

Manjimup and Pemberton Landowners
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19 February 2018

Hon Mark McGowan BA LLB MLA
Premier
1 Parliament Place
West Perth, WA 6005

Dear Premier

DENIAL OF PROCEDURAL FAIRNESS FOR FOOD PRODUCERS IN MANJIMUP

Manjimup and Pemberton Landowners (MPL) write to request your intervention to provide procedural fairness and restoration of statutory rights of water self-supply food producers in the Shire of Manjimup. By administrative decisions, the Department of Water and Environmental Regulation ('the Department') has stopped issuing of new water licences in eight sub-catchments of the Donnelly River and in six other vital sub-catchments of the Warren and Donnelly Rivers. This sudden action taken by the Department in late 2017 is to favour the subsidised and corporatised Southern Forests Irrigation Scheme; please see advertisements of 20 December 2017 in [Attachment](#).

We request the State Government:

- Restore the rights to water of self-supply water users in the fourteen sub-catchments;
- Appoint a Water Resource Management Committee, provided for at section 26GK of the *Rights in Water and Irrigation Act 1914*, to plan for and manage water allocations in the Warren and Donnelly River areas.
- Prepare a local area management plan for the Warren and Donnelly River areas in accordance with Part III, Division 3D 'Plans for management of water resources' of the *Rights in Water and Irrigation Act 1914*.
- Appoint a Water Resources Council for the State under Part IIA of the *Water Agencies (Powers) Act (1984)*.

1. Denial of procedural fairness and the *Warren-Donnelly surface water allocation plan (2012)*

The *Warren-Donnelly surface water allocation plan (2012)* is an administrative non-statutory plan which applies to over 500 water licences associated with 48 Gigalitres of self-supply water held in 'farm dams' and used for food production. The water licences are generally held by 'farming families' and the value of food produced is \$127 million and growing, being twice the value of production of the subsidised Ord River Irrigation Scheme.

On 4 December 2015, the State Government began promoting the Southern Forests Irrigation Scheme, with then Minister for Water Mia Davies MLA announcing, "*The \$3.6 million project targets an extra 12 gigalitres a year of sustainable irrigation water to meet expansion plans of the Warren-Donnelly irrigation district.*" (media release). In the context of the extra 12 gigalitres of sustainable water, the '*Warren-Donnelly surface water allocation plan*' (2012) states at page 31 '*Consideration of future large scale irrigation schemes is beyond the scope of this allocation plan.*'. Thus the State Government's current water *allocation plan* makes no provision for the announced extra 12 gigalitres of water for the Southern Forests Irrigation Scheme.

Announcement of an extra 12 gigalitres of water for the Southern Forests irrigation should have caused the State Government to revise the *Warren-Donnelly surface water allocation plan* and

issue the revised plan for public comment. Instead the State Government has ignored the *allocation plan* and closed eight sub-catchments of the Donnelly River previously available for new self-supply farm dams for growth in food production and is re-allocating up to 15 gigalitres of water to the Southern Forests Irrigation Scheme. The Scheme proponents began water sales on 8 January 2018; however, no water from the Scheme will be delivered until after June 2021. In February 2018 the Minister for Water responded to letters from members of MPL saying that the limits on self-supply will be reviewed in 12 months. However, his Department says that water sold by the Southern Forests Irrigation Scheme will be reduced from any allocation for self-supply, should it ever become available again in the eight sub-catchments of the Donnelly closed to favour the Irrigation Scheme.

MPL wrote to Parliamentary representatives expressing our concern regarding the denial of procedural fairness for self-supply water users. The Federal Member for O'Connor, Rick Wilson MP, in response on 29 January 2018 said "*In my discussions with the various agencies and proponents of this scheme I was not made aware that there would be a closure of catchments for self supply users.*". The Member for Warren-Blackwood, Terry Redman MLA, requested to meet with me on 30 January 2018 and his opening comment was that his understanding was that water for the Southern Forests Irrigation Scheme wasn't to be taken from water allocated for use by self-supply water food producers, it was to be additional water. These statements align with the media statement of Minister for Water Mia Davies MLA of 4 December 2015 that an extra 12 gigalitres of water would be allocated for the Irrigation Scheme.

There is a Warren Donnelly Water Advisory Committee; however, it is not a Water Resource Management Committee appointed under section 26GK of the *Rights in Water and Irrigation Act* 1914, to plan for and manage water allocations in the Warren and Donnelly River areas. In several previous submissions to the State Government MPL has requested the State Government appoint a statutory committee, we again make a request as part of a statutory 'trifecta' required for proper water resource planning in Western Australia.

Currently, concerned self-supply water users who have written to the Minister for Water are being told in response "The Warren Donnelly Water Advisory Committee has been consulted throughout the development of the scheme". A meeting of the Advisory Committee was held on 5 December 2017 at which there was some discussion of water allocation matters. However, the closure for new self-supply licences for eight sub-catchments of the Donnelly River and in six other vital sub-catchments of the Warren and Donnelly Rivers had already taken effect as of 16 November 2017 by unilateral action of the Department. Please see Attachment.

Premier, these unfair and unreasonable limits on food producers to the exercise of rights to water under the *Rights in Water and Irrigation Act* (1914) are having an immediate negative impact on commercial plans for food production and are causing frustration and anxiety for farming families.

The announcement by the Minister for Water in 2015 of \$3.6 million to provide an extra 12 gigalitres of water for a Southern Forests Irrigation Scheme should have caused formal revision of the applicable *Warren Donnelly surface water allocation plan* (2012) and publication of a draft for stakeholder and other public interest comment. Due procedural fairness was denied, and a damaging administrative edict was applied to farming families on 16 November 2017. Along the way, the State Government granted another \$19 million for the favoured Southern Forests Irrigation Scheme and \$40 million has been sought from the Federal Government under the National Water Infrastructure Development Fund.

Premier, we respectfully request you intervene to restore the rights to water of self-supply water users in the fourteen sub-catchments of the Donnelly and Warren Rivers shown in Attachment.

2. Denial of procedural fairness through maladministration of the *Rights in Water and Irrigation Act (1914)*

Denial of procedural fairness causing serious commercial harm and anxiety amongst farming families as we claim above would be less likely if the State Government applied the well-structured provisions for statutory water resource management plans set out in Part III, Division 3D 'Plans for management of water resources' of the *Rights in Water and Irrigation Act 1914*. There is a legislative 'trifecta' available to enable statutory water resource management plans, being:

- Part III, Division 3D 'Plans for management of water resources' of the *Rights in Water and Irrigation Act 1914*. Empowers the Minister to initiate plans and provides for mandatory consultation with Water Resource Management Committees and the Water Resources Council on new plans and changes to plans.
- Provision for Water Resource Management Committees, provided for at section 26GK of the *Rights in Water and Irrigation Act 1914*, to plan for and manage water allocations in defined areas.
- A Water Resources Council for the State under Part IIA of the *Water Agencies (Powers) Act (1984)* to provide peak level advice to the Minister for Water. The Water Resources Council replaced the former Waters and Rivers Commission.

Regarding mandatory consultation on plans the *Rights in Water and Irrigation Act (1914)* provides:

26GZ. Consultation with water resources management committees

A plan, or an amendment to a plan, may only be —

(a) prepared;

(b) modified under section 26GZC(3)(a) or 26GZD; or

(c) revoked and a new plan substituted for it under section 26GZG, after consultation with any water resources management committee under Division 3C that is in existence for the region, sub-region or area to which the plan relates.

The provisions in the *Rights in Water and Irrigation Act 1914* have been ignored by successive State Governments since they were enacted in 2000, and the State Government has not appointed a Water Resources Council provided for in 2008 amendments to the *Water Agencies (Powers) Act (1984)*. The effect of ignoring this statutory framework is to deny formal consultation with stakeholders at peak and local level. It is active denial of procedural fairness through maladministration of legislation.

Fundamental resources are land, water and air. The State Government supports a Western Australian Planning Commission and a statutory framework for land use planning at peak and local levels. It is hard to imagine land use planning without such a statutory framework and proper administration of it. For water, in Western Australia which is mainly dry terrain and with a drying climate, the statutory provisions for water resource planning are ignored by the Minister and Department charged with administration of the applicable legislation for water resources. The effect of this maladministration is denial of procedural fairness for parties subject to the *Rights in Water and Irrigation Act 1914*, *Water Agencies (Powers) Act (1984)*, *Water Services Act (2012)* and other water related acts and subsidiary regulations.

In 2013 the WA Department of Water in a '*Position paper - Reforming Water Resource Management*' admitted "*Administrative allocation plans provide less security to licence holders as the plans may be changed with administrative, rather than legislative due process. Decisions made based on an administrative plan are not as certain as those based on a statutory plan, and there may be additional costs to water users and the government if those administratively based decisions are appealed.*"

None of the water plans in WA are statutory; not for Ord River, Gnanagara/Perth, Harvey, Margaret River/Whicher, Myalup, Colлие, Carnarvon, nowhere! It is scandalous neglect of statutory duties.

In 2009 the State Government directed the Economic Regulation Authority (ERA) conduct a review of the potential for water resource management charges. After two years of costly review process, including payment of consultants by the Department of Water and the ERA, the Department advised the ERA there was no ability to apply charges because:

“The Department’s current approval processes for allocation planning does not meet one potential criterion for statutory allocation planning under the provisions of the RiWI Act (i.e. approval by a Water Resources Council). Preliminary legal advice is that the Department cannot recover costs for this activity because of these inconsistencies (Department of Water submission on ERA Second Draft Report, p13)”.

There is no doubt the 2000 amendments to the *Rights in Water and Irrigation Act* (1914) reflected the interests of the community and industry. The amendments followed issue of a draft ‘green bill’ for wide public comment. The amendments also reflected agreements between State and Federal Governments with the Minister for Water Resources stating in the Second Reading in 1999:

“This Bill also recognises Western Australia’s wider obligations. We are a signatory to the very important Council of Australian Governments Water Reform Framework Agreement. That agreement, signed by the Premier on behalf of Western Australia, gives the State a double benefit: A modern plan for its water resource management systems and substantial payments to the State.”

The Southern Forests Irrigation Scheme is seeking \$40 million in Federal funding under the National Water Infrastructure Development Fund. The ‘*Guidance notes for National Water Initiative requirements*’ state: “(NWI Clause 25-57): *Consideration of projects should be prioritised to areas where there are statutory based water plans in place*”. There is no statutory based water plan for the Warren and Donnelly River catchments from which the Southern Forests Irrigation Scheme is presently conducting ‘water sales’ without a licensed water allocation under the *Rights in Water and Irrigation Act* (1914) or licence under the *Water Services Act* (2012).

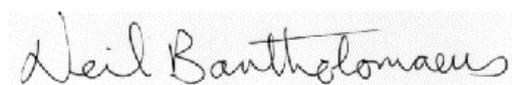
Since 2007 the State Government has been foreshadowing a Water Resources Management Bill which will amalgamate six Acts relating to water. Successive Governments have failed to deliver the Bill, so it must either be of low priority or too complex to achieve. In any event, awaiting pending legislation for over a decade is no excuse for maladministration of current legislation.

Premier we seek your intervention to provide relief for self-supply water users in Manjimup from denial of procedural fairness through maladministration of the *Rights in Water and Irrigation Act* (1914). We respectfully request you ask the Minister for Water to:

- Appoint a Water Resource Management Committee, provided for at section 26GK of the *Rights in Water and Irrigation Act* 1914, to plan for and manage water allocations in the Warren and Donnelly River areas.
- Prepare a local area management plan for the Warren and Donnelly River areas in accordance with Part III, Division 3D ‘Plans for management of water resources’ of the *Rights in Water and Irrigation Act* 1914.
- Appoint a Water Resources Council for the State under Part IIA of the *Water Agencies (Powers) Act* (1984).

We look forward to advice of your actions.

Yours sincerely



Neil Bartholomaeus
Convener, Manjimup and Pemberton Landowners

(Attachment)



Government of **Western Australia**
Department of Water and Environmental Regulation

Changes to water allocation limits in the Warren-Donnelly

The Department of Water and Environmental Regulation (DWER) has recently made changes to water allocation limits which will result in changes to the availability of water in some areas covered by the *Warren-Donnelly surface water allocation plan* (2013). These changes have taken effect as of 16 November 2017 and will apply to all new applications for water submitted after this date. Applications received prior to this date will be assessed and finalised.

Donnelly River catchment

The Southern Forests Irrigation Scheme (SFIS) proposed under the State Government's *Water for Food* initiative is planned to directly pump water from the Donnelly River and capture water in a dam to be built on Record Brook. The yield for the scheme from the catchment will be confirmed through investigations currently underway. As an interim measure to avoid potentially prejudicing the yield of the SFIS, allocation limits in the Donnelly surface water area have been capped at existing entitlements and pending instruments. This means no new licences will be issued in these catchments until a decision on the scheme is finalised.

The following sub-catchments will be affected by these changes:

- Upper Donnelly
- Middle Donnelly
- Lower Donnelly
- Barlee Brook
- Carey Brook
- Beedelup Brook
- Fly Brook
- Record Brook

For any enquiries please contact the department's regional office in Bunbury C/O PO Box 261 Bunbury 6231 or telephone 9726 4111.



Government of **Western Australia**
Department of Water and Environmental Regulation

Allocation limits introduced for Variable Take licensing in the Warren-Donnelly

The Department of Water and Environmental Regulation (DWER) has recently made changes to water allocation limits which will result in changes to the availability of water in some areas covered by the *Warren-Donnelly surface water allocation plan* (2013). These changes have taken effect as of 16 November 2017 and will apply to all new applications for water submitted after this date. Applications received prior to this date will be assessed and finalised.

Variable take sub-catchments

Variable take licensing was introduced on 24 October 2015 following a three year trial period. There has been significant uptake in this form of licensing that allows additional water to be taken in high flow years. Catchment modelling has indicated that the cumulative impact of existing and variable take licences has reached a threshold. To issue more licenses, including variable take, could potentially impact existing licensees and the environment. To manage this risk, allocation limits have been introduced into existing variable take catchments and set equal to existing entitlements and pending instruments until such time that further investigative work is completed. No further licences for variable take will be issued in the following sub-catchments:

- Manjimup Brook/Yanmah Dixvale
- Upper Lefroy
- Four Mile Brook/Big Brook
- Smith Brook
- East Brook
- Treen Brook

For any enquiries please contact the department's regional office in Bunbury C/O PO Box 261 Bunbury 6231 or telephone 9726 4111.