroy Brook near Channybearup Road on 8 August 2010, below the dams in the Upper Lefroy. In general, the dams that have been slow to fill this winter are unlicensed off-stream run-off or overland flow dams. The majority of licensed in-stream dams had filled by the end of August.



Manjimup and Pemberton Landowners submit that a substantial component of the additional water sought for agriculture should be held in reserve for 10 years to evaluate potential impacts of a drying climate, changes in legislation, and other factors affecting approach to allocations. This precautionary approach is important to protect and secure the entitlements of existing licence holders.

4. Reasons for non-support of the *Allocation Plan* prepared by the Department of Water, and support for alternative allocations proposed by Manjimup and Pemberton Landowners.

4.1 Insufficient water for Agriculture in the 'food bowl of the South-West'

The *Allocation Plan* allocates only a minority of available water to agriculture in the area regarded as the 'food bowl of the South-West'. The *Allocation Plan* proposes that water for agriculture in relevant sub-catchments in the Warren catchment be an average of 20% of annual flow, and in the Donnelly catchment 14% of annual flow. The meager additional allocations in the *Allocation Plan* are inadequate. For example, 781ML of additional water allocated for East Brook by the *Allocation Plan* in June 2010 was already sought in pending applications being processed; the 606ML for Smithbrook and 562ML for Lefroy Brook could rapidly be taken up by just a few applications of the

type that have been made in East Brook; no provision for additional water was made at Beedelup Brook and Fly Brook where growth in Avocado plantings are expected.

If water for agriculture in relevant sub-catchments is capped at the volumes in the *Allocation Plan* (at 20% of annual flow) and entitlements are granted to those volumes, a drying climate causing reduced stream flow could cause damage to agriculture while the majority of water (approx 80% of volume) remains allocated to the environment to satisfy ESY and 'Ecological Water Requirement'. The inadequate apportionment of water to agriculture is even worse when the total catchments are considered, being 15% of flow of the Warren River and 5% of flow of the Donnelly River.

The Table above at column 6 proposes that water for agriculture in relevant sub-catchments in the Warren catchment be increased from an average of 20% to 37% of annual flow, and in the Donnelly catchment from 14 % to 28% of annual flow. For major agricultural sub-catchments, the allocations to agriculture are substantially increased, for the Wilgarup River from 31% to 60% of annual flow, for Smith Brook from 30% to 60%, for East Brook from 29% to 50%, and for Manjimup Brook / Yanmah-Dixvale from 29% to 60% of annual flow. In the Upper Lefroy the allocation is increased from 51% to 60% of annual flow; however, we propose a cautionary approach to further allocations in the Upper Lefroy, most of the additional water should be held in reserve for 10 years to evaluate potential impacts of a drying climate, and as a buffer against consumptive pools (see 4.2).

4.2 Insufficient water for Agriculture could lead to Consumptive Pools

Insufficient provision of water for agriculture could force important sub-catchments into highly regulated consumptive pools while the majority of water is allocated to the environment, in excess of what is required for the environmental health of the Warren and Donnelly Rivers. Under the *Allocation Plan*, the Upper Lefroy and East Brook catchments are deemed fully allocated with declared status 'No water available'. If a drying climate or other factors (see 4.4 below) stressed water users in the Upper Lefroy and East Brook such that some licence holders had insufficient water for irrigation, the licence holders could request the Department of Water apply regulations for a consumptive pool, or the Department could take that action without requests. The pending *Water Resources Management Bill* is expected to provide powers to implement consumptive pools. For example, an 'allocation announcement' (see 5 below) could determine landowners within the pool could only use 80% of their water access entitlement. Consumptive pools would be accompanied by regulation that is opposed by Manjimup and Pemberton Landowners; including separation of water access entitlement from land title, mandatory metering of water use, 'use it or lose it', and water trading, allocation auctions and tenders. The increased regulation and compliance monitoring could be accompanied by unacceptable water management and planning charges. Clearly, Manjimup and Pemberton Landowners are strongly opposed to such a scenario causing increased costs and insecurity for agriculture. While examples are made for the Upper Lefroy and East Brook, consumptive pools would also threaten with Smith Brook, Lefroy Brook and Manjimup Brook / Yanmah-Dixvale catchments where there is little margin of additional water in the *Allocation Plan*.

4.3 Ecological Water Requirements in Warren-Donnelly contrast with Others Resources in WA

While the restrictive limits in the *Allocation Plan* are proposed to apply to water for agriculture in private dams in the Warren and Donnelly catchments, public dams on streams in the Darling Range (eg Serpentine, South Dandalup, Collie, Harvey) are not limited to enable provision of water for the environment to the same extent. In contrast to the 85% provision for water for the environment in the Warren catchment and 95% in the Donnelly catchment, there is no similar consideration for water for the environment in other major catchments in WA, 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;

Wungung 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; and
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 the 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 33GL) is for high value horticulture (vegetables, fruit, vines), virtually none is used for pasture. Similarly, with water supplied from public dams on catchments in the Darling Ranges, 38% of water supplied to homes is applied to lawns and gardens.

Manjimup and Pemberton Landowners are proud of the Warren and Donnelly Rivers, and would never want to see them degraded to the extent of the rivers mentioned above. However, the disproportionate approach to Ecological Water Requirements in the *Allocation Plan* is unacceptable.

4.4 Impact of Water Resources Management Legislation on Water Allocations

The State Government is proposing major changes to water legislation through the pending *Water Resources Management Bill*, which could require unlicensed dams in stream headwaters, run-off dams, spring fed dams and tree plantations be granted water entitlements. It would be unacceptable that licence entitlements for these water uses be taken from the meager allocations to agriculture in the *Allocation Plan*. The *Allocation Plan* recognises water uses presently exempt from licensing but only estimates use of water in dams of less than 8ML in capacity, and estimates that is an average of 9% of the 33GL of water licensed in the Warren and Donnelly catchments. The *Allocation Plan* at page 7 says that in regard to water uses other than the less than 8ML capacity dams: "As part of the ongoing allocation process we will refine estimates of unlicensed use (Section 6.1), including water uses other than stock and domestic water use. This will better define how much water is available for licensing." Given the *Allocation Plan* separates the water in the less than 8ML capacity dams from the 'Licensable water' within the 'Allocation limit' made after provision for water for the environment, this statement implies that water in large unlicensed dams in stream headwaters, run-off dams, spring fed dams and water used by tree plantations could also be subtracted from the 'Allocation limit'. This would make most sub-catchments relevant to agriculture fully allocated and then deemed status of 'No water available'.

Manjimup and Pemberton Landowners submit the amount of unlicensed water use from dams in stream headwaters, run-off dams and spring fed dams is probably four times the 9% of the water in farm dams estimated for dams of less than 8ML capacity. Many large orchards and other growers are only using water from dams on their properties that are not required to be licensed under current legislation. The *Allocation Plan* provides no confidence there is a plan to account for this water; will it be included in the Allocation limit or licensed outside of the Allocation limit? Stakeholders repeatedly requested the Department of Water clarify this crucial issue. In the face of these uncertainties, more water must be allocated to agriculture, as proposed by Manjimup and Pemberton Landowners in column 6 of the Table above.

5. Duration of the Warren-Donnelly Surface Water Allocation Plan

The *Allocation Plan* doesn't have a five or ten year duration, it is a plan with no duration, but instead subject to an 'annual evaluation statement' (page 22). The *Allocation Plan* says "The statement will be available on the department's website or by contacting the South West regional office in Bunbury or Busselton." (page 22). This is totally unacceptable as a basis for participants in agriculture to secure essential water resources and for purposes of planning growth in agriculture. The outline in the *Allocation Plan* of the approach to be taken with the 'annual evaluation statement' doesn't mention any opportunity for input by stakeholders in agriculture or by other stakeholders. Further, the stated 'Performance indicators for plan objectives' (page 21) provide no performance indicators for active consultation with stakeholders.

If the Department of Water is convinced of its scientific basis and value judgments for determining Ecological Water Requirements, and relative to those requirements agriculture must operate within the allocation limits in the *Allocation Plan*, then it appears the allocation to agriculture is what would suffer with any adjustments to the *Allocation Plan* made in an 'annual evaluation statement'. The 'annual evaluation statement' approach is what would accompany management of consumptive pools that could be imposed within the meager allocations of water to agriculture.

The duration of the *Warren-Donnelly Surface Water Allocation Plan* should be ten years, and the plan should be administered by a local Water Resource Management Committee (see 6 below), in conjunction with the Department of Water, and in consultation with stakeholders. As a basis for the ten year plan, more water must be allocated to agriculture, as proposed by Manjimup and Pemberton Landowners in column 6 of the Table above.

6. Consultation and the need for a Water Resource Management Committee

There are three deficiencies of process for development and administration of the *Allocation Plan*:

- (i) the local Warren Donnelly Water Advisory Committee (appointed by the Department of Water) was presented with the *Allocation Plan* prior to its release, but was not given the opportunity for influential input in development of the *Allocation Plan*. The Department made clear to the Committee that the *Allocation Plan* was the Department's plan, not a plan to be approved by the Committee before public comment was sought. Such attitude by the Department meant the *Allocation Plan* was defective through absence of stakeholder input and ownership, and stakeholders were offended and alienated;
- (ii) the Department of Water is the party who receives public comment on the *Allocation Plan* that it developed and published, there is no relatively independent third party in the process. The Waters and Rivers Commission established by legislation in 1995 was abolished in 2007, along with any statutory input by stakeholders on the Commission in water resource management. If the Waters and Rivers Commission hadn't been abolished, it would have been the appropriate third party to receive public comment on the *Allocation Plan*, and to approve the *Plan*; and
- (iii) the Department of Water that developed, published, processes comments and approves the *Allocation Plan* will also administer the Plan without further opportunity for stakeholder input.

The third deficiency, and recurrence of the first, must be remedied by appointment of a Water Resource Management Committee for the Warren and Donnelly River areas, provided for at section 26GK of the *Rights in Water and Irrigation Act* 1914. Provisions for Water Resource Management Committees were made by amendment to the *Act* in 2000. Section 26GK and related provisions empower a Management Committee with many relevant functions, including functions exercised by the Minister which the Minister can delegate to the Committee. When new members were appointed to the local Warren Donnelly Water Advisory Committee in 2007, briefing papers provided to them said the relevant legislation for their appointment was section 26GK of the *Rights in Water and Irrigation Act* 1914. The briefing papers were incorrect and misleading, no Water Resource Management Committee has been appointed in WA under provisions of section 26GK of the *Act*.

Manjimup and Pemberton Landowners submit that a Water Resource Management Committee, provided for at section 26GK of the *Rights in Water and Irrigation Act 1914*, be appointed to plan for and manage water allocations in the Warren and Donnelly River areas.

Yours sincerely

Convenor
Manjimup and Pemberton Landowners

APPENDIX: LETTER TO MINISTER FOR WATER, 10 NOVEMBER 2008

Neil Bartholomaeus

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

cc Member for Blackwood-Stirling