

WLS SUB 3.

From:
To: <bob.kucera@mp.wa.gov.au>, <laeisc@parliament.wa.gov.au>
Date: Wednesday, 28 November 2007 12:33 pm
Subject: Economics and Industry Standing Committee: Inquiry into Water Licensing and Services

Hon R C Kucera MLA

Chair, Economics and Industry Standing Committee



Please find attached a letter to you on 'Inquiry into Water Licensing and Services' (Inquiry_WaterLicensing_and_Services_28Nov2007.doc) respectfully requesting you dissuade the Minister for Water Resources from introducing further water licence administration fees until the Economics and Industry Standing Committee Inquiry into Water Licensing and Services has reported to the Parliament.

The letter to you has accompanying attachments, and I have copied your colleague Committee Members into this email.

Regards

Neil

CC: <grant.woodhams@mp.wa.gov.au>, <mick.murray@mp.wa.gov.au>, <sjoffice@mp.wa.gov.au>, <maylands@mp.wa.gov.au>

Hon R C Kucera MLA
Chair, Economics and Industry Standing Committee
Parliament House, Harvest Terrace, Perth WA 6000

Economics and Industry Standing Committee: Inquiry into Water Licensing and Services

Dear Mr Kucera

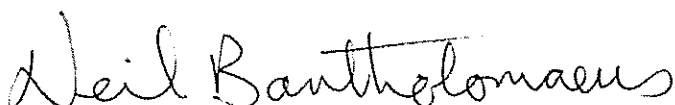
We refer to the Economics and Industry Standing Committee Inquiry into Water Licensing and Services for which submissions are required by 7 December 2007. Manjimup and Pemberton Landowners are keen to make submission to the Inquiry; however, here we wish to express our serious concern the Minister for Water Resources, Hon John Kobelke MLA, may preempt the Inquiry by introducing amendments to the *Rights in Water and Irrigation Amendment Regulations 2007* that were disallowed in the Legislative Council on 22 November 2007.

The Economics and Industry Standing Committee Inquiry into Water Licensing and Services was established by the Legislative Assembly on 24 October 2007 in the clear knowledge the *Rights in Water and Irrigation Amendment Regulations 2007* were subject to three disallowance motions in the Legislative Council. Further, the fees embodied in the *Rights in Water and Irrigation Amendment Regulations 2007* were subject of public controversy since the *Draft blueprint for water reform in Western Australia Discussion Paper* of July 2006. We, and others affected by the *Rights in Water and Irrigation Amendment Regulations 2007* welcomed the Inquiry into Water Licensing and Services as an opportunity for detailed and independent examination of the issues associated with water licensing in Western Australia and the seven terms of reference of your Inquiry are comprehensive in this context.

It was with dismay during the week beginning 19 November 2007 we learnt the Minister for Water Resources planned to replace the disallowed *Rights in Water and Irrigation Amendment Regulations 2007* with a revised eight classes fee schedule perpetuating the flaws that were subject to controversy since July 2006 and embodied in the *Rights in Water and Irrigation Amendment Regulations 2007*. Such action by the Minister would preempt your Committee's Inquiry, have the effect of deterring submissions, make the Inquiry outcomes redundant and waste Parliamentary and public resources. Please find attached the media release we issued on 22 November 2007 expressing our concerns. The revised eight classes fee schedule reflects the previous flawed fee schedule, analysis of which was made in a submission by us to the Auditor General of 17 September 2007, also attached here.

We strongly urge you to dissuade the Minister for Water Resources from introducing further water licence administration fees until the Economics and Industry Standing Committee Inquiry into Water Licensing and Services has reported to the Parliament.

Yours sincerely



Attachments

WATER LICENCE FEES DISALLOWED

Farmers in the South West opposing new water licence fees have welcomed disallowance by the Legislative Council of the \$200 to \$1800 fees being imposed on farmers to use water from their own dams and bores.

Farmers in Manjimup and Pemberton have run a campaign against new annual water licence fees, arguing the fee should have a rational basis and be fairly applied to all water users throughout WA.

Spokesperson for the Manjimup and Pemberton Landowners group, Neil Bartholomaeus said farmers congratulated the Greens, Liberals and Nationals for voting to disallow the *Rights in Water and Irrigation Amendment Regulations 2007*.

“The Minister for Water Resources, John Kobelke must promptly refund hundreds of water licence holders who have already been served invoices since 1 July 2007 and paid the harsh fees.

Mr Bartholomaeus said there should be no further attempt to introduce water licence fees until after the Legislative Assembly has conducted its inquiry into water licence fees and the pending Water Resources Management Bill has been considered by the public and Parliament and enacted in 2008.

Mr Bartholomaeus said he was aware the Greens had foreshadowed support for a revised water licence fee schedule which was fairer to water ‘self supply’ farmers, but Manjimup and Pemberton Landowners wanted the Minister for Water Resources to await the outcome of the Legislative Assembly Standing Committee on Economics and Industry *Inquiry into Water Licensing and Services* reporting in February 2008 (see [attached notice of inquiry](#)).

“If the Minister doesn’t wait until after the Legislative Assembly Standing Committee conducts its inquiry, he is effectively treating that important process as a farce and signaling that to farmers and industry, and the Parliament.

“The Committee is inquiring into the fundamentals of water licensing and fees in WA; including if garden bores in Perth should also be licensed in addition to water used by farms and industry, and the relationship of licence fees to the National Water Initiative.

“In October 2007 the Minister supported the Legislative Assembly Standing Committee inquiry, and the Committee is calling for submissions from farmers and industry by 7 December; how can that process be taken seriously by farmers and industry if the Minister treats it as a political circus?” Mr Bartholomaeus said.

“In addition to the Legislative Assembly inquiry, the pending Water Resources Management Bill will totally transform the previous *Rights in Water and Irrigation Act 1914*, define which water resources should be licensed throughout WA, and establish an entirely new water resource planning and management framework.

“The Minister for Water Resources should never have tried to introduce water licence fees ahead of this major legislation,” Mr Bartholomaeus said.

Mr Bartholomaeus said farmers were prepared to pay rational and fair water licence fees based on a clear distinction between the cost of an application and assessment for a new dam or bore, and the subsequent cost to administer a licensing database over the 10 year duration of the licence.

Mr Colin Murphy
Auditor General
Office of the Auditor General
4th Floor, 2 Havelock Street
West Perth WA 6005

Dear Mr Murphy

WATER LICENCE ADMINISTRATION FEES: COST RECOVERY

We wish to refer a matter of public interest to your Office for audit attention. I write on behalf of the Manjimup and Pemberton Landowners group who represent a range of private land users and uses subject to new annual Water Licence Administration Fees. The new fees were introduced by the *Rights in Water and Irrigation Amendment Regulations 2007*, Gazetted on 22 June 2007 and effective from 1 July 2007. The Department of Water estimate they will raise \$256,550 annually from the 384 water licence holders allocated 40 gigalitres of water held in private dams in the Manjimup and Pemberton area, which is 25% of the sustainable yield of the Warren and Donnelly River catchments. This water, captured in private dams during winter would otherwise flow into the Southern Ocean and not be available to agriculture; there is approximately \$100 million privately invested in 'farm dam' infrastructure vital to over \$150 million in annual agricultural production which is the major employment base in the Manjimup and Pemberton area.

The interests of the Manjimup and Pemberton Landowners group are in common with thousands of water 'self supply' farmers throughout Western Australia subject to the new fees applying to water from their own dams and bores. We are aware the Auditor General in 2004 conducted an examination on 'Setting Fees – The Extent of Cost Recovery' and reported to Parliament on that examination. The principles for setting fees identified in the report, the distinction made between cost recovery and tax, and avoidance of cross subsidies, are matters which, in our view, have been inadequately addressed with the new Water Licence Administration Fees. We wish to bring to your attention for examination:

- 1. Revenue exceeding cost recovery for assessment of applications for new licences**
- 2. Inadequate disclosure of fee pricing policy**
- 3. Cross subsidisation of large water allocation licence fees by 'self supply' farmers**
- 4. Lack of Performance Indicators for services to be cost recovered**
- 5. Suggested alternative fee structure**
- 6. Other consequential matters relevant to fee setting for water licences**

In referring this matter to your Office, our main sources of information are (a) the attached document 'Licence admin fees - how was fee determined' (document file name, Subject: WATER LICENCE ADMINISTRATION FEES), provided by the Department of Water to farmers in Donnybrook on 17 August 2007 on instruction from the Acting Director General, Department of Water, (b) *Draft blueprint for water reform in Western Australia Discussion Paper* (July 2006) published by the Government of Western Australia, and (c) answers to Parliamentary Questions.

1. Revenue exceeding cost recovery for assessment of applications for new licences

Table 1 ('DoW costs...') of the attached 'Licence admin fees - how was fee determined' indicates \$4,145,918 of the \$5,827,397 associated with five licensing deliverables for 2005/2006 relate to 'Licensing'; the previous July 2006 *Draft blueprint for water reform in Western Australia Discussion Paper* at page 34 referred to this as 'assessment of applications and licence renewals'.

Parliamentary Question 4780 of 8 May 2007 asked "(1) For the \$200 Application fee what is the estimated - (a) number of new licence applications for 2006-07; and (b) revenue for 2006-07?" In reply the Minister for Water Resources responded "It is estimated that 650 applications will be received for the period 2006-07 that at \$200 per application would result in \$130,000 in revenue." Parliamentary Question 4957 of 19 June 2007 stated the \$130,000 related to assessing applications for new licences, and in reply the Minister for Water Resources responded "The \$130,000 related specifically to an estimated 650 applications in 2006-07 for short tenure and temporary licences that do not pay an annual fee. For all other licences to take water the \$200 application fee is to initiate the assessment process only. The remaining costs for the administration of licences with different annual water entitlements is recovered through the licensee paying the difference between the application fee and the annual fee in the first instance on grant of the water licence, and then annually (in accordance with the fee schedule)."

Parliamentary Question 4958 of 19 June 2007 asked "(3) How many new licence applications were assessed in 2005-06, and what was the total cost of conducting the assessments?" In reply the Minister for Water Resources responded "(3) In 2005-2006 the Department of Water assessed 1780 applications for new water licences (this does not include renewal applications). Of the 1780 applications received, 640 applications were for short term and temporary bore construction licences or bed and bank permits. The total cost of only assessing the new applications plus renewals was 71% of \$5.8 million." In a further section of Parliamentary Question 4958 of 19 June 2007 it was asked "(9) What was the average time in hours required of Department of Water officers to assess an application for - (a) surface water licence; and (b) a ground water licence in 2005-06?" In reply the Minister for Water Resources responded "(9) The average time in hours required to assess an application for groundwater or surface water in 2005-06 was 14 hours." Table 4 of the attached 'Licence admin fees - how was fee determined' indicates the hourly rate for cost recovery of \$5,827,397 is \$29.73 per hour across the 13451 'Licences in force'. Applying the \$29.73 per hour to an average of 14 hours to assess the 1140 new licence applications in 2005-06 would require \$474,490 in fee revenue to cost recover.

From this information a profile of cost of assessment of applications and renewals for 2005-2006 can be created to evaluate if the \$4,145,918 for 'Licensing' or 'assessment of applications and licence renewals' is justified:

- assessment of 1140 new applications for 10 year duration licences - \$474,490
- processing of 640 applications for short term and temporary bore construction licences or bed and bank permits estimated at the \$200 fee rate - \$128,000
- renewal of 10% of 13,541 ten year duration 'Licences in force', making a conservative assumption renewal costs the same as application - \$563,603
- total of above estimated for cost recovery of assessment of applications and licence renewals - \$1,166,093
- application and renewal fee revenue 255% in excess of cost recovery - \$2,979,825

The estimated \$2,979,825 revenue in excess of cost recovery is conservative; it could be 300,000 to 400,000 greater, because renewal of water licences should not take as long as the average 14 hours

for assessment of an application for a new licence; in many instances renewal would simply be two automated postal transactions and related database activity. Further, the excess on cost recovery for application and renewal of licences could be greater when the contradiction between ‘assessment of an application’ and ‘Hours per instrument’ described at 2 below is taken into account.

In the absence of a satisfactory explanation on the available information, the estimated \$2,979,825 revenue in excess of cost recovery for this aspect of water licence administration is a tax without legislative basis.

2. Inadequate disclosure of fee pricing policy

The absence of distinct fees to cost recover applications for new licences for dams and bores, usually of 10 year duration when granted, and cost recover renewal of the same licences after 10 years, confuses the water licence administration fee structure making it incomprehensible. Amongst this confusion there appear to be serious contradictions between information provided by the Minister for Water Resources in answer to Questions in Parliament and information published by the Department of Water. Parliamentary Question 4958 of 19 June 2007 asked “(8) *What is the average time in hours applied by Department of Water officers to assess an application for - (a) a surface water licence for a less than 50 megalitre allocation; (b) a ground water licence for less than 50 megalitre allocation; (c) surface water licence for a greater than one gigalitre allocation; and (d) ground water licence for a greater than one gigalitre allocation?*” In reply the Minister for Water Resources responded “(8) *Assessment activities are the same for groundwater and surface water. (a) 11 hours for 5 - 50 megalitres surface water applications (b) 11 hours for 5 - 50 megalitres groundwater applications (c) 80 hours for greater than 1 gigalitre surface water applications (d) 80 hours for greater than 1 gigalitre ground water applications.*” The 11 and 80 hours provided by the Minister are the same hours for the ‘Hours per instrument’ for those licence categories presented in Table 4 of the attached ‘Licence admin fees - how was fee determined’ which presents a total of \$5,827,397 for all categories. Table 1 of the same document states that ‘Licensing’ costs \$4,145,918 of the \$5,827,397 total cost. The 11 and 80 hours are either the hours required to assess an application or the hours required to administer that category each year, they can’t be both. Table 1 (‘DoW costs...’) shows in addition to costs (and thus associated hours) required for assessment of applications and renewal (Licensing, constituting 71% of \$5,827,397) there are Compliance (14%), State Administrative Tribunal (4%), Community Input (4%) and Licensing Support/database administration (7%) costs and thus associated hours.

Parliamentary Question 4958 of 19 June 2007 also asked “(9) *What was the average time in hours required of Department of Water officers to assess an application for - (a) surface water licence; and (b) a ground water licence in 2005-06?*” In reply the Minister for Water Resources responded “(9) *The average time in hours required to assess an application for groundwater or surface water in 2005-06 was 14 hours.*” Reference to Table 4 of the attached ‘Licence admin fees - how was fee determined’ enables calculation of the average ‘Hours per instrument’, which is 14 hours. Again, the average of 14 hours is either the hours required to assess the 1140 applications for new licences or the average hours required to administer the 13,541 licences each year, it can’t be both.

Given the lack of transparency in the structure of the water licence administration fee, and the confused and confusing explanation by Government, 90% of 10 year duration water licence holders subject to the new fees from 1 July 2007 may find it difficult to accept that 71% of their annual water licence administration fees due in 2007-2008 aren’t related to either a new application by them nor renewal services they will receive in that year, yet they are being charged for those services as if they are provided. The Minister for Water Resources response to Parliamentary Question 4957 that “*The remaining costs for the administration of licences with different annual water entitlements is recovered through the licensee paying the difference between the application*

fee and the annual fee in the first instance on grant of the water licence, and then annually (in accordance with the fee schedule).” provides no clarity when the hours advised by the Minister for new applications are the same as total hours required for all five services to the licence annually. The methodology for setting the annual fees is fundamentally flawed. If the confused and confusing annual water licence administration fee structure subsidises the cost of assessing new applications for licences at the expense of existing licence holders, that should be declared by Government so that it can be addressed by affected licence holders, and by independent authorities.

3. Cross subsidisation of large water allocation licence fees by ‘self supply’ farmers

The Department of Water seeks cost recovery for services across seven classes of licences associated with annual water entitlements as shown in Tables 3, 4 and 5 of the attached ‘Licence admin fees - how was fee determined’. It isn’t possible to calculate from these tables the licence fee per volume of water licensed in each of the seven classes, which is relevant in regard to Government statements on the value of the water licensed to the licence holder, and to identify the extent of cross subsidies between classes. Parliamentary Question 4780 of 8 May 2007 asked “(2) As of April 2007, for each of the seven licence classes what is the - (a) number of existing licences; (b) number of existing licensees; (c) volume of water licensed; and (d) estimated annual revenue? (3) As of April 2007, for the aggregate of the seven licence classes what is the - (a) total number of existing licences; (b) total number of existing licensees; (c) total volume of water licensed; (d) estimated total revenue from annual fees; and (e) estimated averaged revenue per kilolitre of licensed water?”. In response the Minister for Water Resources provided the information in the table below, based on the number of licences in May 2007. A further column ‘Fee \$/ML’ has been added by us to the table to display the annual licence fee per megalitre of water licensed in each of the seven classes, based on ‘Water Entitlement Gigalitres per year’ and ‘Expected Revenue’.

Answer to Question 4780 plus additional column Fee \$/ML

Class	Water entitlement Kilolitres per	Fee	Number of licences	Number of licensee	Water Entitlement Gigalitres per year	Expected Revenue	Fee \$/ML
1	0 - 5000	\$200	4,610	4,887	9	\$922,000	\$102.44
2	5 001 - 50 000	\$325	5,741	6,010	102	\$1,865,825	\$18.29
3	50 001 - 100,000	\$600	1,119	1,204	79	\$671,400	\$8.49
4	100,001 - 500,000	\$1,200	906	967	206	\$1,087,200	\$5.27
5	500,001 - 1,000,00	\$1,800	172	177	129	\$309,600	\$2.40
6	1,000,001 - 5,000,000	\$2,400	253	257	594	\$607,200	\$1.02
7	> 5,000,000	\$3,000	67	68	1,366	\$201,000	\$0.14
Total			12,868	13,570	2,486	\$5,664,225	\$2.27
	Applications	\$200	640	640		\$130,000	
Grand Total			13,508	14,210		\$5,794,225	

This table shows that licences in Classes 1 to 5 (mainly 'self supply' farmers) allocated 21% of the water will pay 86% of the annual licence fees, whereas corporations (irrigation cooperatives, water utilities, mining companies) in Classes 6 and 7 with large water allocations of more than a gigalitre and allocated 79% of the licensed water will only pay 14% of the revenue to be raised by water licence fees. The average fee per megalitre is \$2.27, 'self supply' farmers pay significantly more than the average while corporations pay significantly less.

To consider whether the huge disparity in water licence administration fee per megalitre of water constitutes a cross subsidy of large users, consideration should be given to the two main justifications given by Government for the licence fee and fee structure: (a) water licence as a valuable right to a tradable asset, and (b) administration effort related to size of entitlement.

Cross subsidisation based on water licence as a valuable right to a tradable asset: The Department of Water document 'Licence admin fees - how was fee determined' (attached, in 'CURRENT STATUS' section) states "A water licence is a tangible and valuable right to a tradable asset for licence holders predominantly engaged in commercial activities. Licences enable allocation decisions that reflect the efficient long term management of the water resource for the community's benefit (including environmental concerns) and provide the certainty of supply that businesses desire. It is no longer commonplace for governments to completely fund resource management and administration without some level of cost recovery from users." Under this rationale, the more water allocated to a licence and the more tradable the water is then the more valuable a licence is. However, because the fee does not apply directly to the volume of licensed water, and most licences are not associated with tradable water, these 'commercial' values are not reflected in the fees; indeed the opposite is the case. For example, the irrigation cooperative at Harvey supporting 703 farmers has a 153 gigalitres annual allocation of water based on three licences for a total of \$9000 in annual water licence administration fees; the fee is 6 cents a megalitre of licensed water. Because of the pipe and channel interconnected system at Harvey there is extensive trading of water within the cooperative, and also trading outside of the cooperative back to the Water Corporation who manage the public dams from which the water is supplied. In contrast, in the Manjimup and Pemberton area 384 farmers as water licence holders with a total of 40 gigalitres allocation of water from their private dams will pay \$256,550 in annual water licence administration fees; the fee is \$6.40 cents megalitre of licensed water, one hundred fold that at Harvey. Because the private dams in the Manjimup and Pemberton area are mainly connected by winter streams, which are dry in summer, there is no practical infrastructure to enable trading. Further, in the Manjimup and Pemberton area only 25% of the sustainable yield of the water catchments is allocated to licences thus there is little demand for trading even if it was practical. This is in contrast to fully allocated water in the Darling Range catchments where water trading is a valuable opportunity to the water licence holders (including Harvey irrigation cooperative, Water Corporation, mining companies).

Similarly, the Ord River cooperative annual water allocation is 335 gigaltres, supporting in excess of \$50 million in agricultural production, yet the annual Water Licence Administration Fee is \$3,000, or 0.89cents a megalitre. The Water Corporation has 231 licences associated with an output from dams and bores in 2005-2006 of 274 gigalitres, enabling revenue from water supply of \$712 million; the annual Water Licence Administration Fees estimated by the Department of Water are \$317,600 (Table 8 of attached), or \$1.15 per megalitre in licence fees. These examples of licence fees for a valuable right to a commercial input and tradeable asset contrast to the range of \$102.44 to \$2.40 a megalitre in annual licence fees for 'self supply' farmers who generally can't trade water.

Cross subsidisation based on administration effort related to size of entitlement: Table 1 of the cover of the Department of Water document 'Licence admin fees - how was fee determined'

(attached) shows 'Water licensing Staff and Salaries by Region 2007/2008' for a total in salaries of \$3,958,000. The Department of Water has two water licensing staff in Kununurra at an annual salary cost of \$157,000, yet they will only raise \$3,000 annually in one licence fee from the Ord River cooperative towards alleged cost recovery for a 335 gigalitre water licence for the cooperative. There are some other water licences in the Kimberly region, but that revenue in fees wouldn't make up for what appears to be a massive subsidy associated with the major licensed water allocation. Department of Water also has two water licensing staff in Manjimup yet, in contrast, Department of Water estimate they will raise \$256,550 annually from the 384 water licence holders allocated 40 gigalitres of water from their private dams in the Manjimup and Pemberton area. Making the reasonable assumption the two staff Manjimup office of the Department of Water costs no more to run than the two licensing staff Kununurra office, it appears as though the fees overcharging in the Manjimup and Pemberton area alone subsidises the cost of the Kununurra office of the Department of Water. It is possible the same overcharging of private 'self supply' farmers is occurring throughout the State, subsidising fees for the Ord and Harvey cooperatives, mining companies and water utilities. Further evidence of cross subsidy of service delivery presents in Budget papers 'Major Initiatives' and 'Major Achievements' referred to below.

Parliamentary Question 2090 of 22 March 2007 asked "*The 2006-2007 Budget papers for Appropriations and Forward Estimates state the 2005-2006 budget appropriation for 'Water licensing and regulation' was \$18.645 million and for 2006-2007 is \$21.544 million. The 2006-2007 Budget papers state, as a Key Efficiency Indicator, the average cost per gigalitre of water licensed was \$6,164 for 2005-2006 and the target is \$6,340 for 2006-2007, and I ask - (1) Can the Minister explain why the proposed charges for water licence fees, to be introduced on 1 July 2007 are, in many instances, more than the \$6.34 per megalitre total cost of water licensing and regulation? (2) Can the Minister explain why the water licence fees to be introduced on 1 July 2007 are not based on the approximately \$6 per megalitre cost of water licence administration?*" In reply the Minister for Water Resources responded "*(1) The use of this averaged cost of water per gigalitre is not appropriate to the water licence administration fee because if applied it would raise more money than the actual costs of administering water licences. Using the suggested cost of \$6 per megalitre may reduce the annual fee to some but would see the larger water users, such as irrigation cooperatives, paying far greater than that proposed and this would be disproportionate to the cost of administering the licences. (2) The water licence administration fee is based on recovering the \$5.8M cost of administering water licences and is based on a seven tier structure that reflects the amount of effort required in administering licences. A water licence with a large entitlement requires more effort and time than one with a lesser water entitlement.*" Several issues arise from this response:

- While *Appropriations and Forward Estimates* for the Water and Rivers Commission identify 'Service 3 Water Licensing and Regulation', the \$5.8 million for licensing and compliance/regulation statutory services to which cost recovery is applied doesn't have a performance indicator which can be directly related to the services cost recovered, and the specific cost recovered services are masked by an additional \$15.74 million appropriation that is less directly related to core statutory services for licensing and compliance/regulation
- The reference in the response to Question 2090 (1) that "*Using the suggested cost of \$6 per megalitre may reduce the annual fee to some but would see the larger water users, such as irrigation cooperatives, paying far greater than that proposed and this would be disproportionate to the cost of administering the licences.*" implies the Harvey cooperative shouldn't pay more than \$9,000 for 153 gigalitres of licensed water yet one of the three 'Major Initiatives For 2006-2007' for 'Service 3 Water Licensing and Regulation' was 'Assess the application from Harvey Water and the Water Corporation to transfer (trade) water'. The subsequent Budget papers for 2007-2008 state a 'Major Achievement For 2006-2007' as 'Initial phase of trade agreement for Harvey Water and Water Corporation water

trading successfully negotiated and respective licences amended'. It is unlikely the services of the Department of Water for this 'Major Initiative' and 'Major Achievement' could be provided within the \$9,000 water licence fee for Harvey Water, and under the *Rights in Water and Irrigation Amendment Regulations 2007* effective from July 1 fees for such water trade applications are only \$200 rather than transparently cost recovered. Another 'Major Achievement For 2006-2007' for 'Service 3 Water Licensing and Regulation' in the Budget papers for 2007-2008 is 'Completed Ord River Management Plan', again it is unclear how the Department of Water would distinguish such a service from licensing of the 335 gigalitre allocation to the Ord River cooperative for which the annual fee is \$3,000.

- The reference in the response to Question 2090 (2) that "*The water licence administration fee is based on recovering the \$5.8M cost of administering water licences and is based on a seven tier structure that reflects the amount of effort required in administering licences. A water licence with a large entitlement requires more effort and time than one with a lesser water entitlement.*" contradicts the fact that large water entitlements such as irrigation cooperatives, water utilities and mining companies will pay an average 14 cents per megalitre for their annual water licence while 'self supply' farmers will pay from \$102 to \$2.40 a megalitre. With inadequate disclosure of the fee pricing as discussed at 2. above, it appears the 12,548 water licence holders in Classes 1 to 5 paying greater than the average fee of \$2.27 a megalitre are cross subsidising the 320 licence holders in Classes 6 and 7 paying substantially less than \$2.27 a megalitre in licence fees.

4. Lack of Performance Indicators for services to be cost recovered

The Government is shifting the cost of water licence administration from the Consolidated Fund to water licence holders as customers of the Department of Water. It is reasonable that water licence holder customers have the opportunity to evaluate the efficacy of services they are required to pay for, and in this regard appropriate performance indicators for the services are essential. Such performance indicators are lacking for both the \$5.8 million bundle of services and the five service components (per Table 1 ('DoW costs...') of the attached 'Licence admin fees - how was fee determined'):

\$5.8 million of cost recovered statutory licensing and regulation services: There are no performance indicators for the efficacy of licensing and regulation services for which \$5.8 million is being cost recovered through Water Licence Administration Fees. The 2007-2008 Budget papers for *Appropriations and Forward Estimates* state the 2007-2008 cost for 'Service 3 Water licensing and regulation' is \$24.847 million. The Budget papers state, as a Key Efficiency Indicator, the average cost per gigalitre of water licensed was \$8,933 for 2006-2007 and the target for 2007-2008 is \$12,731 per gigalitre. The answer to Parliamentary Question 4780 tabulated above puts an average cost of \$2,270 per gigalitre for the 2,486 gigalitres of water licensed in May 2007 and subject to Water Licence Administration Fees from 1 July 2007, for expected revenue of \$5,664,225. Given the controversy surrounding the proposed annual Water Licence Administration Fees expressed in 2006 and into 2007, the Government should have set specific performance indicators for the core statutory licensing and regulation/compliance services for which \$5.8 million will be cost recovered. Instead, the performance of delivery of these core services is masked by \$19 million in relatively discretionary and non-core expenditure, including metering trials, water plans, hydrological modeling and a major initiative on water trading to benefit two of the 14,210 licensees.

Licensing (\$4,145,918): The most recent Water and Rivers Commission Annual Report available, for 2005-2006, provides no micro performance indicators of effectiveness or efficiency below Budget papers level to evaluate the efficiency of processing and assessment of applications for water licences for dams and bores, or other licensing services. It is common experience in the Manjimup and Pemberton area for simple applications to the Department of Water for a new licence

for a new dam to take over 6 months for an outcome. These services are now subject to fees and benchmarks for services should be set and publicised by the Government.

Compliance (\$812,875): Again, the most recent Water and Rivers Commission Annual Report available, for 2005-2006, provides no micro performance indicators of effectiveness or efficiency below Budget papers level to evaluate the efficiency of compliance services, being enforcement of the *Rights in Waters and Irrigation Act 1914*. Parliamentary Question 823 of 5 April 2006 established there were three prosecutions under the *Rights in Waters and Irrigation Act 1914* over the period 2001 to April 2006. As licence holders are now required to pay for these regulatory services, performance indicators should be set for inspections, extent of compliance with the *Rights in Waters and Irrigation Act 1914*, and compliance actions, including prosecutions. Further, there doesn't appear to be any published enforcement policy for the *Rights in Waters and Irrigation Act 1914*; such public policies are essential to enable all stakeholders to understand the enforcement agency's inspection processes and approach to breaches of the legislation. In the absence of both performance indicators and a published enforcement policy, licence holders should not be expected to fund \$812,875 in compliance services.

State Administrative Tribunal (\$237,965): There has only been one decision of the State Administrative Tribunal since 2001 regarding the *Rights in Water and Irrigation Act 1914*, and this level of cost recovery from licence holders is clearly excessive. A basic principle of cost recovery based on 'user pays' is that the party using the service pays, not others not using the service. This basic principle is addressed outside of licence fees as appeals against decisions of the Department of Water are required to be dealt with by the State Administrative Tribunal in accordance with their schedule of fees for appellants. Further, the Department of Water should not expect all water licence holders to meet the cost of the Department's response to appeals against the Department's decisions. If the Government persists with this irrational inclusion in Water Licence Administration Fees, then appropriate performance indicators upon Department of Water appealable decisions must be set, and on the cost per appeal to and decision of the State Administrative Tribunal.

Community Input (\$243,653): Table 1 ('DoW costs...') of the attached document 'Licence admin fees - how was fee determined' and notes state that this cost relates to costs associated with managing and supporting Water Resource Management Committees and Advisory Committees. Our understanding, on written advice from the Department of Water in June 2007, is that there are no current Water Resource Management Committees appointed under section 26GK of the *Rights in Water and Irrigation Act 1914*, notwithstanding members of the Warren Water Management Area Advisory Committee (for the Manjimup and Pemberton area) being advised in writing in February 2007 they were appointed under section 26GK. Again, there is confusion on fundamental matters. The *Draft blueprint for water reform in Western Australia Discussion Paper* (July 2006) at page 34 referred to this fee cost recovery component as 'community awareness' as have all other previous publications and answers to Parliamentary Questions 2090, 2092 and 4957. There is a major functional difference between Government services for 'community awareness' requiring information output from Government, and 'community input' requiring information input to Government. This aspect of cost recovery is poorly defined and there can be little confidence that services are being delivered for fees collected. Parliamentary Question 4779 of 8 May 2007 asked "(10) In regard to answer that community awareness is 4 percent of \$5.8 million or \$231,476, will the Minister itemise costs for 2005-06 for the management and support of each of the ten Water Resources Advisory Committees?". In reply the Minister for Water Resources responded "(10) The management and support of the Water Resource Advisory Committees are not costed to individual committees at this time." If the Government can sum \$231,476 and then pass the cost onto licence holders, it is reasonable to expect that the ten committees should be identified and the associated expenditure for the committee also be identified. If the Government persists with this poorly

defined and inadequately costed 'community input' inclusion in Water Licence Administration Fees, then appropriate performance indicators must be set for the claimed services.

Licensing Support (database administration) (\$386,986): A valid and efficient database is essential to an effective licensing system and cost recovery of this expenditure in fees is supported. However, experience of licence holders in the Manjimup and Pemberton area during 2007 suggests the licensing databases are not highly reliable and that there are substantial differences between information held in regional and central databases causing reduction in quality of service. During 2007, the Department of Water has published three different figures for water licences in the Manjimup and Pemberton area: 511 (February), 428 (April) and 384 (August). Similarly, the number of water licences state wide have reduced from 18,674 in July 2006 to 10,841 in May 2007; while a component of this 42% reduction reflects Government policy change some may be due to database deficiency. As the cost of licensing support is now to be met by licence holders through fees, appropriate performance indicators should be set for this service.

5. Suggested alternative fee structure

Manjimup and Pemberton Landowners support the water licensing provisions of the *Rights in Waters and Irrigation Act 1914* and have been subject to those provisions for over 40 years since proclamation of the Warren and Donnelly River catchments. During public comment on the *Draft blueprint for water reform in Western Australia Discussion Paper* (July 2006) most submissions from our area advocated an application fee directly related to the time required to assess the application for a dam or bore in the context of the water resource, followed by a fee to maintain a 10 year duration licence in a database (analogous to a five year drivers licence fee). Now, with the benefit of further consideration, our proposed alternative fee structure is:

- Application Assessment Fee which reflects the complexity of Department of Water assessment required for the particular dam or bore and water resource; applicant to receive a quote in hours and fee per hour, and be able to appeal to a senior officer of the Department if the quote is unacceptable. The basis of the Application Assessment Fee that would be gazetted annually and adjusted for consumer price index would be the hourly rate, noting the Department of Water hourly rate for cost recovery is \$29.73 per Table 4 in the attached document 'Licence admin fees - how was fee determined'. (the same hourly rate approach could apply to transfer, trades and agreements to Take Water (5C) services).
- Licence Fee, duration (10 years) of licence fee which reflects annual administration costs only, for either dam or bore. This should be a 'flat' fee because there is no rationale in the present classes distinction on Compliance, appeals to State Administrative Tribunal, Community Input and Licensing Support (database administration). The licence holder could opt to pay either annually or 10 years in advance (analogous to a drivers licence). In our view, unless and until there are performance indicators and greater justification for Compliance, State Administrative Tribunal and Community Input as components of the Licence Fee, the fee should only cost recover Licensing Support (database administration).
- Renewal Fee at end of licence, this would re-present the Licence Fee (analogous the renewal of a drivers licence). If a relevant Statutory Water Management Plan identified a particular water resource was nearing full allocation, or was fully allocated, a re-assessment could be invoked and be subject to the same transparent fee process as an initial application.

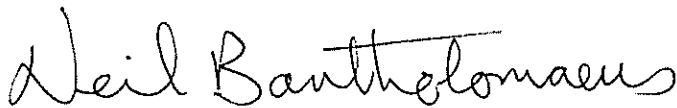
While our view on alternative fee structure is not directly relevant to any attention your Office may give to Water Licence Administration Fees, it may be of interest to you.

6. Other consequential matters relevant to fee setting for water licences

The Water Licence Administration Fees introduced by the Government from 1 July 2007 are the first of three cost recovery activities the Department of Water claims are driven by commitments under the National Water Initiative; the additional cost recovery will be for Water Resource Management Charges and Annual Metering Charges. As submitted here, in our view the Water Licence Administration Fees appear to have a tax component, have a confused and confusing basis, facilitate cross subsidies and are not accompanied by performance indicators for the services; these combine to make the \$5.8 million in fees unacceptable. *Western Australia's Implementation Plan for the National Water Initiative* (April 2007, page 59) indicates 'Full Cost Recovery' will be implemented starting 1 July 2008. We understand this 'Full Cost Recovery' relates to the cost of Department of Water planning and management activities which will be embodied in new Water Resource Management Charges, and could be several times the cost of Water Licence Administration Fees. We are seriously concerned the problems for us (and other water 'self supply' farmers) with Water Licence Administration Fees will be repeated with Water Resource Management Charges as early as the 2008-2009 budget year, and then compounded by mismanaged cost recovery with Annual Metering Charges.

An independent review of Water Licence Administration Fees by your Office is vital given further fees and charges are imminent in regard to use of water resources. We trust the information we have provided is sufficient to draw your attention to this matter, and at your request we can provide further information and substantiation of that already provided.

Yours sincerely



Neil Bartholomaeus
on behalf of Manjimup and Pemberton Landowners