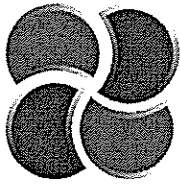




29 January 2007



**PILBARA
REGIONAL
COUNCIL**

Leading the Way...

PRC SUBMISSION

ECONOMIC AND INDUSTRY STANDING COMMITTEE INQUIRY INTO WATER LICENSING AND SERVICES

Draft by: Adrian Ellson, Executive Office, Pilbara Regional Council
Resolution: **0750**

References:

1. Economic and Industry Standing Committee, Terms of Reference, dated October 2007
2. Western Australia State Water Plan 2007
3. Intergovernmental Agreement on a National Water Initiative signed June 2004 and signed by Western Australia State Government in April 2006
4. Pilbara Regional Water Plan (being developed)
5. Commonwealth and State Governments 2006 Bilateral Agreement on Indigenous Affairs
6. 2006 Inter-governmental Agreement Establishing Principles to Guide Inter-Governmental Relations on Local Government Matters

Preamble

A copy of the Economic and Industry Standing Committee's terms of reference for its Inquiry into Water Licensing and Services is at Attachment 1. The matter of water licensing (and associated pricing) that the Committee is considering is highly complex and must be considered with the holistic framework provided with primary References 2, 3, and 4, and numerous other secondary references, which not all are accessible by the Pilbara Regional Council (PRC).

The intent of the National Water Initiative (NWI) is to recognize and promote "*the continuing national imperative to increase the productivity and efficiency of Australia's water use, the need to service rural and urban communities, and to ensure the health of river and groundwater systems by establishing clear pathways to return all systems to environmentally sustainable levels of extraction. The objective of the Parties in implementing this Agreement is to provide greater certainty for investment and the environment, and underpin the capacity of Australia's water management regimes to deal with change responsively and fairly.*"¹

Full implementation of the NWI Agreement is to result "*in a nationally-compatible, market, regulatory and planning based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes by achieving the following:*

- i) *clear and nationally-compatible characteristics for secure water access entitlements;*
- ii) *transparent, statutory-based water planning;*

¹ June 2004 Intergovernmental Agreement on a National Water Initiative endorsed by Western Australia State Government in April 2006, paragraph 5.

- iii) *statutory provision for environmental and other public benefit outcomes, and improved environmental management practices;*
- iv) *complete the return of all currently overallocated or overused systems to environmentally-sustainable levels of extraction;*
- v) *progressive removal of barriers to trade in water and meeting other requirements to facilitate the broadening and deepening of the water market, with an open trading market to be in place;*
- vi) *clarity around the assignment of risk arising from future changes in the availability of water for the consumptive pool;*
- vii) *water accounting which is able to meet the information needs of different water systems in respect to planning, monitoring, trading, environmental management and on-farm management;*
- viii) *policy settings which facilitate water use efficiency and innovation in urban and rural areas;*
- ix) *addressing future adjustment issues that may impact on water users and communities; and*
- x) *recognition of the connectivity between surface and groundwater resources and connected systems managed as a single resource.”²*

In accordance with the NWI, the State Government (through the Department of Water) has developed its 2007 State Water Plan and has commenced on a program of developing Regional Water Plans, of which the Pilbara is an early focus. The State Government is still to approve the necessary legislation that will underpin its State Water Plan.

At present, there is a high level of uncertainty surrounding the proposed future management of water. It is not clear if the Pilbara region is a trading zone within the definition of the NWI or who holds what water access entitlements in the region. The PRC also has limited resources; accordingly, comments provided below are provided from an organization on a steep learning curve regarding the future management of water.

Comments

Signatory to NWI

Local Government is not a signatory to the NWI, and to best knowledge, the State Government’s decision to sign the NWI in 2006 occurred without consultation with Local Government. Accordingly, the principles established within the **2006 Inter-governmental Agreement Establishing Principles to Guide Inter-Governmental Relations on Local Government Matters** should be applied.

Specifically, the State Government should not be regulating or price structuring for local government to be involved in the installation, maintenance, reading and policing of any water metering system without consulting with the relevant peak local government representative body and ensure the financial implications and other impacts for local government are taken into account.”³

Equally in the spirit of the Inter-governmental Agreement, the State Government should not be seeking to remove or revoke existing entitlements, namely the free use of water to develop and maintain public infrastructure and other assets, noting that under Clause 11 local government is required to prudently manage its assets and liabilities.

The PRC strongly supports Western Australian Local Government Association (WALGA) request for further consultation on key matters, some of which are raised below.

² Ibid, paragraph 23.

³ 2006 Inter-governmental Agreement Establishing Principles to Guide Inter-Governmental Relations on Local Government Matters, Clause 10.

WALGA's Comments

The PRC endorses the issues raised and comments provided to the Committee by the WALGA. Our comments below are in addition to those provided by WALGA.

With regard to WALGA's guidance that "*All funds raised via licence charges be hypothecated to the appropriate section of the Department of Water*", the Committee needs to make provision in its recommendations for this to be done in a transparent and auditable manner to remove any temptation by future Governments to siphon money back into consolidate revenue accounts. This comment is consistent with the guidance provided within the NWI. Further comment is provided below.

Types of Water

It should be noted that the concept of water trading, which drives pricing, and accountability, transparency, etc is the impetus for licensing the taking of water from the ground and streams. Australia's boundaries do not stop at the edge of the land but include the oceanic waters out to its maritime boundaries. The PRC has some concern with the NWI limitation to land based water, and recommends that the Committee give consideration to addressing the question of licensing of desalinated water within the boundaries of its Inquiry. The PRC believes that this is necessary in order for the Committee to be able to properly address water pricing within the context of water trading.

The State Government should also be encouraged to update its State Water Plan to include desalinated water, noting that the Plan states:

*"Over time, water prices for scheme and private supplies should reflect the full economic and environmental cost of using water. This provides economic incentives to develop resources, use water wisely and ensures the long-term sustainability of infrastructure, service delivery and water management."*⁴

The use of desalinated water may affect the environment, may impact on heritage matters and could disrupt / corrupt any water trading regime.

Legislation

Further clarity is required around which existing legislation is to be affected before full comment can be made in this area, noting the State Water Plan 2007 comments regarding the proposed Water Resources Legislation Amendment Bill 2006 and that further legislative reform is planned.⁵ However, the NWI statement that "*The consumptive use of water will require a water access entitlement, separate from land, to be described as a perpetual or open-ended share of the consumptive pool of a specified water resource, as determined by the relevant water plan*"⁶ raises a number of questions.

Specifically, what is the impact of segregating water access entitlements from land in terms of local government ability to rate properties. The PRC opposes any change in water licensing that would adversely affect its ability to generate revenue. Should the split occur, and water consumptive pools are seen to be perpetual property then local government should be able to rate these properties in a manner similar to commercial land.

Pricing of Water

Clauses 64 to 77 of the NWI define how water is to be priced – within metropolitan areas by the 'upper bound pricing' method, and for rural and regional areas by the 'lower bound pricing' method. It is noted that neither definition makes reference to profit or requirement for intergenerational environmental investments to provide for continuity of water supplies.

⁴ 2007 State Water Plan, page 63

⁵ *ibid*, page 13

⁶ 2006 Inter-governmental Agreement Establishing Principles to Guide Inter-Governmental Relations on Local Government Matters, Clause 25

It is assumed that any water licensing would be imposed on the water access entitlement either as a flat fee or in some form of percentage based on the annual water allocation for each entitlement. However, in either case, the NWI makes provision for this cost to be passed on to water users. Accordingly, it is possible for any imposed water license to be included in the base operating costs from which profit is determined, hence, increasing the entitlement owner's income. The PRC would prefer to see that the cost of water license be excluded from calculations determining entitlement holders' profit.

It is also assumed that water licensing is being considered to generate funding for State Government to cover its administrative costs associated with the new water regime agreed to when it signed the NWI. It is noted that the NWI provides for and promotes the concept that water users and entitlement holders should contribute to the funding of these overheads. The Committee must satisfy itself that the State Government has minimized all administrative and overhead costs, transferred funding and other resources with any reallocated work when creating the Department of Water, and has not doubled accounted in any manner before agreeing to any water licensing regime. Anything less would be a form of cost shifting and not in keeping with the principles established within the **2006 Inter-governmental Agreement Establishing Principles to Guide Inter-Governmental Relations on Local Government Matters**.

Provision for intergenerational environmental investments should also be included within any water licensing structure, and this should be calculated on known improvement programs and research work. This should also be the basis for hypothecating money to the Department of Water, Water Corporation and where appropriate local government and other organizations, such as universities and research companies, and to support the development and production of innovative technology to improve water management and use.

The NWI states in Clause 33 that:

- "i) fixed term or other types of entitlements such as annual licences will only be issued for consumptive use where this is demonstrably necessary, such as in Western Australia with poorly understood and/or less developed water resources, and/or where the access is contingent upon opportunistic allocations, and/or where the access is provided temporarily as part of an adjustment strategy, or where trading may otherwise not be appropriate. In some cases, a statutory right to extract water may be appropriate; and*
- ii) an ongoing process will be in place to assess the risks of expected development and demand on resources in poorly understood or undeveloped areas, with a view to moving these areas to a full entitlement framework when this becomes appropriate for their efficient management (paragraph 38 refers)."*

It is assumed that the Committee's Inquiry is based around moving the State from the poor position within sub-clause i above to sub-clause ii above, by extending the administrative overheads to include the licensing and metering of water use.

The PRC does not believe that the cost of implementing, reading, managing and policing a State wide groundwater (or bore) metering system has been thought through in terms of complexity and cost. We feel that it would be cost prohibitive to implement, manage and police bore metering across the State, even if based on self-reporting.

The Committee needs to be able to demonstrate objectively and quantifiably that the benefits of any groundwater / stream flow water licensing regime will exceed the cost of implementing and sustaining only the administrative overheads of the regime. If this cannot be done, then the Committee should look to other ways to achieve the objective outcome.

The PRC also believes that the Committee should afford itself the use of best practice techniques and technology and be able to demonstrate via the use of predictive and dynamic modeling the impact of introducing water licenses on inflation, business continuity, community sustainability and the ability of residents of Western Australia to sustain the flow-on costs that industry and governments will have to pass on.

Minerals and Petroleum Sector

The NWI states at Clause 34 that:

"The Parties agree that there may be special circumstances facing the minerals and petroleum sectors that will need to be addressed by policies and measures beyond the scope of this Agreement. In this context, the Parties note that specific project proposals will be assessed according to environmental, economic and social considerations, and that factors specific to resource development projects, such as isolation, relatively short project duration, water quality issues, and obligations to remediate and offset impacts, may require specific management arrangements outside the scope of this Agreement."

The PRC supports the development of the Minerals and Petroleum Sectors; however, has concern that the payment of royalties in lieu of other taxes and charges might be introducing misguided bias to the development of government legislation, policies and practices, such as the clause above. The PRC believes that all industry sectors should be treated equally and that no one sector should be afforded special privilege over any others with regard to water licensing, management and pricing requirements associated with any private venture for the benefit of owners and shareholders. The PRC would like to see the clause above, and associated flow down effects, deleted from all government legislation, policies, practices and agreements.

The Committee should also note Clauses 69 through to 72 of the NWI relating to investment in new or refurbished infrastructure and the release of unallocated water.

The Committee should note that the public water provider for Tom Price and some other rural towns is Rio Tinto, and that there are current water and sewerage infrastructure structural issues within these towns. The Shire of Ashburton is in discussion with Rio Tinto regarding this matter. However, this demonstrates the importance of understanding who are the water access entitlement holders (/ water providers), and scope and policing of licenses provided.

The Committee should also note that the Mineral and Petroleum Sector undertake mine dewatering, that is the pumping of water out of mines operating below the water table. These companies, whether operating under existing State Agreements or not, should not be afforded any specific privilege or exemptions over other industries that use or remove water during the course of their business operations. Particularly, when non-potable water is discarded as unallocated water at the mine site and these companies then use Water Corporation potable water as dust suppression at their port sites.

Dust suppression must be undertaken for health reasons and the PRC opposes any action that will or might cause Mineral companies to reduce dust suppression activities. However, current mining practices are not consistent with the intent of the NWI. Water licenses for Mineral and Petroleum Companies should include directives regarding the use of improved water management practices and use of non-water technology, and these directives should be measurable.

The Committee will also have to consider the impact of mining below the water table and its affect on the quality of water downstream of the mine, be it ground or stream water. Should resource companies that are adversely affecting the quality of groundwater from mining or stream water from dewatering pay a premium in water licenses over the remainder of the community?

Extending the concept above – should there be a water license, metering and payment system for salt mining, which is based on water evaporation? Where is the incentive to combine salt mining with the desalination of water?

Indigenous Communities

Clauses 52 to 54 of the NWI provide for Indigenous access rights, including possible native title rights to water in the catchment or aquifer area. The PRC has some concerns with regard to this matter as it relates to the future management of water licenses.

The issue of native title over water and its affect on related matters, such as land use and pricing of water for indigenous community consumption, is obscure at present. The PRC is concerned that any special privilege afforded to remote indigenous communities might adversely impact any water trading in the area and undermine the normalization of these communities as agreed by the Commonwealth and State Governments within their 2006 Bilateral Agreement on Indigenous Affairs.

The PRC does support the non-profit management of water for the protection of Indigenous heritage, spiritual and customary objectives as it is in the interest of all Australians, not just Indigenous Australians. While provision for this should be provided, the water license should be linked to land under native title not to the water itself. Water licenses should articulate what is required of the entitlement holder to protect the heritage, spiritual and customary objectives of the Indigenous people in the area.

Incentives

The NWI does not provide for the use of incentives to drive effectiveness and efficiency reforms, rather relies on the increasing price of water to encourage movement towards best practice and technology. The PRC believes that this approach is problematic in two ways.

The Committee needs to acknowledge and give consideration to those organizations and people effectively optimizing or trying to optimize their use of water, including the use of recycled water. For example, the Town of Port Hedland uses treated sewerage water wherever possible and the sewerage treatment plant cannot keep up with demand at certain times of the year. The Town of Port Hedland, and others like the Town, should be rewarded for their innovation and efforts.

Equally, the Committee needs to acknowledge and give consideration to those organizations and people who cannot optimize their use of water. For example, the Shire of Ashburton cannot make effective use of recycled water in Tom Price until the public provider of water and sewerage (Rio Tinto) upgrades the infrastructure there. The Shire of Ashburton, and others in the same predicament, should not be penalized for their dependencies.

The NWI provides for the future pricing of treated sewerage output and other recycled water products. The PRC believes that the use of recycled water should be recognized as a trading credit somehow. Furthermore, that local governments and water entitlement providers can undertake some form of today investment for future credit returns. Both concepts being suggested with the view to promoting better water practices and use of innovative technology to reduce prime water usage.

Interception

The PRC does not support the water licensing or costing of any water collected through rainfall collecting in dams and tanks erected by pastoralists, graziers and farmers to support their respective businesses or individuals for personal domestic use. Based on predictive analysis, the future weather patterns of Australia are unlikely to yield the same level of rainfall experienced today. Therefore, the diversion of rainfall to dams and tanks is likely to decrease and pastoralists, graziers and farmers will need to invest in much more elaborate dams and tanks to sustain their businesses. The alternate is for these businesses to compete for water from aquifers, streams and desalination plants, which serves no socio-economic or environmental purposes.

It is acknowledged that some farmers may be able to trade water from man-made dams and tanks, but the volumes would be minimal. Short of going broke and as a last ditched effort, pastoralists, graziers and farmers are unlikely to trade in water.

Conclusion

The PRC appreciates that some of the issues raised above are outside the scope of the Committee's terms of reference and that some issues are too complex to be considered properly in the time allocated to the Committee. However, provision needs to be made for seeding new concerns and identifying and allocating follow-on analyses work. It is hoped that the Committee can recommend further work on those issues of concern that it has had to set aside for scope or time limitations.

The PRC point of contact regarding this submission is the Executive Officer, Mr. Adrian Ellson, and he can be contacted via 08 9187 0687, 0428 940 632, prc@roebourne.wa.gov.au or usellsons@dodo.com.au.

TERMS OF REFERENCE:

That the Economics and Industry Standing Committee inquire into and report by 28 February 2008 on:

1. the benefits to, cost to and imposts on irrigators, industry, community and environment of a licensing system for the taking of water from groundwater or stream flow;
2. the full cost incurred by the Department of Water for administration of the current water licence system;
3. the extent to which the water licence administration fees meet cost recovery requirements the National Water Initiative (NWI) places on the State with respect to services delivered to water users;
4. the penalty or cost that might be applied to Western Australia by the Commonwealth under the NWI, if there was minimal or no cost recovery for services provided to water users by the Department of Water;
5. whether water licences and/or licence administration fees should be required for taking water under arrangements that are currently exempt; for example, residential bores drawing from an unconfined aquifer;
6. what recognition needs to be given to the cost incurred by landholders in harvesting water, including dam construction costs; and
7. the extent to which the NWI provides for a range of different licensing systems.

The members of the Committee are the Member for Yokine (Hon Mr Bob Kucera, MLA), Chair; the Member for Greenough (Mr Grant Woodhams, MLA), Deputy Chair; the Member for Maylands (Dr Judy Edwards, MLA); the Member for Collie (Mr Michael Murray, MLA); and the Member for Serpentine/Jarrahdale (Mr Tony Simpson, MLA).