



PUBLIC



Minister for Environment; Youth

Our Ref: 40-12686

Hon Giz Watson MLC
Chair
Standing Committee on Estimates and Financial Operations
Parliament House
PERTH WA 6000

Dear Ms Watson

2010/11 Questions on Notice – Budget Estimates Hearing, Office of the Environmental Protection Authority

Thank you for your letter dated 10 November 2010 regarding the Office of the Environmental Protection Authority 2010/11 Budget Estimates hearing questions on notice.

The questions on notice arising from the Budget Estimates hearing held on 8 November 2010 have been extracted from the uncorrected Hansard transcript and are provided below together with responses to those questions taken on notice:

Monday, 8 November 2010

Ministry for Environment, Youth

Question No A1: Hon S Talbot asked:

How many bodies actually make up the 82 FTEs and 12 FTEs in the two sections?

Answer: As at the end of pay period 9 being 27 October, 2010 there were 82 and 12 staff employed in the two services respectively.

How many of those people in the former environmental impact assessment and policies service were transferred to the new OEPA?

Answer: 88 staff transferred from the Department of Conservation and Environment (DEC) to the Office of the Environmental Protection Authority (OEPA) as identified on the final Disposition List. A further six new positions were created as part of the establishment of the OEPA to undertake corporate functions.

Question No A2: Hon L Ravlich asked I wonder whether you could provide the committee with the MOU between your agency and the DMP, and also the MOU between your agency and the OEPA?

Answer: I understand that the second part of the question should refer to the DEC. I am pleased to provide the Committee with a copy of the:

- Memorandum of Understanding between the Department of Mines and Petroleum (DMP) and the Environmental Protection Authority (EPA) in relation to the referral of Mineral and Petroleum Onshore and Offshore and Geothermal Proposals (2009), and
- Memorandum of Understanding for Collaborative Arrangements between OEPA and DEC which include the Communication Protocol for Advice on the Assessment of Proposals.

Question No A3: Hon L Ravlich asked I wonder whether you could perhaps take it on notice to provide information about the number of MOUs that currently exist and who they exist with?

Answer: The EPA has 4 MoU's in place. The detail of each of these is outlined below:

- Memorandum of Understanding between the DMP and the EPA in relation to the referral of Mineral and Petroleum Onshore and Offshore and Geothermal Proposals (2009).

The purpose of this Memorandum of Understanding is to establish an efficient and transparent administrative process for the DMP to refer environmentally significant mineral, petroleum and geothermal proposals to the EPA, pursuant to Part IV of the Western Australian *Environmental Protection Act 1986*.

- Memorandum of Understanding between the EPA, Water and Rivers Commission, Western Australian Planning Commission, City of Armadale, City of Gosnells, Water Corporation and the Armadale Redevelopment Authority (2004).

This Memorandum of Understanding clarifies the working arrangements on matters of mutual interest in the implementation of the Southern River, Forrestdale, Brookdale, Wugong Urban Water Management Strategy.

- Memorandum of Understanding between the EPA, Marine Parks and Reserves Authority, Water Corporation, Department of Conservation and Land Management and the Department of Environmental Protection (2003).

This Memorandum of Understanding was established for the management of treated wastewater discharges to the Marmion Marine Park.

- Memorandum of Understanding between the EPA and the Fisheries Department of Western Australia (1999).

This Memorandum of Understanding was established for the environmental assessment of translocation of live aquatic non-endemic species into or within Western Australia.

Question No A4: Hon L Ravlich asked also could you provide information on the criteria for non-referral and how many non-referrals there have been since September 2008?

Answer: The MoU with the DMP indicates the basis upon which the Department will determine whether a proposal subject to an application to the Department is likely to have a significant effect on the environment, if implemented, and therefore require referral to the EPA. The MoU sets out in section 5 that the following matters will be considered by the Department in making that decision to refer:

- those matters set out in Schedules 1,2 and 3 of the MoU, and
- the capacity of the Department's regulatory processes to deliver an agreed outcome where there would be no residual effects that would be environmentally significant

The DMP has advised that it has referred all proposals before it that meet the requirements for referral indicated in Schedules 1,2 and 3 of the MoU and where residual effects that would be environmentally significant would remain after the application of its regulatory processes.

Question No A5: Hon P Gardiner asked what the breakdown of the \$700,000 under Grants and Subsidies was?

Answer: The majority of funds identified under Grants and Subsidies in the estimates papers relate to the Fertiliser Action Plan being \$610 00. The remainder of funds relate to a number of recoups from other government agencies. The details of these are available in the OEPA financial Statements contained in the OEPA Annual Report (page 82). A copy of the OEPA Annual Report is attached for information.

A breakdown of the \$610 00 for the Fertiliser Action Plan includes:

- Department Agriculture and Food WA for fertiliser trials: \$350,000
- Department of Water for soil amendment planning and trials: \$120,000
- OEPA for project planning, coordination, working group support: \$89,000
- Swan River Trust to establish and run the Urban Users Group: \$14,005
- Publications and promotion: \$10,280
- Scientific expert advice: \$7,300
- Balance remaining: \$19,415

Question No A6: Hon K Travers asked why the funding under Grants and Subsidies fluctuates from \$853 000 to only \$700 000 this year?

Answer: The value of \$853,000 for 2008/09 is based on the actual results for the function contained within the DEC annual report for 2008/09. The revenues reported for the function in 2008/09 contain an apportionment of central DEC revenues that are not available to the OEPA as a revenue source.

The revenues of \$700,000 for OEPA for 2010/11 are exclusive to this department.

Question No A6: Hon S Talbot asked whether any of those resources used to convene, or chair, or in some way manages, four action groups to do with the Fertiliser Action Plan is included within that funding?

Answer: Yes. OEPA project managed the Fertiliser Action Plan which involved fulltime work for one officer (\$89,000) with in kind support from other staff. The Swan River Trust contracted an officer to establish and support the Urban Users Working Group in the early stages of its work. Other allocations were made to the Department of Agriculture and Food WA for fertiliser trials and to the Department of Water for soil amendment planning and trials.

Question No A7: Hon K Travers asked are you holding any of the Fertiliser Action Plan money that is then passed on to other agencies in kind?

Answer: OEPA was the coordinator and distributor of the funds under the NRM allocation and reports to the NRM Office on the progress of the project. Allocations from the grant were made to the Department of Agriculture and Food WA for fertiliser trials; to the Department of Water for soil amendment planning and trials; and to the Swan River Trust to establish and run the urban users group.

Question No A8: Hon P Gardiner asked can you give us an idea of what number of recommendations you have made under strategic advice in different areas which are sitting with nothing being done about them for a start over the past three years?

Answer: The EPA has provided strategic advice over the past three years under section 16 of the Environmental Protection Act 1986 in the following reports. Under each report is an outline of the advice given by the EPA and how that has been acted upon.

2007-08

1281 Keralup (formerly Amarillo) Masterplan, Karnup: Department of Housing and Works

The EPA identified key environmental issues that would need to be addressed in progressing the Keralup Masterplan and relevant investigation that would be required to provide adequate information to the EPA on those issues. The Department of Housing and Works has been undertaking studies to inform the future assessment by the EPA.

1282 Advice on areas of conservation significance in the Preston Industrial Park

The EPA prepared advice to planning authorities about the identification of land within the Preston Industrial Park that retained significant conservation values and should therefore be protected during planning for the Park. The Department of Planning and land owners are taking account of the EPA's advice in preparing rezoning and development applications

1290 Conservation of Roadside Vegetation

The EPA reviewed and gave advice on the issues associated with roadside vegetation and appropriate measures to improve its protection. Main Roads WA

and local governments manage the clearing of native roadside vegetation under Part V of the *Environmental Protection Act 1986*, administered by DEC. The State Government has since established a Native Vegetation Working Group which is expected to provide its policy and legislative recommendations by 30 November 2010.

1293 Advice on Clearing for Mining in the Lane-Poole Reserve Recreation Area, North Willowdale: Alcoa World Alumina Australia

This advice reflected an agreement in relation to proposals by Alcoa to disturb informal reserves established through the Regional Forest Agreement. In this instance, Alcoa proposed to mine and disturb 365 hectares within the Lane-Poole Reserve Recreation Area. The EPA recommended that the proposal does not impose an unacceptable impact on the environment.

2008-09

1306 Kimberley LNG Precinct

The EPA reviewed and gave advice on the site selection process for the LNG Precinct and recommended James Price Point as its preferred site. The Government has decided that James Price Point would be the site to be progressed through relevant approval processes.

1329 Advice on Conservation Values and Review of Nature Reserve Proposals in the Lake Cronin Region

The EPA reviewed and provided advice on the adequacy of the Lake Cronin Nature Reserve and adjacent areas. The Great Western Woodlands initiative launched by the Minister for Environment on 3 November 2010 is consistent with the EPA's advice. The State Government has allocated \$3.8 million over three years for development and implementation.

2009-10

1359 Strategic Environmental Advice on the Dawesville to Binningup Area

This advice was broadly about identifying the regional, national and internationally significant conservation values in this area and indicating that development in the area would have to protect those values or it would not be supported, and that the Yalgorup National park should be expanded to better protect those values. The EPA has been following this advice when considering development proposals in the area.

Question No A8: Hon S Talbot asked perhaps you could give us a list of the areas in various strategic advice where there has been a recommendation to acquire land that currently is available for development over the past three years?

Answer: The EPA has provided strategic advice in relation to the Preston Industrial Park and the Dawesville to Binningup Area that relates to privately owned land and which may be subject to development in the future. In the instance of the Preston Industrial Park, the EPA was primarily giving advice to the planning authorities indicating land that

should not be developed. It did not propose the acquisition of specific land. Similarly, while the EPA included a recommendation in its Dawesville to Binningup Area advice that the Yalgorup National Park should be expanded, the EPA did not identify specific land that should be purchased for that purpose.

Question No A8: Hon K Travers asked what current strategic advice is out there at the moment – a list of those over the past three years?

Answer: The list of relevant EPA reports is provided above.

Question No A9: Hon L Ravlich asked can we have the trend data for 2007-08, 2008-09 and 2009-10 on how many project were managed by DMP and did not get referred to EPA and for those that did get referred can we divide these into two categories – those that are assessed, and those that are not assessed?

Answer: The OEPA does not have records of how many projects are managed by DMP, however, there is some information in DMP's Annual reports on its project approvals.

On the basis of a search of the EPA records, DMP referred 16 proposals to the EPA in 2007-08, 7 proposals in 2008-09 and 5 proposals in 2009-10. Of these referred proposals, 2 proposals received in 2007-08 were determined by the EPA to require assessment.

Question No A9: Hon S Talbot asked in relation to the auditing of approved projects when an enforcement has been taken in the last three years?

Answer: The OEPA was established on 27 November 2009. During 2009-10, enforcement action was commenced on 15 occasions in relation to proposals approved under Part IV of the *Environmental Protection Act 1986*.

Question No A10: Hon K Travers asked for information on the number of audits of approved projects undertaken each year (linked to the above question from Hon S Talbot and the response should be for the last three years)?

Answer: 55 audits of proposals approved under Part IV of the *Environmental Protection Act 1986* were completed during 2009-10.

Question No A11: Hon K Travers asked for an indication of how many projects you expect to audit over each of the four years of the forward estimates?

Answer: The OEPA plans that approximately 60 proposals will be audited each year for the next four years.

Question No A8: Hon P Gardiner asked how many of the audits undertaken in the field in 2009/10 were announced to the proponent beforehand and how many were unannounced?

Answer: During 2009-10, the proponent was advised of the audit intention prior to each of the audits.

I trust this information is of assistance to the committee.

Yours sincerely

A handwritten signature in black ink, appearing to read "John Day". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

**JOHN DAY
MINISTER FOR PLANNING;
CULTURE AND THE ARTS;
ENVIRONMENT & YOUTH**

24 NOV 2010

Memorandum of Understanding for Collaborative Arrangements

between

The Office of the Environmental Protection Authority

and

The Department of Environment and Conservation

Purpose

This is a Memorandum of Understanding (MoU) between the Office of the Environmental Protection Authority (OEPA) and the Department of Environment and Conservation (DEC).

This MoU confirms the principles of a valued and constructive working relationship between the organisations and establishes working arrangements for effective and efficient co-operation between the agencies.

The practical intent is to describe the processes the organisations use to plan and agree the provision of resourcing, services and advice to enable both agencies to perform their respective statutory functions within the *Environmental Protection Act 1986* (the Act). The MoU also contains schedules of delegations and details administrative arrangements, communication protocols and related matters as agreed from time to time.

Objectives

The broad objectives of the MoU are to:

- clearly define the respective roles of the OEPA and DEC;
- ensure relevant strategies and programmes of the OEPA and DEC are integrated and complementary;
- optimise the use of resources;
- describe how the OEPA and DEC will work together; and
- optimise information sharing and knowledge management.

Background

On 29 September 2009 Cabinet approved the establishment of the OEPA. Establishment of the OEPA is consistent with a Government election commitment to improve approvals processes and also strengthens the provision of independent environmental advice. The OEPA will support the Environmental Protection Authority (EPA) and replace the EPA Service Unit which was formerly part of DEC.

Both the OEPA and DEC are departments of State established under the provisions of the *Public Sector Management Act 1994*. Both departments fall within the responsibility of the Minister for Environment and both have responsibilities under the *Environmental Protection Act 1986*. As a result of the Cabinet decision, the OEPA will be responsible for Part III of the Act – Environmental Protection Policies, and Part IV – Environmental Impact Assessment. Part V – Environmental Regulation, will continue to be the responsibility of DEC.

Both departments share many common objectives. Sharing of resources, information and knowledge optimises the efficiency and quality of advice provided to the Minister and of service delivery by the respective departments.

The OEPA services the EPA, an independent, statutory authority which provides advice to Government. DEC provides specialist knowledge and advice to the OEPA based on its recognised expertise in many areas of environmental management. The OEPA also provides specialist knowledge and advice to DEC based on its special expertise in other areas relevant to environmental management.

The State Solicitor's Office has advised that until the Act is amended, it can only be administered through one Department and the Chief Executive Officer of that Department is the CEO under the Act for all purposes. Therefore, to enable the OEPA to carry out its functions, the CEO of DEC has delegated relevant authorities to the CEO, or appropriate officers, of the OEPA.

Shared Vision and Partnership

This MoU confirms (within annual budget parameters established by Government from the consolidated fund and any other sources of funding legitimately secured by each agency) that:

- DEC has agreed to provide a bureau service to the OEPA subject to a Service Level Agreement;
- DEC and OEPA will share information, knowledge and advice from a wide range of resources on matters where each agency has specialist expertise; and
- OEPA and DEC will collaborate on matters of mutual interest for the protection of the environment and promotion of conservation values in Western Australia.

Partnership Principles

The basis of this MoU is a commitment to foster and continue to improve cooperation between the OEPA and DEC through consultation, open communication and collaboration at strategic and operational levels for the mutual benefit of the protection and conservation of the environment.

The intent of this agreement is to support the roles and functions of the parties as set out in relevant legislation.

Three key principles are agreed as follows:

- respect for roles;
- planning and working co-operatively; and
- effective consultation and communication.

Respect for Roles

DEC and the OEPA acknowledge the statutory roles and accountabilities of their respective organisations and will use best endeavours towards the intent of this agreement and any subsequent working arrangements. The key considerations are:

- separate existence of the two agencies;
- independence of the EPA;
- role of the Minister;
- responsibilities of OEPA and DEC as separate departments of State in the provision of advice, each in its own right, to the Minister;
- arrangements under which each agency may access information, advice and services from the other and more generally from other government agencies and outside sources; and
- delegations agreed between the Director General of DEC and the General Manager of OEPA from time to time to assist in the efficient and effective operation of responsibilities assigned to the OEPA.

Planning and Working Cooperatively

DEC will provide informal and formal advice to the OEPA.

It is acceptable for the agencies to consult directly through individual branches or officers regarding informal advice (such as drafting Ministerial conditions and providing comments on monitoring reports etc).

Requests for formal advice from DEC are to be made in writing. The process for obtaining formal advice and what constitutes formal advice is articulated in an exchange of letters between the agencies.

Senior officers of the DEC and OEPA will meet quarterly to review working arrangements.

Environment Protection and Heritage Council of Australia and New Zealand

The *National Environment Protection Council (Western Australia) Act 1996* requires that the Council member (currently the Minister for Environment) nominate a Standing Committee member. The Director General of DEC is the member.

DEC is responsible for briefing the Minister for Environment prior to meetings of the Council. DEC will provide copies of all meeting agendas and papers for both the Council and Standing Committee to OEPA who will provide relevant advice to the Minister and the Director General.

Transitional Arrangements

As a result of establishing the OEPA, there are a number of 'transition' projects that require attention to clarify roles, responsibilities and resourcing. In particular:

- **Oil spill response**

DEC will represent the OEPA and the Department of Fisheries on the Western Australian (National Plan) State Committee established under the Western Australian Marine Oil Pollution Emergency Management Plan (WestPlan MOP).

The role of Environmental and Scientific Coordinator, established under WestPlan MOP, will continue to be undertaken by the Manager of the Marine Ecosystems Branch of the OEPA, or his alternate.

The specific responsibilities relating to oil spill response are detailed in Schedule 1.

- **Gorgon gas development undertakings**

The roles and responsibilities of DEC and the OEPA in relation to Ministerial statements 748 and 800 (Gorgon LNG proposal) are articulated in an exchange of letters between the agencies.

- **Pluto project undertakings**

The roles and responsibilities of DEC and the OEPA in relation to Ministerial statement 757 (Pluto LNG proposal) are articulated in an exchange of letters between the agencies.

Effective Consultation and Communication

Effective consultation and communication is recognised as essential to the achievement of the objectives of this MoU. Communication will be based on the following principles:

- the parties value a working relationship based on straight talk and good consultative processes with each other and the community;
- the OEPA and DEC will endeavour to ensure that all major public announcements material to the themes of this agreement and the role of the two agencies are the subject of prior consultation; and
- the parties recognise the importance of confidentiality to good corporate governance and commit to ensuring the integrity of processes where commercial or other sensitive material is exchanged or discussed.

Contentious Issues Management

The agencies will undertake to co-ordinate advice on contentious issues to the Minister and media.

Where both agencies are involved in an issue, agreement will be made on which agency will have the lead and respond with advice from both agencies. Final sign-off and transmittal will be from the lead agency following agreement (CEO or CEO's delegate sign-off) by the other agency, with a copy of the final version to be sent to the non-lead agency.

Agreement in Good Faith

This MoU is an agreement made in good faith based on the commitment of the parties to an effective and sustainable partnership. It does not seek to establish a legal relationship between the parties. The parties may periodically choose to review the commitments and understandings set out in this MoU.

This MoU can be amended by mutual agreement.


Dispute Resolution

Disputes between the parties arising from the operation of this MoU where unresolved quality, performance or resourcing matters arise can only be resolved by the OEPA and DEC, represented by their nominees.

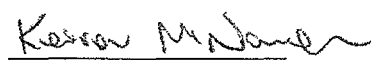
Term

The agreement will date from 11 June 2010 and is to be reviewed annually.

Signed:


Kim Taylor
General Manager
Office of the Environmental
Protection Authority

Date 18 November 2010


Keiran McNamara
Director General
Department of Environment
and Conservation

Date 15 November 2010

SCHEDULE 1

Oil Spill Response Arrangements

Responsibility for implementing the Oiled Wildlife Response Plan, which is a sub-plan of WestPLAN MOP, will remain with the Nature Protection Branch of the Department of Environment and Conservation.

The role of the Environmental and Scientific Coordinator is to provide the Incident Controller with timely 'whole of government' advice on priorities for environmental protection and on the appropriateness of proposed response strategies. The advice is developed through consultation with representatives of DEC and the Department of Fisheries.

DEC and the OEPA agree that Dr Ray Masini (OEPA) is the most suitably qualified person to undertake the role of Environmental and Scientific Coordinator. Although the position sits more appropriately within DEC, it is currently fulfilled by Dr Masini on the basis of his personal credentials.

The role of Oiled Wildlife Coordinator, established under WestPLAN MOP, will continue to be undertaken by the Supervising Wildlife Officer, Marine, in the Nature Protection Branch of the Department of Environment and Conservation, or his alternate.

Pollution response and waste management will remain the responsibility of the Pollution Response Unit of the Department of Environment and Conservation.

Department of Environment and Conservation regional offices will remain responsible for on-scene response and provide personnel to participate in the Incident Management team.

The operational response role for oiled wildlife will remain with the Department of Environment and Conservation Nature Protection Branch.

The parties recognise that these roles and responsibilities will be the subject of further discussion and review.

**COMMUNICATION PROTOCOL FOR ADVICE
ON THE ASSESSMENT OF PROPOSALS BETWEEN
THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION AND
THE OFFICE OF THE ENVIRONMENTAL PROTECTION AUTHORITY**

It is recognised by both agencies that close interaction is necessary – both formal and informal – for Department of Environment and Conservation (DEC) advice to be considered in the assessment of proposals under Part IV of the *Environmental Protection Act 1986* (EP Act).

While informal cooperation between individual officers and individual branches is assumed and expected, formal consultation procedures are detailed below.

The Office of the Environmental Protection Authority (OEPA) will encourage proponents to discuss issues directly with DEC throughout the environmental impact assessment process. The extent to which DEC engages in those discussions is a matter for DEC to determine on a case by case basis.

The OEPA (or proponents as suggested by OEPA) may seek informal comment at DEC Branch Manager level (copy to the DEC Advice Coordinator) on draft documents (including study reports and their findings) on a case by case basis. DEC will determine the level of response based on potential environmental impacts and risks and available capacity.

To meet target times for formal advice requests referred to in this document, good communication between OEPA and DEC staff during the assessment process on the progress of assessments and upcoming advice requests will be necessary.

Document distribution protocol

The OEPA project officer should contact the DEC Advice Coordinator to determine who and where in DEC hard or electronic copies are to be sent on a case by case basis. DEC's Advice Coordinator will consult with the relevant DEC officers and advise the OEPA project officer of document distribution.

1. Referral Documents

The OEPA will consult with relevant areas in DEC, consistent with the document distribution protocol, in cases where the EPA is considering a recommendation to not assess on the basis that the proposal can be managed under Part V of the EP Act.

2. Environmental Scoping Document (ESD)

a) Draft prepared by proponent (Public Review)

The OEPA will request formal advice from DEC on the draft ESD at the time of public comment.

The request for formal advice will be made in writing by the General Manager, OEPA to the Manager, Environmental Management Branch (EMB), with a copy to the DEC Advice Coordinator. The OEPA will distribute the documents as per the above document distribution protocol.

Consolidated DEC comments will be provided to the OEPA within 15 business days (3 weeks).

b) Draft prepared by OEPA (no public review)

The request for formal advice will be made in writing by the General Manager, OEPA to the Manager EMB, with a copy to the DEC Advice Coordinator, plus hard copies and electronic copies to identified areas in DEC as determined by the document distribution protocol.

Consolidated DEC advice will be provided to the General Manager, OEPA within 10 business days (2 weeks).

These steps will still apply for a "no comment" response from DEC.

3. Formal Environmental Review Advice

a) Assessment on Proponent Information (API)

The OEPA expects proponents to engage in consultation with State and local government agencies and stakeholders who are interested in, or affected by their proposals, including DEC, to address any outstanding matters of concern prior to formal document submission to OEPA. The proponent should provide a copy of DEC's written advice to the proponent, at time of submission to OEPA.

The OEPA may request formal advice from DEC on the API document before the EPA completes its assessment. The request for formal advice will be made in writing by the General Manager, OEPA to the Manager EMB, with a copy to the DEC Advice Coordinator, plus provision of hard and electronic copies to identified areas in DEC as determined by the document distribution protocol.

Consolidated DEC advice will be provided to the General Manager, OEPA within 15 business days (3 weeks).

These steps will still apply for a "no comment" response from DEC.

b) Public Environmental Review (PER).

This applies to DEC review of the environmental review document (the formal proposal) during the public review (PER). When the proponent's document is available for public and agency comment, the General Manager, OEPA will notify the Director General of DEC in writing, with copies to the Manager EMB and the DEC Advice Coordinator plus

forward hard copies to identified areas in DEC as determined by the document distribution protocol.

Consolidated DEC advice will be provided to the General Manager OEPA within the public comment period.

Proponent's Response to Submissions

In cases where DEC is an identified DMA or involved agency, the proponent's response to the OEPA on DEC's advice will be sent to the DEC Advice Coordinator for information to inform future input at the EPA meeting and at the recommended conditions stage.

4. Draft Recommended Conditions

It is standard practice during assessments for the OEPA to consult informally at DEC Manager level during the development of draft environmental conditions.

In cases where DEC is a Decision Making Authority (DMA), the OEPA will formally consult with DEC on draft recommended conditions prior to the release of the EPA report. Consistent with EPA Bulletin number 11, the consultation at this stage will be limited to matters of fact, and technical or implementation issues. Wherever possible, the OEPA will endeavour to provide prior advice of its intention to seek advice on a particular condition set.

A request for comment will be made by the General Manager, OEPA to the Manager EMB, with a copy to the DEC Advice Coordinator, plus identified areas in DEC as determined by the document distribution protocol.

Consolidated DEC advice will be provided to the General Manager, OEPA within 5 business days (1 week).

5. Post Implementation

a) Section 45C - Post Assessment Approvals

Where an application has been made under section 45C for amendment of a proposal, the OEPA will seek written advice from DEC prior to completing the relevant process, where DEC is a DMA.

A request for comment will be made by the General Manager, OEPA to the Manager EMB, with a copy to the Advice Coordinator, plus hard and electronic copies to identified areas in DEC as determined by the document distribution protocol.

Consolidated DEC advice will be provided to the General Manager, OEPA within 10 business days (2 weeks) with best endeavours to provide a response within 5 business days (1 week).

b) Section 46 – Amendment of Conditions

Where an application has been made under section 46 for amendment of conditions, the OEPA will seek written advice from DEC prior to completing the relevant process, where DEC is a DMA. The OEPA may also seek advice where DEC is an involved agency.

A request for comment will be made by the General Manager, OEPA to the Manager EMB, with a copy to the Advice Coordinator, plus hard and electronic copies to identified areas in DEC as determined by the document distribution protocol.

Consolidated DEC advice will be provided to the General Manager, OEPA within 10 business days (2 weeks) with best endeavours to provide a response within 5 business days (1 week).

6. Environmental Management Plans

Many Ministerial Statements contain Conditions that require the preparation and implementation of Environmental Management Plans (EMP). The OEPA will encourage direct proponent communication and consultation with DEC, in order to address any outstanding matters of concern to DEC prior to submission of management plans. DEC will determine the level of response based on potential environmental risk and available capacity. The OEPA will seek written advice from DEC prior to completing the relevant process.

A request for comment will be made by the General Manager, OEPA to the Manager EMB, with a copy to the DEC Advice Coordinator, plus hard and electronic copies provided to identified areas in DEC as determined by the document distribution protocol.

Consolidated DEC advice will be provided to the General Manager OEPA within 15 business days (3 weeks).

Timelines

DEC will use its best endeavours to meet the timelines for advice outlined in this protocol. Both parties recognise that this may not always be achievable. In these circumstances the OEPA will accommodate reasonable delays in the provision of DEC advice.

DEC Contact

The Director General of DEC may nominate a particular DEC officer, other than the Manager of EMB or the DEC Advice Coordinator, as the point of contact in respect of any specific proposal.

Problem Solving/Escalation of issues

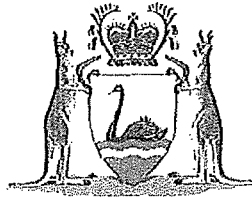
It is desirable for officers of the OEPA and DEC to meet to clarify and resolve issues of a technical or policy nature, or matters of interpretation, that arise from time to time.

If issues remain unresolved, Managers of the relevant Branches of DEC and OEPA will meet to discuss the matter. If necessary, these issues will be escalated to the relevant Directors to resolve.

Where necessary, matters will be referred to the General Manager, OEPA and the Director General, DEC.

Review

These procedures are to be reviewed six months after implementation and annually thereafter.



Memorandum of Understanding
between the
Department of Mines and Petroleum
and the
Environmental Protection Authority
in relation to the referral of
**Mineral and Petroleum (Onshore and Offshore) and
Geothermal Proposals**

Endorsement

The purpose of this Memorandum of Understanding is to establish an efficient and transparent administrative process for the Department of Mines and Petroleum to refer environmentally significant mineral, petroleum and geothermal proposals to the Environmental Protection Authority, pursuant to Part IV of the Western Australian *Environmental Protection Act 1986*.

The Environmental Protection Authority does not abrogate its responsibilities in regard to environmental assessment. The Authority can, under the *Environmental Protection Act 1986*, call in for assessment any proposal that is likely to have a significant effect on the environment.

Richard Sellers
Director General
Department of Mines and Petroleum

Date:

26/6/09

Dr Paul Vogel
Chairman
Environmental Protection Authority

Date:

29.6.09

1 Purpose

This document outlines the administrative arrangements between the Environmental Protection Authority (the Authority) and the Department of Mines and Petroleum (the Department) in the referral of proposals under section 38 of the *Environmental Protection Act 1986*. It establishes an agreed process for the Department to refer to the Authority for assessment those mineral, petroleum and geothermal proposals likely to have a significant impact on the environment.

The Authority and the Department commit to working cooperatively to ensure that:

- the objectives of the *Environmental Protection Act 1986* are met
- applications are considered efficiently and effectively, and
- the process is clear, consistent and transparent

A proposal may also require approvals under other legislation and it is the proponent's responsibility to ensure that all necessary State and Commonwealth regulatory requirements are met.

2 Relevant Legislation and Scope

The MoU facilitates the administration of the following legislation:

- *Environmental Protection Act 1986* and Regulations - section 38 requires the Department and any other Decision Making Authority to refer to the Authority any proposal that is likely, if implemented, to have a significant effect on the environment. This includes any proposal that is environmentally significant for reasons other than the factors listed in this MoU
- *Mining Act 1978* and Regulations - that relates to mining on land undertaken in accordance with the *Mining Act 1978*, and on freehold land subdivided before 1899 where most minerals are not 'owned' by the State, and
- *Petroleum and Geothermal Energy Resources Act 1967*, *Petroleum Pipelines Act 1969*, *Petroleum (Submerged Lands) Act 1982* and the relevant Schedules and Regulations, that relate to petroleum exploration and production within Western Australian coastal waters and onshore, and covers seismic and other ground disturbing surveys, drilling, facility (construction, installation, operation, modification and decommissioning), pipeline (construction, installation, operation, modification and decommissioning), and geothermal energy activities onshore

This MoU does not apply to proposals on Commonwealth lands or in Commonwealth waters but recognises that the Department is a lead agency for administration of petroleum legislation for Commonwealth Offshore Areas.

The MoU does not prejudice the provisions of any other written law or the statutory responsibilities of other Government agencies or their respective Ministers. However, to the extent that an inconsistency may arise then the provisions of the *Environmental Protection Act 1986* or approved policy prevails, in accordance with section 5 of the Act.

Matters relating to pre-1899 Crown grant lands and consequently not subject to the *Mining Act 1978*, are managed under the *Environmental Protection Act 1986*.

3 Roles and responsibilities

The following roles apply:

- The Authority has lead responsibility for providing advice to the Minister for Environment regarding environmental protection in the State
- The Authority is responsible for conducting the environmental impact assessment process as required under the *Environmental Protection Act 198*
- The Department has lead responsibility for the regulation of mineral, petroleum and geothermal exploration and development in the State, and
- The Department is a Decision-Making Authority under the *Environmental Protection Act 1986*

4 Agreement

In respect to the purpose of this MoU, the Authority and the Department agree to:

- be effective, timely, transparent and accountable;
- share information, including spatial data, to assist with decision-making under this MoU
- ensure that when referrals occur, the exchange of information and documentation occurs in a timely manner
- consult and pursue collaboration on new and proposed changes to relevant policies, guidelines and standards
- consult and pursue collaboration on new and emerging issues not adequately addressed by the MoU
- communicate decisions through the Authority's Director EPA Service Unit and the Department's Director Environment Division,
- publicly advise on the assessment status of proposals on each website (www.epa.wa.gov.au and www.dmp.wa.gov.au respectively), and
- meet as agreed to discuss specific proposals likely to be referred to the Authority and the general effectiveness of this MoU

In respect to the purpose of this MoU, the Department will:

- require proponents to submit adequate information with their application

- refer to the Authority those proposals it considers likely to have a significant effect on the environment if implemented
- use the best available information to promote industry leading practice
- require proponents to identify and minimise environmental risks associated with their proposals
- seek advice from appropriate agencies, research institutions and independent specialists to minimise the environmental risk of a proposal and determine whether a proposal is likely to have a significant effect on the environment, and
- review each proposal against relevant legislation, policies, guidelines and standards

This agreement between the Authority and the Department recognises that it is the proponent's responsibility to undertake environmental investigations in accordance with relevant guidelines and standards and demonstrate that all practicable measures will be taken, and that any residual risks or impacts are acceptable.

5 Factors to consider in determining whether a proposal is likely to have a significant effect on the environment if implemented

The Department's determination of whether a proposal is likely to have a significant effect on the environment if implemented, and therefore require referral to the Authority, will occur through the consideration of;

- those matters set out in Schedules 1,2 and 3, and
- the capacity of the Department's regulatory processes to deliver an agreed outcome where there would be no residual effects that would be environmentally significant

The following are general factors for determining the environmental significance of a proposal:

- character of the receiving environment
- magnitude, extent and duration of anticipated change
- resilience of the environment and its ability to cope with change
- confidence of prediction of change
- existence of environmental values, policies, guidelines and standards against which a proposal can be assessed, and
- degree of public interest in environmental issues likely to be associated with the proposal

Environmental impact assessment principles will be applied in decision making, including consideration of:

- risk-based assessment of impacts, to include a systematic assessment to identify and characterise the significant potential impacts, so that decisions made are informed by the significance of the environmental risks posed by the environmental aspects of a proposal
- cumulative impacts, so that all decisions will consider the short and long term and cumulative impacts of a proposal or a number of proposals in an area on the environment
- outcome or performance based conditions that set a specific outcome to be met, and are clear and auditable, and
- the strategic context for a proposal is considered early and with stakeholder involvement, including the outcome of previous strategic assessments undertaken by the Authority.

6 Duration and Review

The MoU will commence from the date of signing and continue in its terms until reviewed or terminated by written notice by either party. It will be reviewed if there is a change of legislation or State Government policy affecting the subject of the MoU, or one of the parties determines that a review is required. The review will be undertaken jointly by the parties.

7 Audit

Administrative processes and decision-making under this MoU may be audited every 12 months and the results of the audit will be publicly available.

CRITERIA FOR REFERRAL OF ONSHORE MINERAL PROPOSALS

This schedule should be read in conjunction with parts 4 and 5 of this MoU

Factors		Exploration proposals that result in ground disturbance	Development, productive mining, excess tonnage applications and construction proposals
1	Extracting from an open pit or underground operation greater than 10 million tonnes of material (waste and ore) per annum	N/A	Refer to EPA
2	Processing of greater than 2 million tonnes of ore per annum	N/A	Refer to EPA
3	On pre-1899 Crown Grant lands and consequently not subject to the <i>Mining Act 1978</i>	Refer to EPA	Refer to EPA
4	Wholly or partly within a Red Book Area or Bush Forever Site	DEC to advise DMP if EPA referral is required	Refer to EPA if proposal is within, or wholly or partly within 2 km of the area
5	Wholly or partly within the following DEC managed areas ¹ : <ul style="list-style-type: none"> National Park Nature Reserve Conservation Park State Forest Timber Reserve Regional Park Proposed DEC Reserve DEC Pastoral Lease Threatened Ecological Community 	DEC to advise DMP if EPA referral is required	Refer to EPA if proposal is within, or wholly or partly within 2 km of the area
6	Having a direct or indirect effect upon environmentally significant lakes and wetlands ² or a declared occupied townsite	Refer to EPA	Refer to EPA
7	Impact to a water resource area, including a water reserve, a declared or proposed water supply catchment area or groundwater protection area	DoW to advise DMP if EPA referral is required	Refer to EPA if proposal is within, or wholly or partly within 2 km of a water resource area
8	Within 2km of the coastline or a Private Conservation Reserve	DMP to assess	Refer to EPA

Factors		Exploration proposals that result in ground disturbance	Development, productive mining, excess tonnage applications and construction proposals
9	Wholly or partly within the following sensitive areas: <ul style="list-style-type: none"> ▪ World Heritage Property ▪ Biodiversity Reserve ▪ Heritage Site ▪ Soil Reference Site 	Refer to EPA	Refer to EPA if proposal is within, or wholly or partly within 2 km of the area
10	DMP will use its best judgement, and where necessary seek advice from the EPA Service Unit, to determine whether proposals require referral to the EPA where there is potential for significant impact on areas of outstanding scenic or landscape values.	Refer to EPA on a case by case basis	Refer to EPA on a case by case basis

Notes

- ¹ Proposals that DEC considers may result in a significant impact on: threatened ecological communities; priority listed ecological communities; rare and/or threatened flora or fauna listed under the *Wildlife Conservation Act 1950*, priority listed flora or fauna, remnant rainforest areas or mangroves should be referred to the EPA
- ² Including *Environmental Protection Policy* lakes and wetlands, conservation category wetlands, Ramsar wetlands and sites listed under JAMBA or CAMBA.

CRITERIA FOR REFERRAL OF ONSHORE PETROLEUM ACTIVITIES

This schedule should be read in conjunction with parts 4 and 5 of this MoU

Activity	Protected areas ¹	Red Book areas ²	Sensitive riparian/ groundwater areas ³	Other State areas ⁴	Potential for significant impact
Seismic or other ground disturbing surveys	Refer to EPA	Refer to EPA	Refer to EPA	DMP to assess	Refer to EPA
Drilling	Refer to EPA	Refer to EPA	Refer to EPA	DMP to assess	Refer to EPA
Facility (construction, installation, operation, modification & decommissioning)	Refer to EPA	Refer to EPA	Refer to EPA	DMP to assess	Refer to EPA
Pipeline (construction, installation, operation, modification & decommissioning)	Refer to EPA	Refer to EPA	Refer to EPA	DMP to assess	Refer to EPA

Notes

- i. Proposals that are wholly or partly within existing *Conservation and Land Management Act 1984* reserves are forwarded by DMP to DEC under other consultative arrangements. DEC may recommend that such proposals require referral to the EPA.
- ii. Proposals that DEC considers may result in a significant impact on: threatened ecological communities; priority listed ecological communities; rare and/or threatened flora or fauna listed under the *Wildlife Conservation Act 1950* or priority listed flora or fauna will be referred to the EPA.
- iii. Proposals that require native vegetation clearing will be assessed in accordance with the *Environmental Protection Act 1986* and *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*. The native vegetation clearing process is covered by a separate administrative arrangement between DMP and DEC. Proposals that are considered to be environmentally significant may be referred to the EPA.

¹ Protected areas include:

- | | |
|-----------------------------------|-----------------------|
| ▪ Conservation Reserve | ▪ Regional Park |
| ▪ Threatened Ecological Community | ▪ Biosphere Reserve |
| ▪ World Heritage Property | ▪ Soil Reference Site |
| ▪ Bush Forever Site | ▪ Heritage Site |

² Several Red Book Areas have been formally replaced by endorsed DEC Regional Management Plans.

³ For example a salt lake, an estuary, a wetland or system of standing water, or in a position from which an oil spill could enter any of the above, or a designated groundwater area or within 2km of the coastline, or having an impact on *Environmental Protection Policy* lakes and wetlands, conservation category wetlands, Ramsar wetlands and sites listed under JAMBA or CAMBA.

⁴ Sites that are wholly or partly within 2km of the boundary of a declared occupied townsite or a Private Conservation Reserve should be referred to the EPA.

Schedule 3

CRITERIA FOR REFERRAL OF OFFSHORE PETROLEUM ACTIVITIES

This schedule should be read in conjunction with parts 4 and 5 of this MoU

Activity	DEC Marine Conservation Reserves ¹							Other Marine Areas		
	Marine Nature Reserves	Marine Parks ²				Marine Management Area		Other Marine Protection Areas ⁴	Other WA Coastal Waters	Commonwealth Waters
		Sanctuary Zone	Recreational Zone	Special Purpose Zone ³	General Use Zone	Special Protection Zones	Unzoned			
Seismic survey (airgun towed array)	Closed ⁵	Closed ⁵	Closed ⁵	Refer to EPA	Refer to EPA	Refer to EPA	DMP seeks advice from DEC ^{6,7}	Refer to EPA	DMP to assess ⁶	DMP to assess ⁸
Exploration or appraisal drilling	Closed	Closed	Closed	Refer to EPA	Refer to EPA	Refer to EPA	DMP seeks advice from DEC ⁷	Refer to EPA	Refer to EPA if within 3nm of coast, islands or intertidal reefs	DMP to assess
Production development and/or pipelines ⁹	Closed	Closed	Closed	Refer to EPA	Refer to EPA	Refer to EPA	Refer to EPA	Refer to EPA	Refer to EPA	DMP to assess

Notes

- i. Activities in State or Commonwealth waters may also require referral to DEWHA under the *Environment Protection and Biodiversity Conservation Act 1999*.
 - ii. Proposals that DEC considers may result in a significant impact on: threatened ecological communities; priority listed ecological communities; rare and/or threatened flora or fauna listed under the *Wildlife Conservation Act 1950* or priority listed flora or fauna will be referred to the EPA.
 - iii. Proposals that require native vegetation clearing will be assessed in accordance with the *Environmental Protection Act 1986* and *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*. The native vegetation clearing process is covered by a separate administrative arrangement between DMP and DEC. Proposals that are considered to be environmentally significant may be referred to the EPA.
- ¹ DMP will inform DEC Environmental Management Branch (EMB) of any proposals in existing Marine Conservation Reserves or areas indicated in the Marine Parks & Reserves Schedule Working Group Report. EMB will consult with relevant specialists within other sections of DEC.
- ² Drilling and development are not permitted in Ningaloo Marine Park.
- ³ Drilling and development are permitted in parts of special purpose or general use zones, pending EPA assessment.

- ⁴ Protected areas other than those managed under the *Conservation and Land Management Act 1984*. For example areas protected under the *Fish Resources Management Act 1994*, the *Rottenest Island Authority Act 1987*, historic wreck sites and World Heritage Areas.
- ⁵ For minor extensions of adjacent surveys refer to EPA.
- ⁶ All intertidal zone seismic proposals and also seismic proposals in shallow water (<15m) in turtle breeding areas during turtle breeding season require referral to the EPA. Seismic proposals which may affect migrating whales or are located in whale mating/calving areas (e.g. Buccaneer Archipelago area) in the breeding season also require referral to the EPA.
- ⁷ DMP seeks advice from DEC as to whether the proposal is consistent with the Marine Management Plan, or is otherwise environmentally significant (for example because of potential for impacts on breeding turtles from artificial lighting), in order to determine if referral to the EPA is required.
- ⁸ Outside EPA jurisdiction, assessed and managed by DMP.
- ⁹ Additional production wells from an existing production facility would not normally require referral and would be managed by DMP consistent with the existing EPA environmental conditions.

Appendix A Acronyms, Short Titles and Interpretation

For the purpose of this document, the following acronyms and short titles will be used:

DEC	Department of Environment and Conservation
DEWHA	Department of Environment, Water, Heritage and the Arts
DMP	Department of Mines and Petroleum (the 'Department')
DoW	Department of Water
EPA	Environmental Protection Authority (the 'Authority')
MoU	Memorandum of Understanding

Definitions

The terminology used in this document is defined below:

Biosphere Reserve	An area of terrestrial and coastal/marine ecosystem that is internationally recognised under UNESCO's 'Man and the Biosphere' program.
Decision-Making Authority	Has the meaning as defined under section 3 of the <i>Environmental Protection Act 1986</i> ('the Act') and means a public authority, including a Minister, that is notified in writing by the EPA that they must await authorisation by the Minister administering the Act before making a decision.
Decommissioning	The process that begins near or at the cessation of resource development and ends with the removal of all infrastructure and final rehabilitation of the operation.
Environmentally Sensitive Area	An area that is declared in the Environmental Protection (Environmentally Sensitive Areas) Notice 2005. A Native Vegetation Map Viewer is available on the DEC website. It provides an up-to-date search tool to locate declared Environmentally Sensitive Areas within Western Australia. Available at www.dec.wa.gov.au (refer to the links to Management and Protection: Plants: Native Vegetation: Data).
Geothermal [activities]	Has the meaning under the <i>Petroleum and Geothermal Energy Resources Act 1967</i> .
Heritage site	A site, including an historical, indigenous and other heritage site, listed under the <i>Heritage Act of WA 1990</i> , <i>National Trust of Australia (WA) Act 1964</i> or <i>Aboriginal Heritage Act 1972</i> . Also refer to EPA Guidance Statement 41: Assessment of Aboriginal Heritage.
Land	Under the <i>Mining Act 1978</i> includes water, and also includes the foreshore and sea bed within the meaning of section 25.
Leading practice	Means the best way of doing things at a given site. Leading practice is flexible and innovative in developing solutions that match site-specific requirements and is as much about approach as it is about a fixed set of practices or a particular technology (DITR 2006)
Minerals	Means naturally occurring substances obtained or obtainable from any land by mining operations carried out on or under the surface of the land, but does not include (a) soil; or (b) a substance the recovery of which is governed by the <i>Petroleum and Geothermal Energy Resources Act 1967</i> or the <i>Petroleum (Submerged Lands) Act 1982</i> ; or (ba) without limiting paragraph (b), geothermal energy resources as defined in the <i>Petroleum and Geothermal Energy Resource Act 1967</i> section 5(1); or (c) a meteorite as defined in the <i>Museum Act 1969</i> ; or (d) any of the following substances if it occurs on private land (i) limestone, rock or gravel; or (ii) shale, other than oil shale; or (iii) sand, other than mineral sand, silica sand or garnet sand; or (iv) clay, other than kaolin, bentonite, attapulgite or montmorillonite.
Mining	Includes fossicking, prospecting and exploring for minerals, and mining operations (s8 of <i>Mining Act 1978</i>).

Mining operations	Means any mode or method of working whereby the earth or any rock structure stone fluid or mineral bearing substance may be disturbed removed washed sifted crushed leached roasted distilled evaporated smelted or refined or dealt with for the purpose of obtaining any mineral therefrom whether it has been previously disturbed or not and includes (a) the removal of overburden by mechanical or other means and the stacking, deposit, storage and treatment of any substance considered to contain any mineral; (b) operations by means of which salt or other evaporites may be harvested; (c) operations by means of which mineral is recovered from the sea or a natural water supply; and (d) the doing of all lawful acts incident or conducive to any such operation or purposes.
National park	Has the meaning assigned to it under the <i>Conservation and Land Management Act 1984</i> .
Nature reserve	Has the meaning assigned to it under the <i>Conservation and Land Management Act 1984</i> .
Offshore/ Offshore Area	Means an offshore area of a State or Territory within the meaning of section 7 of the <i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> .
Onshore	Any locality on the mainland or islands (including Barrow Island) under Western Australian jurisdiction that lies above the mean low water mark.
Petroleum	Petroleum includes: (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state; (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and one or more of the following, hydrogen-sulphide, nitrogen, helium and carbon dioxide, and includes any petroleum as defined by (a), (b) or (c) that has been returned to a natural reservoir, but excludes oil shale.
Petroleum activities	Operations carried out under authority or consent of the <i>Petroleum and Geothermal Energy Resources Act 1967</i> , <i>Petroleum Pipelines Act 1969</i> and <i>Petroleum (Submerged Land) Act 1982</i> and includes the following: seismic and other ground disturbing surveys; drilling; facility (construction, installation, operation, modification and decommissioning); pipeline (construction, installation, operation, modification and decommissioning) and any other upstream petroleum operations; and geothermal energy activities onshore.
Practicable	Capable of being put into practice, done, or effected, especially with the available means or with reason or prudence.
Proposal	An application to the Department for a proposed exploration, mineral or petroleum activity. It includes measures to protect the environment and to rehabilitate disturbed ground. Under the <i>Environmental Protection Act 1986</i> , a proposal can be a project, plan, programme, policy, operation, undertaking or development of change in land use, or amendment of any of these (section 3).
Red Book areas	Proposed conservation reserves for WA recommended by the EPA including the Forest Management Plan and the Department of Environment and Conservation's Regional Management Plans where they formally supercede Red Book areas where such plans have been endorsed).
Refer/Referral	Referral means a proposal that is referred to the EPA for consideration under Part IV (section 38) of the <i>Environmental Protection Act 1986</i> .
Risk	Means the chance of something happening that will have an effect on objectives (i.e. a component of the environment) in accordance with AS / NZS 4360:2004.
State	The State of Western Australia.
Systematic assessment	Clear processes that describe the decisions and decision making criteria, as amended from time to time, are appropriately documented and available to the other party.
Water Resource Management Area	An area where legislation administered by the Department of Water applies.