

Decision on application to amend water services licence WL31

South West Irrigation Management Co-operative
(trading as Harvey Water)

1 June 2021

Economic Regulation Authority

WESTERN AUSTRALIA

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1. Decision

1. In accordance with section 18 of the *Water Services Act 2012*, the Economic Regulation Authority has approved amendments to Harvey Water's water services licence (WL31) to:
 - a. Authorise Harvey Water to provide potable (drinking) water supply services to customers in the Kemerton Industrial Park (industrial park).
 - b. Expand Harvey Water's existing operating area for the supply of irrigation and non-potable water supply services to include the remaining part of the industrial park not currently in the operating area set out in plan OWR-OA-178/3.
2. As required by section 47(2)(a) of the *Water Act* and regulation 10 of the *Water Services Regulations 2013*, the ERA will publish a notice of its approval of the licence amendments in the Western Australian Government Gazette as soon as is practicable.

2. Reasons

3. Harvey Water is a co-operative that provides irrigation and non-potable water supply services in the Harvey and Collie areas.
4. Harvey Water submitted an [application](#) to the ERA to amend WL31 to authorise it to provide potable and non-potable water supply services to the industrial park. Harvey Water's first customer in the industrial park is MARBL Lithium Operations Pty Ltd's (Albemarle) lithium production facility.

2.1 Public consultation

5. On 13 April 2021, the ERA sought [public comment](#) on the application to amend WL31.
6. The ERA received one [submission](#), from the Department of Health. The department made the following statement in its submission:

The Department of Health (DOH) does not object to this licence amendment, provided that:

- water for this purpose is sourced from the Leederville aquifer;
 - any potable water supply licence that is granted incorporates provisions requiring the licensee to enter a Memorandum of Understanding with the DOH about drinking water; and that
 - those provisions are consistent with the content of other potable water supply licenses previously granted by the Economic Regulation Authority.
7. The Department of Water and Environmental Regulation has granted Harvey Water a licence to source the water from the Leederville aquifer through a bore installed at the industrial park.
 8. The amendments granted to Harvey Water's licence require it to have a Memorandum of Understanding on drinking water quality with the Department of Health as soon as practicable after the licence is amended.

2.2 Financial and technical assessments

9. Under section 11(1)(a) of the Water Act, the ERA must grant a licence if it is satisfied that the applicant:
 - a. has, and is likely to retain, for each class of water service, the financial and technical ability to provide the service in the operating area or areas to be specified for the service; or
 - b. will acquire within a reasonable time after the grant, and is then likely to retain, that ability.
10. As supplying potable water will be a new class of water service under Harvey Water's licence, the ERA engaged financial and technical consultants to examine the financial and technical ability of Harvey Water to undertake the activities to be authorised by the licence amendment.
11. Following the financial assessment of Harvey Water's application, the financial consultant concluded that Harvey Water complied with the financial requirements of section 11(1)(a)

of the Water Act. The ERA considered the financial consultant's report, including information relied on in the report and the reasons for its conclusion. The ERA agreed with the conclusions in the report for the following reasons:

- a. Harvey Water has the funds needed to complete the installation of the water treatment plant and the bore to source the water from the aquifer for the potable water supply.
 - i. Harvey Water has executed an agreement with Albermarle for the design and installation of the water treatment plant, which will ensure Harvey Water recovers its costs for installing the plant.
 - b. Harvey Water has a financial plan that shows it has the capacity to fund the operating and maintenance costs of providing potable and non-potable water to Albermarle.
 - c. Harvey Water is in the latter stages of negotiating agreements with Albermarle for the operation and maintenance of the water treatment plant and the supply of potable and non-potable water, which will generate sufficient income for Harvey Water to cover its costs and provide it with a financial return on providing these services, including installing the bore and pipe that will connect the bore to the water treatment plant.
12. Following the technical assessment of Harvey Water's application, the technical consultant concluded that Harvey Water complied with the technical requirements of section 11(1)(a) of the Water Act. The ERA considered the technical consultant's report, including information relied on in the report and the reasons for its conclusion. The ERA agreed with the conclusions in the report for the following reasons:
- a. Harvey Water has a history of managing, operating and maintaining extensive irrigation and non-potable water services to the requirements of its water services licence.
 - b. Harvey Water is using an experienced service provider to design, construct and install the water treatment plant on its behalf. The operation and maintenance of the assets will be undertaken by trained Harvey Water staff, supported by the provider of the treatment plant.
 - c. Harvey Water intends to incorporate the new assets in its existing asset management system, which was last [reviewed](#) by an independent expert in 2020 and found to be effective.

2.3 Assessment of public interest

Water Services Act

13. Section 46 of the Water Act sets out the matters the ERA must take into account (to the extent to which the ERA considers they are relevant) when making a decision to amend a licence:
- a. Environmental considerations, including the value of ecologically sustainable development
 - b. Public health considerations relating to the provision of reliable water services.

Economic Regulation Authority Act

14. The ERA must also have regard to the matters set out in section 26(1) of the *Economic Regulation Authority Act 2003* (ERA Act):¹
- a. the need to promote regulatory outcomes that are in the public interest.
 - b. the long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets.
 - c. the need to encourage investment in relevant markets.
 - d. the legitimate business interests of investors and service providers in relevant markets.
 - e. the need to promote competitive and fair market conduct.
 - f. the need to prevent abuse of monopoly or market power.
 - g. the need to promote transparent decision-making processes that involve public consultation.

ERA assessment of the public interest

15. As the licence amendment allows the supply of potable and non-potable water to customers in the industrial park, the ERA is satisfied that it will best serve the long-term interests of consumers, consistent with section 26(1)(a) of the ERA Act.
16. As the water licence regulates certain performance and service standards and provides consumer protections to customers, the ERA is satisfied that the grant of the licence amendment will protect the long-term interests of consumers in relation to the quality and reliability of goods and services provided by Harvey Water, consistent with section 26(1)(b) of the ERA Act.
17. The licence amendment will support economic and regional growth by facilitating the operations of Albermarle's lithium production facility. The facility cannot operate without a reliable source of potable and non-potable water. The ERA is therefore satisfied that the licence amendment will encourage investment in relevant markets and is consistent with section 26(1)(c) of the ERA Act.
18. All water services licences are non-exclusive, which means that another water service provider could enter the market if conditions permitted. The ERA is therefore satisfied that the licence amendment is consistent with sections 26(1)(e) and (f) of the ERA Act.
19. Harvey Water has prepared a Drinking Water Source Protection Plan for the bore, which details the measures that will be taken to ensure the safety of the water source for the potable water. Harvey Water will be required to have a Memorandum of Understanding on drinking water quality with the Department of Health (section 46(b) of the Water Act).
20. The ERA conducted public consultation on the licence amendment application and has stated in this decision the reasons for amending the licence, which is consistent with section 26(1)(g) of the ERA Act.

¹ The ERA has discretion as to the weight it gives to each of the matters listed in section 26 of the ERA Act in making its decision.

21. In all circumstances, after taking into account the matters in section 46 of the Water Act and section 26 of the ERA Act, the ERA is satisfied that amending WL31 would not be contrary to the public interest.