

Hon Paul Llewellyn; Hon Barry House; Hon Murray Criddle; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Hon Kim Chance; Deputy President

RIGHTS IN WATER AND IRRIGATION AMENDMENT REGULATIONS 2007 - DISALLOWANCE

Motion

HON PAUL LLEWELLYN (South West) [2.10 pm]: I move -

That the Rights in Water and Irrigation Amendment Regulations 2007, published in the *Government Gazette* on 22 June 2007 and tabled in the Legislative Council on 27 June 2007 under the Rights in Water and Irrigation Act 1914, be and are hereby disallowed.

The Rights in Water and Irrigation Amendment Regulations 2007 impose a licensing fee regime on the holders of water entitlements in proclaimed catchment areas in Western Australia. It is no secret that water management and entitlements is a delicate issue across the whole of Australia. That is particularly the case in Western Australia, because these proposed water licence fees are opposed by many people, not just those in the farming community, who will now be charged for an entitlement that until now they have received for free.

The Greens (WA) support the water reforms that have been signed off under the National Water Initiative. We support a licensing regime under which entitlements are formally allocated. We also support the principle of establishing a user-pays framework under which water entitlements are allocated. However, that is conditional upon two matters. The first is that the fees payable must be fair and proportional; that is, the costs must be shared equally between all the people who benefit from the entitlement. The water regulations proposed by the government are neither fair nor proportional. For that reason, I have entered into a considerable amount of negotiation and consultation with people across Western Australia to find out what a genuine fair and proportional arrangement should look like, because the problem is that currently 80 per cent of the revenue raised from water entitlements is raised from people who hold just 20 per cent of the entitlements, and 20 per cent of the revenue is raised from people who hold the largest entitlements.

There was also some discussion and disagreement about the way in which the proposed water licences should be calculated, and what parameters should be measured. Approximately \$5.8 million of the revenue that will be raised from the proposed licence fees will be used to cover the costs of the licensing regime, \$800 000 will be used to cover the costs of compliance, and \$386 000 will be used to cover the costs of the licensing support database. Other costs that will be covered are for the State Administrative Tribunal provisions, and community input.

The question that then arose was how the licensing costs could be allocated more fairly. The Greens believe that the current licensing allocations are arbitrary and unfair. They also lack proportionality, because the very large Ord River entitlement of 335 gigalitres of water, with 200 users to share that burden, would be treated in a similar way to a small entitlement. In other words, the fee for a large licence on the Ord River might be \$3 000, yet for a small entitlement it might be \$2 000 or \$3 000. The Water Corporation, with its over 400 gigalitres of allocation and 840 000 users among whom to distribute the costs, would also be paying a relatively small amount for its 20 or so licences. The south west irrigation cooperatives, with their approximately 140 gigalitres of entitlement and approximately 600 users, would also be paying a relatively small proportion of the total licence fees.

Needless to say, a lot of negotiation has taken place between the various parties. I made a commitment that if we could not strike a better deal, I would move to disallow these regulations and would seek to negotiate an alternative strategy for calculating water licence fees that would be a fair compromise solution and would be more acceptable to regional communities. As a consequence, we have proposed a regime under which there will be a base price of \$100 per licence, as a nominal fee to cover the administrative costs, and an additional fee of \$2 per megalitre of water used. This will mean that the people with the greatest proportional entitlement will pay more, and the people with the smaller proportional entitlement will pay less.

However, the Minister for Water Resources rejected the concept of a flat fee of \$100 per licence, plus a per megalitre rate, and was intent on implementing a more banded licensing fee structure. To that end, we have negotiated another arrangement that I would now like to outline very briefly. Under that arrangement, the fees for smaller entitlements will be halved, and the fees for larger entitlements will be approximately doubled. In order to get this new licensing system through, the government was prepared to accept a reduction in the revenue raised. The government was also prepared to give an undertaking that the shortfall in revenue would be made up from the consolidated account or the retention of unspent funds. The government also agreed that any new regulations would be subject to a three-year sunset clause so that it would be clear that the regulations were just an interim measure. We also sought from the government an undertaking that the revised cost recovery arrangements will be put in place following the next round of water reform; in other words, that the new licence fees will be put in place only once we have some understanding of how the state's new water licensing and governance regimes are going to work. We understand also that the revised cost recovery arrangement will be

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independently reviewed by the Economic Regulation Authority before the new licensing arrangement is put in place. We also sought an undertaking from the minister that the terms of reference for the review will be broad enough to assess fees based on the volumetric entitlement, and will be on a catchment-by-catchment basis, given that many other jurisdictions use a proportional entitlement based on megalitre of entitlement and a catchment-by-catchment regime. We also sought an undertaking that a clear and agreed process would be established for the transition to the new arrangements.

As part of these negotiations with the minister, I was told that we would get some assurance from the floor of the house that the minister would adhere to the six principles that I have outlined in an open letter that will be published on my website as soon as this debate is over.

I support the disallowance of these current regulations because they are neither fair nor proportional, and they do not meet the fundamental principles of proper cost recovery. There is some disquiet in the community about the way in which the licences have been established as well as the impacts of them.

It is important that, through a negotiated process, we can get long-term and sustainable water security for all Western Australians. A licensing regime and a water governance framework are absolutely essential to doing that.

HON BARRY HOUSE (South West) [2.20 pm]: The opposition supports this disallowance motion because I have moved exactly the same motion, which is the next order of the day on the notice paper. If this motion is agreed to, we will not get to that one. We support the motion for slightly different reasons. We are coming to it from a slightly different angle from Hon Paul Llewellyn. Until about half an hour ago, the background was pretty much as Hon Paul Llewellyn outlined in his comments. The background was that there was widespread discontent about and widespread questioning of the changes to water resource management in Western Australia, as well as a widespread feeling that the water licensing fees regime that was being introduced by the regulations we are debating now was unfair and inequitable.

I mentioned "until about half an hour ago". I am very interested in Hon Paul Llewellyn's comment about an agreement that he is seeking with the government and that the agreement, once he receives the assurance from the minister, will be published on his website. At the risk of giving of Hon Paul Llewellyn even more media exposure, I seek leave to table a media release from the member regarding this matter. The media release is titled "Media Release 22 November 2007 - EMBARGOED UNTIL 12:30 PM - Greens negotiate fairer water licence fee agreement".

Leave granted. [See paper 3534.]

Hon BARRY HOUSE: It is not my job to give Hon Paul Llewellyn extra media exposure for this and I hope that he does get it, but perhaps not in the manner that he seeks! The embargo on this media release was 12.30 pm. I will read a couple of paragraphs, which might outline the current situation for members -

Greens Southwest MLC Paul Llewellyn has secured fairer and more equitable water licence fee arrangements under an important agreement with the Minister for Water Resources.

Compared to the current fees, which were disallowed today in the Upper House, the new fees will halve the current bottom rate and double the top rate.

Mr Llewellyn said while the agreement was a compromise, it was a significant improvement on the current water licence fee regulations introduced on 1 July.

That may be true in the eyes of two people I know of: Hon Paul Llewellyn and Hon John Kobelke, the Minister for Water Resources. I am not sure about the rest of the world because I do not think the rest of the world knows anything about it and it certainly has not been consulted. As I think Hon Paul Llewellyn explained, the media release goes on to outline the conditions of the new deal - the new compromise - in that it will be an interim arrangement for three years. The media release runs through some of the conditions.

Let us set some of that aside and address the issue that is before us, which is the water licensing fees regime that was introduced by the state Labor government to commence from 1 July 2007. We know the timing of the introduction. It was gazetted and tabled in this house in the last couple of days of June. In fact, I think it was the last day of the sitting in the session before the winter recess. The fees were applicable from just a few days after that date. That, in itself, caused some pretty serious anger in many parts of country Western Australia, where the impact will be most acute. That is one issue. The Liberal Party had many representations from many different people and consulted very widely with many groups. We were and still are of the view that those fees under the seven classes - proposed with a minimum of a \$200 fee - are unfair and inequitable and do not have a reasonable basis. That is why we moved to disallow them. It was coincidental that, on the same day I had my disallowance motion in my drawer to move, another two disallowance motions came from the drawers of two other members.

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One was from Hon Ray Halligan on behalf of the Joint Standing Committee on Delegated Legislation. He moved a disallowance motion in exactly the same terms. That has since been withdrawn because I understand that that committee has considered it. Hon Paul Llewellyn moved his disallowance motion. I was encouraged by that alone because we can all count in this place and a disallowance motion does not have any chance of success if the opposition moves it unless one or two other members join with it. Normally, we would expect that to be from the Greens (WA). I am pleased that Hon Paul Llewellyn is prepared to disallow this current set of regulations. The events of the past half an hour or so since I was alerted to the media release have not necessarily changed my view or my support of the issue, but it has tainted the process somewhat, I might say in very diplomatic terms.

I will address the major issue at stake, which is the fees regime itself. We have opposed, and we have moved to disallow, the regulations that set out this proposal - not the cobbled-together compromise. The regulations were tabled in this house in late June. We oppose the regulations on the basis that they are unfair and inequitable. The reasons are many. I certainly do not intend to take all the time of the house before this matter has to be decided because I know other members want to make some contributions. I will run through some of the reasons in summary. Firstly, there is widespread concern that the fees are a "one size fits all" approach. In that sense, they are unfair because there is no differentiation between whether there is an application fee for a licence and then a subsequent ongoing annual fee. If we are looking at a fair and equitable system of applying costs to the consumer - we are telling people that they are consumers of water here - it is fair and reasonable to have a different licensing regime. When we apply for a driver's licence, we pay an up-front application fee, and, on top of that, a five-year licence fee. That is the basis of every fee structure I am aware of. I am not aware of any fee structures that apply a catch-all flat rate across the board.

Another major reason for disallowing these regulations is that the assessment of the basis for these fees is totally incomplete. The basis for that contention hinges on the fact that the assessment has been applied to only the areas where licences currently exist; it does not apply to areas of this state for which a licensing regime has not yet been proclaimed. That, alone, is an inequity. I know that current legislative proposals intend to resolve that issue in the next few years so that all people are brought under the same umbrella. The other issue attached to that is that large areas of this state that draw large volumes of water are not caught by these licensing requirements at all. Metropolitan and suburban water bores are not required to be licensed, and a fee is not applied. Therefore, how can the government accurately assess how much water is coming out of that aquifer? Individually, I support the argument that drawing water from a shallow aquifer which is inferior to potable water can save vast quantities of potable water. That is fine; however, collectively, consumers pull an enormous amount of water out of the metropolitan aquifers. Surely, a government that wanted to analyse proper water resource management would want to know where that water is coming from, who was using it and where it was going. The other inequity that many people from outside the metropolitan area bristle at is that metropolitan consumers not only are not required to hold a licence and pay a fee, but also get a subsidy for putting in bores. Members can imagine that country people see that as a pretty unfair type of arrangement.

The legislative and administrative framework for the changes to water resource management is still a work in progress. I have said before that the first piece of four pieces of legislation is still on the notice paper of this house. The Water Resources Legislation Amendment Bill 2006 is listed as order of the day 524. I know that what is left to deal with is probably the final consideration of that piece of legislation and that it should clear both houses of Parliament and be proclaimed very soon. However, it has not cleared Parliament yet, and three other bills are pending, which the government has told us it is putting together to be tabled in this house by the end of this year. I think that timetable is probably optimistic. Those bills are a water corporations bill, a water services bill and a water resource management bill. On top of that, once the water resource management bill passes through this house, there will be a requirement for a series of statutory water catchment plans to be put into place. There is a long way to go to complete that picture. Wearing a slightly different hat, as Chairman of the Standing Committee on Public Administration, members will be aware that that committee has tabled a report in this house recommending that that legislation be referred to the committee at the initial stage so that it can do some research and consultation on the legislation and report to the house. My most conservative and optimistic estimate of that time frame alone is two years. If I am a realist - I try to be a realist - I think it will probably be five years, maybe eight years, before that jigsaw is complete. How can the government and the Greens make an assessment based on just one-quarter of that jigsaw puzzle being complete? I contend that they cannot; they certainly cannot do it fairly.

The signature of the Western Australian government on the National Water Initiative is acknowledged. However, after reading all those documents, it is still not absolutely clear to me in a prescriptive way what are the state's responsibilities for cost recovery for licence and fee administration. It is not prescriptive. The only date before which the state government is required to do anything specific about that agreement that I have seen mentioned in the literature I have read is December 2008. In any case, the Australian Water Resources Council

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is undertaking a review into the ways that licence fee cost recovery should be approached. Other states in Australia are doing it in different ways and there is no consistency about the proper framework for that and how other states are approaching it. The National Water Initiative, which is trotted out by the Minister for Water Resources as the major reason for this state proposing and implementing a fee regime, has a long way to go.

Another point to discuss is exactly what is a “water user”. That has not been identified yet, which may lead to legal arguments about who owns the water that falls on a property. The end water user is not the farmer, horticulturist or viticulturist who uses this water in the production of meat, vegetables, fruit or wine; the end users are the people, mostly in cities around Australia, who consume the produce from their dining room tables. I do not think that issue has been explored enough.

These regulations relate to a specific group of water users. The current regulations apply to users who use more than 1 500 kilolitres of water and who trap water in surface catchments in gully dams, and exclude the use of water harvested and trapped in turkey nest dams, or catchment dams on hillsides or emanating from springs that are not in a stream or a gully. The toss could be argued as to how that definition should be applied. Also, how did the minister arrive at the final position that in negotiating these fees only water used, and not the total volume, will be assessed? It is very inequitable. The other question to ask is: who provided the infrastructure in the first place? In virtually all these cases, the infrastructure is provided by the farmer, horticulturist, viticulturist or orchardist. They paid out hundreds of thousands of dollars to create their own dam. They created a water supply where previously there was no water supply so that they could use it for productive means. It may be understood that there is a pretty strong feeling out there that these fees, and the way they have been proposed, will unfairly target the productive agricultural sector compared with other sectors. How are we to assess the way in which water is otherwise used? Water may not be used directly from a dam or an aquifer bore to water vegetables or pasture for a dairy farm. It may be used by simply gathering water from the subsoil as do blue gums. Thousands of acres of blue gums have been planted throughout Western Australia and they consume an enormous amount of water. There seems to have been absolutely no comparable attempt to calculate water usage for blue gum plantations as there has been for productive orchardists or horticulturalists. That alone needs a lot more work before we can come up with a fair fees regime. These days we all accept that there is an environmental entitlement to water, but how much is it and who pays for it? I am sure other members of this place will be able to talk about the lower Ord valley as a case in point. There are many other examples around the state. Catchments in Warren-Lefroy and the Preston valley, for example, have created their own ecosystem. These catchments have significantly enhanced their environments from what they would otherwise be, with a seasonal stream.

Who pays for the environmental entitlement? It is pretty clear to me that it is a public good and that therefore the public should pay from consolidated funds. Another way of assessing the inequalities is to acknowledge that surface catchments and aquifers are different in their complexities and in the efficiencies of water extraction. Some of them are more expensive than others, while some are more technically difficult than others. Some of them can be managed more easily. There are many different layers and levels of complexity. The “one size fits all” approach does not take account of any complexity or difference. There can be efficiency of management, which is why the opposition is very supportive of building some degree of local management into the fees regime. We already know of some cases in which local management is better than a general, bureaucratic, centralised approach to the issue. The Harvey irrigation scheme is a prime example. About 12 years ago Harvey irrigators had the courage to take over management of the scheme, which many viewed as being dated and broken down. They had the courage to take it on and manage it and they have created an outstandingly efficient irrigation area, which now returns water to the south west integrated water supply scheme.

There are many questions about where the recovery figure came from in the first place. An amount of \$5.8 million was stipulated as the figure that had to be recovered. Where is the basis for coming up with that figure? I do not know. I have never seen anything outlining the basis for that. During negotiations before the end of June, the minister at the stroke of a pen wiped \$1 million off that and said, “All right, we’ll fiddle with the scheme a little and we’ll now only assess water taken rather than water captured. We need only \$4.8 million for that.” I am bewildered about how, at the stroke of a pen, the minister could decide that it would cost \$1 million less to do that. When the disallowance motions were proposed, the minister came to the opposition with some alternative proposals and put forward four options. However, all of the options were based on a minimum cost recovery of \$3 million, with licence fees of \$100 and up. That may be fine, but where did the figure of \$3 million come from? If \$3 million can be plucked out of the air, can we not pluck any figure we wish out of the air? That is another point of contention.

I will not labour the point in too much further detail. The opposition’s contention is that there is no basis for the fees as proposed in this regulation. I am not talking about the compromise deal, because that is another matter. Apparently the compromise deal has already been stitched together behind closed doors, and I presume that the

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result will be a new set of regulations coming before Parliament in the very near future. That will start the ball rolling again, because the new set of regulations was drafted without any consultation with industry groups or stakeholders. It was negotiated between Hon Paul Llewellyn and Hon John Kobelke. What is the reasoning behind the drafting of new regulations on that basis? I agree with many of the points raised by Hon Paul Llewellyn in relation to the regulations being fair and equitable. Some of the issues he raised should be taken into account. However, he apparently now feels that he has the authority to enter into a compromise deal with the Minister for Water Resources on the basis of his personal view of the world; I can see no other reason for it. That will be a matter for another day, because the opposition will have a good look at this supposedly new compromise deal and will - unlike others, it seems - go out, consult and get some input from various people.

These supposedly substitute fee regimes will be introduced while a review is being undertaken. The Standing Committee on Economics and Industry of the Legislative Assembly is currently investigating terms of reference relating to this matter. The proposal for the inquiry was inserted by none other than the Minister for Water Resources, Hon John Kobelke. I will read from an advertisement for the inquiry that was recently placed, presumably in *The West Australian*. It states -

Economics & Industry Standing Committee

Inquiry into Water Licensing and Services

On 24 October 2007 the Legislative Assembly passed the following resolution:

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

There are seven terms of reference, being -

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 advertisement then goes on to outline the members of the committee and the requirements for making submissions. The inquiry will cover a lot of the ground that the previous speaker and I have already mentioned as being the reasons behind our lodging a disallowance motion in the first place. However, it seems that the minister and Hon Paul Llewellyn are not prepared to wait for the committee to report. That is quite outrageous. The position of the opposition is that we should go one step further; that is, we should wait not only for that report, so that industry, stakeholders and the community have an opportunity to have some input, but also for the jigsaw to become more completely known and understood. As I said, that will take a little while. If it takes a little while, so be it. In the meantime, the licence administration fees should be met from the consolidated revenue fund. There is no doubt in my mind that that is the way it should be. We need a process that involves some proper consultation and will lead to a fair and equitable outcome. This process will certainly not do that. For a start, we need a process that will allow for local administration schemes. We cannot even start to compute that until we have all the facts on the table. To do otherwise, as has been proposed, would be unfair and inequitable. The opposition therefore supports Hon Paul Llewellyn's disallowance motion, because it is exactly the same as our motion. However, we have some serious reservations about what is apparently being proposed in its wake. On the surface, it appears that many water users - that is, farmers around the state - will get a pretty ugly Christmas present as a result of the new set of regulations. The opposition will have a really good look at those. We may well debate a similar motion in the future.

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HON MURRAY CRIDDLE (Agricultural) [2.53 pm]: The National Party will support the disallowance motion. I have copious notes on this matter from my colleague the member for Stirling, but I will not use them - I will relieve members of that concern straightaway! This issue has been canvassed very clearly by the two previous speakers. It is interesting that this disallowance motion follows on from debate on a disallowance motion last night. Members will remember that when we debated that motion in committee, I tried to establish the amount of cost recovery that was required to be raised by the fees, but I battled to establish the number. It seems that the numbers are a moveable feast, because in this case there has been an adjustment of about \$1 million from the amount originally identified. The National Party would like to put on the table that it is inappropriate to introduce water licence fees before we know the full extent of the water licences that are required. That can be determined only when statutory water management plans are in place, which will be developed in response to new legislation to be introduced next year. The industry has significant concerns, especially with the equity of the fee regimes that have been suggested. Hon Paul Llewellyn has announced, on behalf of the government, a new fee regime that I know nothing about. I will be introduced to that in the future. We will decide later whether we are happy to support that new fee regime. The government supported an inquiry into the water licensing issue, so it would be inappropriate to pursue any sort of fee regime before the committee reports. That issue was raised by Hon Barry House.

Clear inequities exist between regional and city water users in the application of the government's blueprint for water reform. For example, some regional domestic bore users are required to have licences due to the potential impact of water use on aquifers, yet there is no level of regulation of city bore users despite the minister acknowledging the impact of those bores on water resources. The principle of water reform is to better manage the water resource and to place a level of regulation on water sources that are at risk of being over-allocated. In essence, the National Party is saying that we should wait until legislation is introduced next year and the statutory water management plans are in place, so that we know exactly what we are dealing with before we move to introduce water licence fees. All metropolitan domestic bores should be licensed to achieve consistency with licences issued in Albany and Exmouth. Obviously, the fee that will be charged in the future needs to be considered. We do not support replacing the current licence fee regime with another model. No fees should be put in place until appropriate legislation is introduced next year. The National Party supports the disallowance.

HON ROBYN MCSWEENEY (South West) [2.56 pm]: I support this disallowance motion. The water licensing structure, as set down in the *Government Gazette*, is irrational, inequitable and very unfair. Hon Paul Llewellyn has thrown a spanner in the works by putting forward another fee structure. It is more than likely that the fee structure proposed by the Greens (WA) is worse than the government's proposal, but I believe that both are unfair. However, Hon Paul Llewellyn put forward some good points. For the use of between 100 000 and 500 000 kilolitres of water, the government has proposed an amount of \$1 200 and the Greens have proposed an amount of \$700. For between 500 000 and one million kilolitres, the government has proposed an amount of \$1 800 and the Greens an amount of \$1 600. For between one million and five million kilolitres, the government has proposed an amount of \$2 400 and the Greens \$2 500. For between five million and 10 million kilolitres, the government has proposed an amount of \$3 000 and the Greens \$4 000. For the use of 10 million kilolitres of water and above, the government has proposed an amount of \$3 000 and the Greens \$6 000. The government has proposed an annual licence fee of \$200 for an entitlement of between 1 500 and 5 000 kilolitres of water, which the Greens would lower to \$100. For between 5 000 and 50 000 kilolitres of water, the government has proposed a fee of \$325, which the Greens would lower to \$150. For between 50 000 and 100 000 kilolitres of water, the government has proposed a fee of \$600, which the Greens would lower to \$250. The fees set by the Greens are lower in four instances, but not in other instances. The government would charge a late fee of \$200 for an annual licence, a \$50 fee for a duplicate licence, a \$200 fee for an application for approval to transfer a licensed water entitlement, a \$200 fee for an application for a licence under section 26D of the Rights in Water and Irrigation Act and a maximum amount of \$50 for a meter test. I understand that the Greens (WA) and the government will probably negotiate a new fee structure. This motion is to disallow the water licensing schedule that is set out in the *Government Gazette*.

It concerns me that a press release was put out by the Greens, who have obviously negotiated with the minister, even though the Economics and Industry Standing Committee in the other place will report on this issue in 2008. I pointed this out to people at a meeting I attended last Saturday and urged them to put in submissions on water licensing to that standing committee. That process should continue to occur, and it will. I do not know where it leaves us with negotiations with the government if the minister has already made up his mind. That is extremely arrogant.

The reason that this disallowance motion should be supported is that farmers will pay \$1.02 to \$2.40 a megalitre per annum for a water licence, whereas corporations, water utilities, mining companies and irrigation cooperatives will pay only 14 cents a megalitre. I understand what the government is trying to do, but it is not equitable. Farmers allocated 21 per cent of the water will pay 86 per cent of the annual licence fees, whereas

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corporations that use large water allocations of more than one gigalitre and are allocated 79 per cent of licensed water will pay only 14 per cent of the revenue to be raised by water licences. It is another issue that we need to look at.

A letter of complaint reads as follows -

- the government of Western Australia has shifted water licence numbers to which annual fees apply from 18,764 (2006) to 13,541 (February 2007) to 10,841 (30 May 2007); a remarkable 42% reduction in licences in less than a year, when they should be extending licensing to all water resource systems; and
- in contrast to the sustainable and productive use of rural water in our area, -

Pemberton, Manjimup and Bridgetown, the region I represent -

- 120 gigalitres of groundwater is drawn by 150,000 domestic bores in Perth to water roses and lawns; yet the Government of Western Australia has decided neither licences, nor fees, nor metering are required on domestic bores.

Approximately 120 gigalitres of groundwater is being drawn unsustainably from the Perth basin system as evidenced by the collapse of wetlands.

This next letter is a complaint that the minister received -

... I don't accept your rationale that the harsh water licence fees are necessary because of a drying climate and that they will provide greater security of water for our farming business.

If you were serious about water resource management and a drying climate, you would control the 154,000 garden bores in Perth extracting 120 gigalitres of water unsustainably. ...

There is no increased security for our farming business with your intended separation of our 10 year duration water licence from our land title, followed by an annual licence and water allocation from a consumptive pool which will be exposed to water cost speculation through allocation auctions and tenders. If this is your 'perpetual' entitlement, I much prefer our present 10 year licence bonded to our land title.

I could go on and refer to other correspondence to demonstrate the inequity.

Geoff Gare from the Pastoralists and Graziers Association is extremely concerned. The association supports the disallowance motion saying that the government is unfairly taking advantage of the National Water Initiative. Paragraph 64 of that initiative states -

"The Parties agree to implement water pricing and institutional arrangements which:

I do not think it meant the Greens and Labor Party without consultation. To continue -

- promote economically efficient and sustainable use of:
 - water resources;
 - water infrastructure assets; and
 - government resources devoted to the management of water;
- ensure sufficient revenue streams to allow efficient delivery of the required services;
- give effect to the principles of user-pays and achieve pricing transparency in respect of water storage and delivery in irrigation systems and cost recovery for water planning and management;
- avoid perverse or unintended pricing outcomes."

The water charges are perverse, and they will have an unintended outcome; that is, farmers will break the law because it is an added impost when they have built the dams on their farms. I come from a farming background and we have a marron farm; therefore, I know a great deal about dams and how much they cost.

Best practice water pricing must be accountable and transparent. The principles of user pays and full cost recovery is supported. However, water charges on the rate of return for existing assets at the date of initiation of pricing reform in each jurisdiction is not supported. An example of this is the introduction of administration fees for infrastructure that has been installed by rural landholders, and it is unreasonable for rural landholders to face paying fees after they have self-financed this infrastructure. Water collected in dams from rainfall should also be exempt from any withholding fee. Fees collected by the Department of Water must only be used to recover administration costs and not to consolidate revenue for other government interests. It is a revenue-raising instrument. Why should rural landholders have to pay a late fee for an annual licence of \$200? It is ripping

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them off. It is not necessary and it is pathetic of the person who drew it up. A fee for a duplicate licence is \$50. All that is done is that the original is put on a photocopier and a copy is made and people are asked for \$50. It is pie in the sky, and I agree with Hon Murray Criddle that it should be fee neutral.

I have outlined objections to the water licence fee. I also record my objection to the high-handed attitude of the Minister for Water Resources in dealing with the Greens (WA), and the Greens high-handed attitude in putting out a press release at 12.30 pm today to the effect that the disallowance motion had gone through. It is now three o'clock and we are still debating it. The Greens have thrown a huge spanner in the works and users of more than five million kilolitres will be happy to know that under the Greens' proposal, that cost will increase from \$3 000 to \$6 000.

HON NIGEL HALLETT (South West) [3.09 pm]: I would like to add a few comments to what has already been said. First, I acknowledge the work that has been done on the water fee structuring by the South West Region members, particularly Hon Barry House and Hon Robyn McSweeney. As Hon Barry House said, the opposition will support this disallowance motion, although the manner in which Hon Paul Llewellyn has done a deal behind closed doors to what was a bipartisan agreement is disappointing. To have the audacity to put out a press release at 12.30 pm today prior to the motion being discussed shows a contempt for politics.

It is very difficult to support a motion such as this when we have not seen it. It could be worse than the original one, but there are no costings for it. I think the way in which it was done was a little shabby. As members are aware, the original allocation of water licences and the administration fees that were to be brought in by this government would result in some \$5.8 million of revenue annually. As Hon Barry House rightly said, the government slashed \$1 million from that figure the moment it was queried. It still seems to me to be an exorbitant amount for just assessing water licence applications, renewals, checking compliance and licence conditions, maintaining databases and management of appeals. An interesting one is community awareness. The Department of Water, even during the middle of winter, was advertising widely.

The cost should not come back to the small number of people who are using these licences. I do not believe that the fee structure is appropriate to the water entitlement; that is, small users pay much more a megalitre than large water users. As has been mentioned, the revenue raised will certainly exceed cost recovery for the assessment of these new licences. There appears to be a cross-subsidisation of the large water allocation licence fees from the self-supply farmers. The table prepared by the Department of Water has classes 1 to 5; namely, the self-supply farmers who are allocated 21 per cent of water but pay 86 per cent of the annual licence fees under the current government structure. Larger users in classes 6 and 7 - that is, corporations, large utilities and mining companies with an allocation of more than a gigalitre - are allocated 79 per cent of the licensed water but pay only 14 per cent of the revenue raised by the water licence fee. The average fee per megalitre is \$2.27. The self-supply farmers are to pay more than this, while corporations will certainly pay much less than that. The inequity in the level of fees being implemented is the issue.

I go back to the press release of the Greens. It would be interesting to see the new collection fees total. The Greens (WA) have not got that in detail. It all looks lovely and fluffy, but they have halved the first figure for fees and doubled the last. Presumably, somewhere in the middle are the producers of our food. I cannot answer off the top of my head the question of whether it would increase the cost of food production for the consumers of Western Australia, but the government could have a very short-sighted fee structure that would add to the weekly household bill of the average Western Australian consumer. Some landowners in Manjimup and Pemberton are licensed for around 40 gigalitres. They would end up paying \$6.40 a megalitre. The Ord Irrigation Cooperative is licensed for 335 gigalitres of water and it pays a one-off \$3 000 water licence fee, which equates to less than one cent a megalitre. We could compare Harvey fees with Manjimup and Pemberton fees. Generally, self-supply people have put in their own infrastructure at a cost of millions of dollars. Members would have been to various meetings with them. Many families have gone without over many years so that they can put large dams on their properties and be self-sufficient so as to guarantee that they can provide their own water. They are using this water for horticultural and agricultural production to provide a quality product for the people of Western Australia. What government of any persuasion could put a tax on their water? Food must be produced. Adding to the cost of water pushes up the production costs of food, and, ultimately, the consumer pays more. Regardless of the cost, it still takes a certain amount of water to grow a lettuce or a lamb, and a cow still drinks a certain amount of water.

Most people are aware that the fees proposed by the government are well beyond what is required to recover the costs associated with licensing. It could be construed that this is basically a new water tax. I implore members to recognise the need to force this government to review the licence fees, which is what the disallowance motion is about. The opposition was working with the Greens to come up with a better structure, not so that the Greens could do a deal with the minister and then say what they have done. We are all looking for a fairer, better and more equitable model.

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In conclusion, I must comment on Minister John Kobelke's lack of will to visit the areas and discuss the issues with the stakeholders. His absence was certainly noted. I would like to know what will happen to the 29 per cent of the annual fees that will remain after cost recovery. Will it go to general revenue? In reality, the licences will be for every 10 years, so on what will the annual ongoing money be used? Although we support this disallowance motion, the fees are unfair and inequitable. I agree entirely with Hon Barry House; we must be looking at a much better local management system that will be cheaper and use local knowledge to implement water management in this state.

HON NORMAN MOORE (Mining and Pastoral - Leader of the Opposition) [3.18 pm]: I ask the Leader of the House, who is handling this legislation, what effect the new proposed fee, which the Greens (WA) have imposed upon us, of \$6 000 for 10 gegalitres of water and above, will have on the Ord valley. Are the fees to be paid by individual consumers in the Ord valley or is there a collective amount to be paid by the whole valley for the use of water?

Hon Kim Chance: The Ord Irrigation Cooperative holds the licence.

Hon NORMAN MOORE: If it uses 300 gegalitres a year, will it pay 300 times \$6 000?

Hon Kim Chance: No, it depends on the number of licences.

Hon NORMAN MOORE: That is what I am asking. Is there one fee for the whole valley based upon 300 gegalitres? Is it \$6 000 for the whole lot?

Hon Kim Chance: It is a single licence, so the fee is \$3 000.

Hon NORMAN MOORE: It is \$6 000 under the new proposal. There is a single licence in the valley and, regardless of how much they use above 10 gegalitres, the cost will be \$6 000 under the new proposal.

Hon Kim Chance: That is if they have only one licence. If they had three licences, the cost would be \$18 000. I cannot tell you how many they have. For example, Harvey Water has more than one licence; I think it has three.

Hon NORMAN MOORE: I am interested in whether individuals in the Ord valley have a licence and have to pay or whether it is a collective. The Leader of the House is saying that it is a collective.

Hon Kim Chance: I believe that is the case.

Hon NORMAN MOORE: I would be interested to know some time down the track.

Hon Kim Chance: Sure.

HON KIM CHANCE (Agricultural - Leader of the House) [3.19 pm]: We have spent a rather longer time on the disallowance than we had expected.

Hon Norman Moore: Do you know why? It is because a deal was done behind the scenes that nobody knew about until they read about it in the paper in an article that said that it had already been disallowed at 12.30 pm today when we were having lunch. When people do that, it takes a bit longer than usual. You might talk to your minister.

Hon KIM CHANCE: I was going to say that I appreciate all the comments that were made; indeed, they were to the point. However, because those comments were quite extensive, I will reduce my comments to the bare minimum, because much of the background information of the scheme has already been covered.

I emphasise the fact that the state has a binding agreement with the National Water Commission on how the National Water Initiative will be implemented in Western Australia. The NWI requires all jurisdictions to implement cost-recovery arrangements for water resources, planning and management. That is an obligation. The government introduced a water licence administration fee on 1 July 2007 as a regulation under the Rights in Water and Irrigation Act 1914. The commonwealth government has made progressing the cost recovery of grant funding under the Australian Government Water Fund a necessity. If the state does not introduce licence administration fees, it is in jeopardy of losing \$15 million over four years in Water Smart Australia funds. For those reasons, the government will not support this disallowance motion. I do not think that I need to say anything further, because the Minister for Water Resources has made his comments clear. However, I will address the "concept of fairness" issue referred to by some members as it applies to small and large users and the relative cost imposed on the system by users according to their volumetric engagement. Volume has very little to do with cost, particularly the administration cost of licences. A large number of small licences is far more expensive than a small number of large licences. There is an enormous difference. Drawing parallels between highly complicated, self-provided irrigator arrangements on farmed dams that use a common water source will always be a much more expensive process than that used for the Ord River cooperative, for example. What we are dealing with here - this is why I went through the NWI requirements - is a fee for service. I would have

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thought that all members in this chamber above all other members, given the education that we have received from Hon Ray Halligan in particular, understood the definition of a fee for service. It is a fee for a service.

Hon Barry House: Where is the service when people provide their own infrastructure?

Hon KIM CHANCE: I think Hon Barry House or another member answered that question in the context of this debate, which is why I did not bother going into the matter again. The service is the provision of the licence, and all the work that goes into the establishment of the protection of the right that is provided by that licence. In other words, if my licensed dam diminishes in value because a person higher up the public watercourse constructs a dam, what recourse do I have unless I have a property right? The property right has to be defended. The property right is expressed in the licence. When there are 15, 20, 30, 35, 40 or 50 dams on one common watercourse, it is a highly complex arrangement. It is much more complex than saying to the Ord River District Cooperative that it has 11 000 gegalitres and we will let it use 360 gegalitres. That is how simple the Ord system is. A fee for service must mean exactly that. Hon Ray Halligan was dead right when he described the definition of a fee for service. It has to be a fee for service to the extent that the service costs X dollars to deliver; indeed, unless arrangements have been made to return the surplus, X plus \$1 cannot be charged.

Hon Murray Criddle: That argument blows up when we can't identify the final figure.

Hon KIM CHANCE: The people setting the figure have done the best they can.

Hon Murray Criddle: I asked a question about it last night, and again it was adjusted.

Hon KIM CHANCE: They have done the best they can. It will be inexact, particularly when trying to allocate the costs of the common infrastructure of the organisation. In time they will be able to refine that to a more accurate position. Can they put their hands on their heart and say, to the last dollar and cent, that they have it spot on? No, they cannot. They have always been honest about that. They have done the best they can. They are prepared to share and discuss that methodology with the stakeholders to satisfy them that they have done the best they can, albeit it will be somewhat inexact.

When some members were talking about a fee for service, they referred to abstract notions about fairness based on a volumetric scale. I know what Hon Ray Halligan would do when members impute abstract notions on top of a black and white situation, such as a fee for service. He would have the matter disallowed on the basis that it was the application of an abstract notion and that it could not be proved that the fee was for that service. He would be dead right. Members must understand what is being done. They must understand that if there is a debate to be had about the level of the cost, by all means let us engage in that debate, give a bit of ground here and there and arrive at a figure that we are more or less happy with. That is important, because we know it will be difficult to get a precise number. However, once we have agreed on a number, that is what the fee will be, otherwise it is a tax and not a fee for service.

Hon Norman Moore: Why is the government going along with Hon Paul Llewellyn's proposal?

Hon KIM CHANCE: I have not been involved in those discussions.

Hon Norman Moore: You're accepting what he is proposing.

Hon KIM CHANCE: Actually, I am not. I am discussing the reason that we should not disallow this regulation. The reasons by which other members have been influenced is not a matter for me to determine and it is not a matter before the house for debate. We are debating whether the government's regulations will stand. I can count the numbers in the house. I know that I am fighting a lost cause. The government's regulations will be disallowed. Whatever happens beyond that is of no interest to me.

HON PAUL LLEWELLYN (South West) [3.28 pm]: I think there is consensus that it is possible to put forward regulations that are unfair, inequitable and disproportionate. It is clear to me that members of the opposition share the view that the current fee structure, which was put in place by the government on 1 July 2007, is unfair, inequitable and disproportionate. In that regard, I seek leave to table the open letter that I will put on my website.

Leave granted. [See paper 3535.]

Hon PAUL LLEWELLYN: If there is consensus between the opposition and the Greens (WA) that the fees are unfair and inequitable, it is fair to say that we could negotiate a compromise in the interim that would move us down the path towards a fairer and more equitable arrangement. If any reports are subsequently developed in the other place, or anywhere else, the findings of those reports can easily be incorporated into the renegotiated and reformulated fee structure. The view of the Greens (WA) on water licence fees is very clear. We believe that water entitlements should be covered by a licensing regime. However, the fees should be proportional to the entitlement, and there should be equity in the way in which costs are shared. I understand that the Department of

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Water has an annual budget of around \$60 million, and that it claims that approximately \$5.8 million of that budget has to do with licence fees.

The DEPUTY PRESIDENT (Hon George Cash): Order! Hon Paul Llewellyn is winding up the debate. That imposes some very severe strictures upon Hon Paul Llewellyn in that he is to comment in brief on the matters raised and is not to now digress into those other matters that he had hoped to remember to raise earlier.

Hon PAUL LLEWELLYN: On the contrary, Mr Deputy President, I was dealing with the wide-ranging issues that were raised by the opposition and, indeed, the Leader of the House.

The DEPUTY PRESIDENT: Order! Whatever Hon Paul Llewellyn may be seeking to do, if he wants to dispute what I am saying, there is a particular way to do it.

Hon PAUL LLEWELLYN: I would like to put on the record also that I made a mistake by preparing a press release this morning and I think accidentally putting a time on that press release that preceded this debate. That was an honest mistake. The intention was to put on the public record, as soon as possible, the outcomes of this particular debate.

Hon Simon O'Brien: How have you secured this new fee structure? Has the minister agreed to it?

Hon PAUL LLEWELLYN: I have put on the table the terms of an agreement - a negotiation - that relates to a process for establishing a fairer and more equitable fee structure, and a process by which the new fee structure will be established at the end of a three-year sunset period, using the new water legislation to inform the process. I think that is as clear as it can be. As the new water legislation is laid out in Western Australia, it will become even more clear how we can create a fee structure for the licensing of water entitlements that is fair, proportional and equitable. That was our only intention. In fact, this arrangement will be fairer to the small water users of the south west and the farmers who have small bores. This arrangement will be fairer, more equitable and more proportional.

Hon Simon O'Brien: What is the nature of your agreement with the Minister for Water? That is what I am trying to work out.

Hon PAUL LLEWELLYN: I have put on the table an open letter that explains these arrangements, which I believe will result in a fairer process. In doing that, we have also moved to disallow these water regulations, because there was considerable community concern about the way in which they were structured. We hope to be able to negotiate a compromise that will be a win for the community, a win for commonsense and a win for good water governance in Western Australia.

Question put and a division taken with the following result -

Ayes (15)

Hon George Cash
Hon Peter Collier
Hon Murray Criddle
Hon Brian Ellis

Hon Donna Faragher
Hon Anthony Fels
Hon Nigel Hallett
Hon Barry House

Hon Paul Llewellyn
Hon Robyn McSweeney
Hon Norman Moore
Hon Helen Morton

Hon Simon O'Brien
Hon Giz Watson
Hon Bruce Donaldson (*Teller*)

Noes (11)

Hon Vincent Catania
Hon Kim Chance
Hon Kate Doust

Hon Sue Ellery
Hon Jon Ford
Hon Graham Giffard

Hon Sheila Mills
Hon Ljiljanna Ravlich
Hon Sally Talbot

Hon Ken Travers
Hon Ed Dermer (*Teller*)

Pairs

Hon Ken Baston
Hon Barbara Scott
Hon Ray Halligan

Hon Matt Benson-Lidholm
Hon Adele Farina
Hon Shelley Archer

Question thus passed.