Manjimup and Pemberton Landowners
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26 February 2010

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

SUBMISSION ON ERA *DRAFT REPORT 'INQUIRY INTO WATER RESOURCE MANAGEMENT AND PLANNING CHARGES'* OF 3 DECEMBER 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 are located in the Warren and Donnelly River catchments where 40 gigalitres (5%) of the 742 gigalitres mean annual outflow is allocated to surface water licences and the balance is water for the environment flowing into the Southern Ocean.

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. Included as an APPENDIX A here is a submission Manjimup and Pemberton Landowners made on the Department of Water 'Discussion Paper Water Resources Management Options' (November 2009) which the Minister for Water requested be issued in advance of the *Water Resources Management Bill*. We continue to have serious concern at the additional cost implications for self-supply water users of proposed vesting in the Crown of springs and run-off water, and similarly the cost implications of tree plantations requiring water access entitlements. The ERA is ignoring these and other highly relevant legislative issues which should have been resolved by State Parliament before the ERA Inquiry was requested by the Treasurer.

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.

In both of our previous submissions we stated our submission on potential fees and charges raised in the ERA *Issues Paper* of April 2009 for the Inquiry. Here, we will re-state our submission on potential fees and charges, and make further specific comment in relation to our submissions in response to the ERA's *Draft Report.*

We note with alarm that the *Draft Report* (pages 18 and 19) has identified $29.625 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 compared to irrigation cooperatives, water supply utilities and large users in the resources sector. If on the recommendation of the ERA, the State Government applies $30 million in annual fees and charges for water using a similar irrational approach, over 200 of the 380 water licence holders in the Manjimup and Pemberton area would be served invoices annually of between $3000 and $12,000 for water licence fees and water resource management charges.

We also note the *Draft Report* doesn't propose specific quantum for fees and charges because the 'efficient cost' of provision of related services by the Department of Water can't be established. We are not going to be victims to recover costs for a bloated Department of Water with a budget of $93.57 million and 601 FTE in 2009-10 that doesn't supply a drop of water to our businesses and generally disregards the views of self-supply water users. Self-supply water users should be applauded for providing water as a basis for independent, non-subsidised agriculture; not regarded as parties who are not paying their way, which is the general tenor of the *Draft Report* by the ERA. Another perspective, held by many, is that the public sector is seeking to parasitise initiative taken by self-supply water users in the private sector. They see the State Government, via the Water Corporation, making an unseemly profit from supply of essential water to the public in cities and towns, and suspect a similarly outrageous grab for revenue from water by 'slugging' self-supply water users, via the Department of Water.

FEES AND CHARGES

We restate our consistent submission on potential fees and charges raised in the initial *Issues Paper* for the ERA Inquiry and comment on matters raised by the ERA in the *Draft Report*:

1. Submission: Specific charges imposed on water licence holders for 'water resource management' (including planning) are opposed. 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. It should be regarded as an essential service in the public interest and funded as a core function of Government. Appropriate funding of core functions should be contrasted with discretionary Government funding, such as for the low productivity Ord River irrigation system for over 40 years and discretionary funding of sports stadia and boxing matches where the beneficiaries are multinational media networks.

   While suggesting that water resource management and planning should be a core function of Government, such services have been of no material benefit to water self-supply agriculture in the Manjimup and Pemberton area. On the contrary, in mid 2008, the Department of Water imposed new water allocation policy on stakeholders in the Warren and Donnelly catchments based upon 11% of water in streams for agriculture and other users and 89% for the environment. When imposing the new policy without consultation with stakeholders, the Department advocated unnecessary and commercially unattractive water trading as a solution to the overallocations of water it created by the new policy. The unreasonable policy stopped new agricultural investment and no replacement water allocation policy has been introduced. Please see in an APPENDIX B to this submission a letter to the Minister for Water of 10 November 2008 on 'WATER ALLOCATION LIMITS: IMPLICATIONS FOR MANJIMUP AND PEMBERTON'. The flawed 'sustainable diversion limits' applied unilaterally by the Department in 2008 were developed by external private consultants to a 601 FTE Department of Water. What do the 601 FTE do if when it comes to water resource management and planning they engage private consultants from Victoria? Water resource management and planning based on 'sustainable diversion limits' may have been useful in the catchments of the Darling Ranges where virtually all rivers and streams have been impeded by dams for water utilities, irrigators and miners, with less than 5% of the fresh water remaining for the downstream environment. It appears the Department of Water prefers to impose such new policy on water self-supply farming families rather than corporations.

   Comment on ERA *Draft Report* and anti-competitive fees and charges on proclaimed areas: The ERA has not accepted (*Draft Report*, page 15) our previous submission that fees and charges applied to self-supply water users in the proclaimed Warren and Donnelly catchments (Manjimup and Pemberton areas) will be anti-competitive relative to similar agricultural production in Bridgetown, Nannup, Frankland, Boyup Brook, Denmark, Mount Barker, Albany, Williams, Kojonup and many other farming areas that are not proclaimed areas. Proclamation of the Warren and Donnelly catchments over 40 years ago primarily related to control of direct

pumping and diversion of water from the summer flow of streams. In the alternative to direct pumping and diversion, dams were constructed to capture the abundant water in winter to use for agriculture in summer. The well mannered self-supply water users of Manjimup and Pemberton accepted some control by the Department of Water relating to licensing of dams on streams. There was delaying 'red tape' but no fees or charges, so they tolerated it. However, most services have a 'price point' and an option to avoid punishing and anti-competitive water licence fees and water resource management charges would be to seek to be un-proclaimed. Section 6(3) of the *Rights in Water and Irrigation Act 1914* makes provision to reverse proclamation of a surface water catchment. It is generally fallacious that by proclamation and vesting of management of water in the Crown that 'security of water' increases, as claimed in the *Draft Report* (page 16). On the contrary, the most secure water supply is where the water isn't vested in the Crown and subject to 'red tape', as many landowners with dams on springs and capturing run-off have enjoyed in the Warren and Donnelly catchments. Most landowners have a mix of dams on streams, on springs and capturing run-off. They don't lie awake at night worrying their dams on springs and capturing run-off are less secure because they are not vested in the Crown and regulated by the Department of Water. There is no case for proclamation to ensure water for the environment in the Warren and Donnelly catchments, there is abundant fresh water for the environment after a minority of the water in winter is captured in dams.

2. Submission: 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. Such cross-subsidy was the fundamental flaw in the previous water licence fees twice disallowed by State Parliament.
   Comment on ERA *Draft Report* and appeals in regard to quotations: The *Draft Report* (page 12) expresses concern in regard to our suggested appeal process if a quotation was unacceptable, stating "*However, the Authority is concerned that the proposed appeals process could evolve into a more complicated process with appeals being made to bodies other than the Department of Water, in which case the benefits of appeals may be outweighed by the administrative and legal costs involved*." We wish to clarify that it is not our intention that the suggested appeal process fulminate beyond the Department of Water. It is likely that benchmark quotations would be established in practice and accepted by most applicants for assessments.
   Comment on ERA *Draft Report* and transparency of costs: The *Draft Report* (page 38) implies only some water users would benefit from full transparency of costs, stating "*The Authority accepts that there is a case for charging some customers their direct licensing costs, and excluding these costs from the general licence fees, if there are adequate systems in place to separately identify these costs. In particular, other large customers, and not just the Water Corporation, should be given the option of individual charging, if the administration costs are not prohibitive*.". A specific quotation by the Department of Water for the specific cost of assessment of an application for a water access entitlement should not be beyond the resources of a Department with 601 FTE. Most services provided to agribusiness by suppliers are based on written quotations, including itemisation of labour costs. If such quotations can be provided by pest controllers, irrigation installers, electricians and others as standard practice, it should not be beyond public servants to do the same, and we request nothing less.

3. Submission: 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.

Comment on ERA *Draft Report* and lack of evidence of services for compliance and enforcement: Included in the $29.625 million cost of services the ERA says are '…candidates for cost recovery..” (page 19) is $7.413 million for 'Licensing, Compliance and Enforcement' (page 18). We have consistently submitted that a 'Water Licence Fee' should only be for administration of a licensing database. The cost of compliance and enforcement should be met from the consolidated fund derived from State and Commonwealth taxes we pay, as is the case for other compliance services to workplaces, such as for occupational safety and health, and labour relations. Further, it is not obvious the Department of Water actually provides any significant compliance and enforcement services. In contrast to other agencies with a regulatory role neither the Annual Report of the Department of Water nor Budget Papers mention performance indicators for compliance and enforcement; there is no mention of 'prosecution' or 'infringement'. The Department's 2008-2009 Annual Report at page 45 says:

“Compliance and enforcement

The department's compliance and enforcement unit was established to coordinate enforcement of relevant legislation including but not limited to the *Rights in Water and Irrigation Act 1914*, *Water Agencies (Powers) Act 1984*, *Waterways Conservation Act 1976* and *Country Areas Water Supply Act 1947*. In 2008–09 the unit conducted investigations and provided advice in relation to breaches of statutes, as well as developed training models for up-skill of regional staff in investigations. It also partnered with other government agencies to raise awareness among land holders and lessees regarding obligations under the *Rights in Water and Irrigation Act 1914* and other relevant acts.”

The previous attempt in 2007 to raise $5.8 million in water licence fees included costs for compliance. The Department of Water needs to prove it can enforce before levying taxes for that function. That should be obvious to the ERA.

4. Submission: 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 a particular water resource was over-allocated because of diminished resource, a reassessment could be required and be subject to the same transparent fee process as an initial application.

5. Submission: 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.

ERA CASE STUDIES OF COST RECOVERY FOR NATURAL RESOURCE MANAGEMENT

The *Draft Report* examines two examples of approaches to cost recovery of resource management charges, the role in NSW of the Independent Pricing and Regulatory Tribunal (IPART) in cost recovery for the New South Wales Office of Water, and in WA the role of the Department of Fisheries through licensing and resource management charges. In our view neither of these examples should be followed in regard to water licence fees and water resource management charges in WA.

NSW is the lowest performing economy in Australia and water users in NSW are protesting against the high cost of water licensing and resource management charges implemented by IPART. Even small dams used for stock and domestic purposes are required to be licensed in NSW, and pay annual licence fees and water resource management charges. The NSW economy is collapsing under the burden of layer upon layer of red tape and associated fees and charges imposed on industry by the State Government. In a recent self-serving submission to the Australian Competition and Consumer Commission of 9 June 2009, the Chairman of IPART pleaded:

“*I refer to the submissions made by IPART in response to the Issues Paper and the Position Paper on water.planning and management charge rules. In these submissions, IPART argued strongly for the adoption in the rules of a price determination framework which would serve as a catalyst for reform in those jurisdictions where less progress has been achieved in the implementation of the National Water Initiative, including the principle of 'user-pays' and achieving pricing transparency.*

IPART also expressed its disappointment in the degree of progress achieved in the 15 years since COAG first agreed the water reform framework including the commitment to full cost recovery. IPART has grave doubts that the approach proposed will create the necessary incentives or pressure for those under-performing States to address their continuing problems of inefficiencies in water allocation and use and market failures. Cognisant of the unfortunate limitations in the drafting of the Act, IPART believes that these deficiencies should be addressed as a matter of priority through legislative reform. In its earlier submission, IPART called on the ACCC to champion these legislative amendments, as it has done in its other areas of its responsibilities. I am gravely disappointed in the ACCC's response. It is inadequate to suggest that this issue can be deferred for a further five years until the review of the Act. Continuation of status quo for at least a further five years of the different approaches of the States to the full cost recovery of water management activities distorts the efficient allocation of water, water markets, trading and future investments. Equally important it has implications for the relative competitiveness of NSW irrigators from whom full costs are recovered.".

The tenor of the *Draft Report* (page 57) is that the ERA wants to emulate IPART with a continuing role for the ERA beyond this Inquiry in setting water licence fees and water resource management charges.

The Department of Fisheries in WA is possibly a worst case example of approach to licence fees and resource management charges. Next week on 2 March 2009 the Department of Fisheries will apply increases in fishing licence fees that will make Western Australia the most expensive recreational fishery in the world. The total fee for the range of fishing licences will be $207 for an adult and $103.50 for children. The half price but high cost for children to fish in WA is particularly punitive when there is no fee for children fishing in other states in Australia (with a few marine exceptions in Tas). A new Recreational Fishing from Boat licence is added to the array of licences. There are 72,000 registered recreational boats in WA, and with an estimated 250,000 persons using the boats the Recreational Fishing from Boat Licence could be required by 100,000 persons. To require 100,000 persons to hold a Recreational Fishing from Boat Licence where in most instances they may only fish for a few hours a year for fish that are not endangered (eg whiting, squid, crabs, bream) and not subject to special limitations, is unfair and irrational. Generally, the few days family fishing is during school holidays, and often in holiday towns in regional WA. There has been no regard by Fisheries on the affects on related businesses and tourism in regional WA.

Similarly, the *Fish Resources Management Act 1994* and *Regulations 1995* block potential production of marron from farm dams by excessive 'red tape'. For example the *Act* first requires evidence of local government planning approval before an application can be made to Fisheries for a licence to capture marron from a persons own private dam to put in a cooler box and transport to a local wholesale distributer! Attempts to lift such 'red tape' have been ignored by Fisheries.

There appears to be no limit to the growth of excessive and unnecessary 'red tape' and associated fees and charges applying to both industry and the public, and the ERA seems to be a willing sponsor of such growth.

We trust our submission is of interest to the ERA.

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APPENDICES A and B

APPENDIX A

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15 February 2010

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Submission to the Department of Water by Manjimup and Pemberton Landowners on:
'DISCUSSION PAPER WATER RESOURCES MANAGEMENT OPTIONS' (November 2009)
Priority issues for self-supply water users in the Warren and Donnelly catchments:

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. We are located in the Warren and Donnelly River catchments where 40 gigalitres (5%) of the 742 gigalitres mean annual outflow is allocated to surface water licences and the balance is water for the environment flowing into the Southern Ocean.

The Department of Water has issued a *Discussion Paper Water Resources Management Options* (November 2009, the Discussion Paper) setting out proposals that may form the basis of a *Water Resources Management Bill* that has been pending since 2007. The policy approach in the Discussion Paper continues that contained in the *Draft Blueprint for Water Reform in Western Australia* (2006) based on the National Water Initiative. Other than some changes in terminology used (eg Water Resource Management Plans have been replaced by Water Allocation Plans), there are no policy changes that alleviate concerns expressed by self-supply water users in the Warren and Donnelly River catchments in response to the *Draft Blueprint* in various submissions made to the State Government in 2006 by water users in the Warren Donnelly catchments. From the perspective of self-supply water users in the Warren and Donnelly catchments the key issues in the Discussion Paper are addressed below, with recommendations in response.

1. EXPANSION OF VESTING OF WATER RESOURCES WITH THE CROWN

At present only dams on streams that have origins outside of a property are required to be licensed by the property owner. The Discussion Paper proposes to extend water resources vested in the Crown to include springs arising on a property and run-off or overland flow, with a requirement for licensing in most instances. This approach could substantially increase the number of dams required to be licensed in the Warren and Donnelly catchments without any obvious benefit to self-supply water users but attracting more 'red tape' and potential water licence fees and water resource management charges. There are approximately 360 water licences in the Warren and Donnelly catchments associated with 'in-stream' dams'; requirement for licensing of springs and run-off dams could add another approximately 200 water licences. Given the Department of Water has previously advised landowners who constructed dams on springs and to capture overland flow or run-off, that such dams did not require licensing and associated services from the Department of Water, landowners may have legitimate claims relating to 'adverse possession' if the water is vested in the Crown, and possibly compensation.

Springs: The Discussion Paper proposes dams on springs require a Water Access Entitlement, page 11 says "*It is suggested that the management of water resources should be extended to include wetlands on a single property; and springs. This would protect the rights of downstream water users and the environment where demand for water is high. A licence or WAE would be*

issued for the existing use where the water being taken from a spring or wetland is greater than the volume that can be taken under basic rights.". Page 25 says 'basic rights' are for stock, domestic, firefighting and household garden irrigation. The Discussion Paper doesn't provide adequate justification to vest springs with the Crown. In considering the proposal to vest springs with the Crown, springs should not be confused with 'headwaters' or origins of winter streams following run-off. While major springs generate water throughout the year, they are minor contributors to the winter flow of streams in the Warren and Donnelly catchments that is the major source of water to fill licensed in-stream dams to overflowing and thereafter the source of major environmental water flows. In most instances, the flow from springs (and 'soaks') during summer, in the absence of a dam, would soak into the soil within a hundred metres of its source, and not contribute to summer flows in major streams. It is not clear how springs are accounted for in Water Allocation Plans (eg for the Warren and Donnelly catchments) and the Discussion Paper doesn't elaborate on how a WAE for a dam on a spring would be issued to a property owner in circumstances where the catchment water resource is deemed fully or over allocated.

Recommendation 1: Given the lack of justification for vesting of springs in the Crown and the absence of quantification of the contribution of springs to water accounting in Water Allocation Plans, vesting of springs and their management with the Crown is opposed.

Run-Off: The Discussion Paper says in regard to run-off dams at page 60 "*Off-stream dams capture overland flow, preventing water entering waterways and aquifers. In most areas this does not matter but in areas of high water demand the water used and intercepted by off-stream dams needs to be accounted for and managed like other water uses*.". The Warren and Donnelly catchments are areas of high water demand thus it is reasonable to project if overland flow is vested in the Crown then licensing of run-off dams would be applied in the Warren and Donnelly catchments. There is a stronger case for licensing run-off dams, that capture water after winter rains when run-off occurs generating winter streams, than there is for licensing springs. However, there has been minimal if any accounting for water in run-off dams in estimates of available water for in-stream dams in the Warren and Donnelly catchments and thus it would be both irrational and unreasonable to require retrospective licensing of run-off dams. [It should be recognised there are unresolved 'property rights' arguments within the community, some citing private water rights in the Constitution of Australia, claiming that neither run-off from rain on a private property, nor springs arising on a private property, should be alienated from 'private rights' and vested in the Crown.]

Recommendation 2: If overland flow water is vested in the Crown, there should not be retrospective licensing of run-off dams, licensing should only apply to new run-off dams in the context of contemporary water accounting.

Tree Plantations: While not directly related to vesting of water resources in the Crown, the Discussion Paper says in regard to tree plantations at page 6 "*Activities that intercept water (such as plantation forestry and overland flow) are not recognised under the Act. This could be addressed by including such activities under the definition of 'taking water'*.". Self-supply water users in the Warren and Donnelly catchments who have made major investments in dam infrastructure are concerned that tree plantations are intercepting water that otherwise would flow into their dams. These concerns increase in sub-catchments where water is deemed to be fully or overallocated. It is not clear that interception of water by tree plantations has been specifically accounted for in the Water Allocation Plan (WAP) under preparation for the Warren and Donnelly catchments. Tree plantations are a substantial aspect of the economy in the Warren and Donnelly catchments and could be intercepting more water than is licensed for in-stream dams. It is unclear how the tree plantations would be retrospectively issued with a WAE and licences. However, proposals for new tree plantations and re-planting after harvest should be subject to assessment for water use and require a WAE.

Recommendation 3: Interception of water by tree plantations should be included in the scope of legislative definition of 'taking water'. Proposals for new tree plantations and re-planting after harvest in the Warren and Donnelly catchments should be subject to assessment for water use and require a WAE.

If existing dams on springs, run off dams and tree plantations will require a WAE retrospectively, and this hasn't been accounted for in the specific Water Access Plan, will water then need to be 'recovered' from pre-existing WAE holders with in-stream dams, adversely affecting their security of water and businesses? The Department of Water should clarify this issue for stakeholders.

2. WATER TRADING

The Discussion Paper strongly advocates water trading (permanent trades) as a mechanism to manage water resources, for example page 54 says "*Trading in water licences and entitlements determines the use and distribution of water to its highest value use by water users, rather than by the government. This is an efficient and fair way to redistribute resources such as land and water. Trading is easier if land and water can be traded separately*.". Self-supply water users in the Warren Donnelly catchments have consistently opposed the separation of water entitlements from land title as illogical. They are also not confident that Government can control speculation in water markets, and that once a 'price' for local water is established it will set a precedent that will cause the cost of water as an input to local agriculture to increase.
In mid 2008, the Department of Water imposed new water allocation policy on stakeholders in the Warren and Donnelly catchments based upon 11% of water in streams for agriculture and other users and 89% for the environment. When imposing the new policy without consultation with stakeholders, the Department advocated water trading as a solution to the overallocations of water it created by the new policy. A specific proposal for a water trade in the Upper Lefroy in 2009 advocated by the Department of Water was not supported by parties to a potential land sale for a large new 50 acre orchard, and the orchard did not proceed.

The Discussion Papers strong advocacy of commercial water trading seems inconsistent with the proposed expansion of vesting of water with the Crown (springs and overland flow); that is, if water is a Crown resource why should commercial trading of the resource be permitted. Private parties can't trade or sell Crown land unless they have first purchased it from the Crown and it is then private property. The Discussion Paper proposes perpetual access entitlements to provide certainly for water users (page 9) but it seems contradictory that such entitlements can then be traded or sold and disassociated from the land on which the entitlement was granted. These apparent contradictions are compounded by the proposal in the Discussion Paper that "*The 'use it or lose it' policy should be continued to reduce the risk of speculation, and ensure that water licences are used for economically productive purposes*." (page 55). A contrary view is that applying 'use it or lose it' may promote 'trade it before it is taken away' behaviour which could put more water into the hands of speculators.

Recommendation 4: Separation of land and water titles for self-supply surface water is opposed.

3. WATER ALLOCATION PLANS

The Discussion Paper replaces the previous 'Water Resource Management Plan' terminology (and concept) with a new term 'Water Allocation Plan' (WAP, page 28). The change in terminology is accepted subject to local consultative processes being used in development of a WAP, and importantly ongoing local input in management of the WAP during the Plans ten year life. Legislation must provide for consultation with self-supply water users in both the development and management of WAPs that apply to self-supply water users.

Recommendation 5: Legislation must provide for consultation with self-supply water users in both the development and management of Water Allocation Plans that apply to self-supply water users.

4. METERING OF WATER USE

The Discussion Paper makes no reference to metering of water use (mandatory or otherwise) which has previously been a contentious issue. An annual 'Surface Water Licence Report' by licence holders based on measurement of water levels and volumes from relevant dams, is a

practical alternative to expensive metering, and that should be an option under relevant legislation and regulations, and water management plans. Estimates of volume of the relevant dam (or dams) for the licence could be made either from the contour from a surveyed dam or by the method used in the Application for a 5C Licence to Take Surface Water.

Recommendation 6: Legislation provide for a 'Surface Water Licence Report' by licence holders, providing measurement of water volumes from relevant dams, as a practical alternative to mandatory metering.

5. COST RECOVERY

The Discussion Paper at page 71 notes "*The Economic Regulatory Authority (ERA) is currently holding an inquiry into water resource management and planning charges to provide the Government with a range of options and recommendations for the recovery of water planning and management expenses*.". The ERA is conducting their inquiry into both water licensing fees and water resource management charges in the context of existing legislation; it should be acknowledged that retrospective inclusion of dams on springs and run-off dams within a licensing fees and charges system could substantially increase costs for self-supply water users in the Warren and Donnelly catchments. Manjimup and Pemberton Landowners have made detailed submissions to the ERA inquiry which are available at the ERA web site for the information of the Department of Water. The previous attempted collection of $257,000 in annual water licence fees from the Warren and Donnelly catchments in 2008 was based on cost recovery of $5.8 million by the Department of Water, now the ERA has identified potential cost recovery of more than $29.62 million. Unfair and illogical fees and charges imposed on self-supply water users will be vigorously opposed.

While our submissions to the ERA recognise potential for specific fees for specific services by the Department of Water (eg assessment of an application for a new water allocation entitlement or licence), 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 (now Water Allocation 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.

Recommendation 7: Charges imposed on water licence holders for water resource management and planning are opposed.

Thank you for considering our submission.

Yours sincerely

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APPENDIX B

Neil Bartholomaeus
PO Box 534
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10 November 2008

Hon Dr Graham Jacobs MBBS FRAGP MLA
Minister for Water
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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