Mining interests
Public submissions to Securing Western Australia’s water future: Position paper
20 December 2013

Policy submissions-Water Reform
Policy and Innovation Directorate
Department of Water
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To Whom It May Concern

Position paper - reforming water resource management

Thank you for the opportunity to provide input to the Western Australian Department of Water (DoW) on the "Position paper - reforming water resource management".

The Association of Mining and Exploration Companies (AMEC) is the largest representative peak industry body for mineral exploration and mining companies within Australia. The membership of AMEC comprises hundreds of exploration, mining and service industry companies.

AMEC’s strategic objective is to secure an environment that provides clarity and certainty for mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

AMEC has a longstanding position of advocating for the streamlining of regulatory systems to remove unnecessary impediments and improve their efficiency and effectiveness. In AMEC’s view Western Australia’s water resources legislation has been lacking in its ability to deliver efficient and effective water regulation to water users. Granted, this is probably due to the age of the legislation which being used against contemporary water needs. Therefore AMEC supports the need for water reform in Western Australia and the overall goals and objectives of the Position Paper. However, AMEC highlights that the true reform will be contained in the detail of the new legislation and regulations.

AMEC is a member of the Water Resources Management Reform External Reference Group and has been involved in the process to begin the implementation of the Position Paper’s water reform framework. AMEC looks forward to working with the DoW through the Reference Group on the implementation of the reforms.

AMEC considers that two issues are absent from the Position Paper.
The first is a guiding principle pertaining to water use efficiency and how the new legislation and regulations will incentivise efficient water use. All users should be using water efficiently for the highest value. There should be built in incentives in the system to promote this principle. These could be as explicit as ‘use it or lose it’ or implicit such as metering - metering invites the water user to monitor water usage and therefore the ability to make management changes if necessary.

The second is recognition that flexibility will be required at the water resource level in managing water resources. The Position Paper discusses flexibility in the context of water management in a variable and changing climate that is, reducing allocations due to lower rainfall trends, or increasing allocations to take advantage of short term water availability. Water resource management should be focused on outcomes. However, the Position Paper is silent on its views in providing flexibility to water resource users to utilise a suite of ‘approved’ tools in the appropriate manner to manage the resources. That is, as long as the local users are meeting agreed outcomes for the water resource, the method to do so should be determined by them.

If you have any further questions of issues raised in this submission please contact myself or Justin Fromm.

Yours sincerely

Simon Bennison
Chief Executive Officer
APPEA comments on ‘Securing Western Australia’s water future’ position paper

The Australian Petroleum Production and Exploration Association (APPEA) is the peak national body representing Australia’s oil and gas exploration and production industry. Its member companies account for around 98 per cent of Australia’s total oil and gas production and the vast majority of exploration.

APPEA welcomes the opportunity to provide input into the State’s plan to streamline and better manage Western Australia’s water resources. APPEA recognises the importance of water management as an integral part of the industry’s commitment to sound resource and environmental management.

The industry regularly works with government agencies, in particular the Department of Mines and Petroleum (DMP), to ensure the regulatory framework for oil and gas activities continues to remain relevant and meets government, community and industry expectations. It supports the initiatives which have been undertaken by government, including an independent review of shale and tight gas regulation, a guidance statement from the Environmental Protection Authority (EPA) and an interagency working group to consider onshore gas activities on which the Department of Water is represented. In parallel, the industry has also sought to establish and promote good operator practices in relation to the protection of aquifers or groundwater and sourcing and use of water.  

APPEA generally supports the reforms proposed in the Department of Water’s position paper and would welcome further consultation, specifically in relation to the points detailed below.

Improved legislative framework

APPEA supports the goal of streamlining and consolidating the various pieces of water legislation that have regulated the sector in Western Australia since 1914. The intended alignment with the National Water Initiative and the trend towards risk based assessment processes represent particularly important elements of the planned reforms.

In progressing these reforms, APPEA notes that there are a number of State agencies involved in the regulation of the petroleum sector in relation to water issues, including the DMP, Department of Water (DoW) and the EPA. A whole-of-government approach will be important and existing mechanisms such as DMP’s inter-agency working group on onshore gas should continue to be used as a forum for aligning agency regulation and interactions, including with the DoW.

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1 See [www.wa-onshoregas.info](http://www.wa-onshoregas.info)
Mechanisms for Managing Water Resources and Water Quality

As noted, rules on water quality and protection are spread in a number of Acts and in relation to the oil and gas sector are also governed specifically by petroleum legislation designed to ensure well integrity and thus the protection of groundwater. This legislation is subject to ongoing reforms, with draft resource management regulations to be released for consultation in 2014. These regulations are expected to consider the lifecycle management of petroleum wells and provide a strong platform for ensuring the ongoing protection of water resources.

This legislative framework is supported by inter-agency arrangements which require DMP to consult with the DoW and automatically refer proposals to the EPA if a public drinking water source is involved. In APPEA’s view these arrangements have proved effective and are supported.

APPEA also recognises the importance of a community-level dialogue on responsible management and the shared use of water resources. In relation to exploration and evaluation of onshore gas resources in the Carnarvon, Mid West and Canning Basin regions the use of local water advisory groups is supported.

Proportionate, Contemporary and Uniform Compliance Measures

Ensuring compliance measures are uniform, proportionate and contemporary will assist with providing certainty to companies operating in Western Australia. In particular, APPEA welcomes the DoW’s proactive efforts to align compliance measures with other pieces of environmental legislation in Western Australia and nationally.

APPEA would welcome further consultation as the Government moves to implement its final positions on the planned improvements in water management.

I would be pleased to discuss any of these points with you further.

Regards,

Stedman Ellis
Chief Operating Officer – Western Region
APPEA
18 December 2013

Mr Tad Bagdon
Executive Director- Policy & Innovation
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Dear Mr Bagdon

CME submission on Securing Western Australia’s Water Future

CME is pleased to provide comment in response to the Department of Water (DoW) water reform position paper, *Securing Western Australia’s Water Future*.

Evidence based, stable water resource management policies are important for ensuring resources sector companies have certainty over water access for exploration, construction and operations. CME is therefore supportive of DoW’s proposed reforms to streamline, consolidate and modernise state water resource management legislation.

CME also supports DoW’s commitment to reconciling inconsistencies, where appropriate, between state water policies and the principles of the National Water Initiative, while acknowledging state policies must be able to respond to the broad spectrum of water management circumstances and challenges that exist in Western Australia.

There is a need to update the existing suite of legislation dealing with water resource protection and management to make it responsive to the needs and challenges of the 21st century. CME encourages the government to give priority to the drafting of the Water Resources Bill (the Bill) as a demonstrable measure of the commitment to continuing the water reform process.

CME requests the opportunity to comment on a draft version of the Bill before it is introduced into parliament to help ensure the practical application of the legislation. CME was provided an opportunity of this nature prior to the introduction of the *Water Services Act 2012*, which proved to be valuable to ensure that the principles discussed in earlier consultations were clearly and correctly drafted into the legislation, provisions were tested by industry to ensure they were implementable, and the drafting of the Act did not generate any unintended consequences.

Given the level of detail on water resource management proposed to be deferred to regulations under the new Water Resources Act, CME also strongly encourages DoW and the government to continue its commitment to consultation with stakeholders through the Water Resources Reform Reference Group.

Efficient and effective consultation through the reference group in drafting the Bill, its passage through Parliament and during the development of regulations, will be critical to allaying industry concerns over policy positions and ensuring new legislation is drafted as intended. The success of the water resource management reform will ultimately depend on the drafting of these new regulations and CME considers this process should not be rushed.
Strategic priorities for the resources sector

The water resource management strategic priorities for the resources sector are:

- access to water resources for exploration, construction and security of supply for operations;
- maximum optionality in the management, use and disposal of dewatering water surplus to mine needs;
- recognition of the significant investment the resources sector makes in water resource development and management;
- the need to recognise and protect State Agreement Act rights; and
- the need to contain costs so as not to harm Western Australian’s competitiveness in the international commodity markets.

The proposals in DoW’s position paper have been reviewed with these strategic priorities in mind.

Key comments on the position paper

CME identifies the following four overarching issues from the position paper.

1. Adequate departmental resourcing

The proposals in the position paper will, if implemented, represent a substantial change to DoW’s current functions and practices. To minimise the number of issues inevitably arising during the implementation of a new Water Resources Act and the transition to the new regime established by it, DoW will need to be adequately resourced during the transition period. Support for DoW officers in regional offices is particularly important.

This support should encompass the increased consultation functions DoW will be assuming during the development of statutory water allocation plans and the ongoing liaison with local advisory groups. It should cover technical expertise as well as administration and regulatory functions.

To this end, CME considers this resourcing should be in place for at least three years to provide for an appropriate transition process. Further, CME considers DoW should remain as a stand-alone agency to allow it to focus on managing the transition process.

2. Ongoing consultation

There is a considerable amount of detail on how water resources are to be managed that will not be addressed by the Bill. Instead, detailed management will be devolved to regulations under the new Water Resources Act, statutory water allocation plans and other policy instruments.

Matters to be left for specification and development later include the:

- simplified assessment processes proposed for transfers and trades;
- rules for varying water entitlements after a water allocation entitlement is granted or licence issued;
- criteria for fixing licence terms of short duration;
- criteria for determining the triggers for transition from licensing to water access entitlements and the process for this transition;
• criteria for determining the size of a consumptive pool;
• criteria for determining whether a statutory allocation limit will be set;
• composition and function of local water advisory groups;
• process for returning over allocated systems to their allocation limit; and
• risk assignment provisions where permanent cuts to allocation entitlements or licence volumes are to be made.

While it is appropriate for some matters to be left to subordinate instruments to provide sufficient flexibility to best manage a particular water resource, the resources sector requires a sufficient degree of certainty and stability in the regulatory framework in order to make long term decisions in relation to water. CME therefore encourages DoW to maintain current administrative policies that are well understood by industry such as the 'first in first served' and 'use it or lose it' policies, which should retain primacy until full or near full allocation of a resource supports the transition to a market based mechanism or perpetual rights.

Ongoing communication and consultation will be vital to ensure the principles embodied in the Bill can be appropriately and effectively implemented.

3. Consideration of the implications for other legislation

CME requests the consolidation of water resource management and source protection regulations to have consistent principles applying across the state to both surface and groundwater systems.

The Rights in Water and Irrigation Act 1914 (RiWI Act) and other water legislation to be consolidated under the Bill do not operate in isolation. The Bill will need to integrate with other legislation referencing water rights, such as the Mining Act 1978 and State Agreement Acts, and to ensure those Acts will continue to operate as intended alongside the regime created by the Bill.

4. Consideration of the new water regime on State Agreements

The position paper does not adequately consider the impact the new regime may have on the water access rights created under State Agreements. While most State Agreements explicitly reference the RiWI Act, State Agreements create a suite of other rights that may have an impact on water resource management. The regime created by the Bill must be able to integrate with those rights without limiting them.

Detailed comments on the position paper

CME makes the following detailed comments on specific matters discussed in the position paper:

(a) Simplified licensing

CME welcomes the proposal in section 3.1.1 of the position paper to apply simplified, risk-based assessment processes to the grant of, and certain types of dealings in, licences.

However, the criteria proposed to be developed within the legislation require careful drafting so the risk-based principles can be clearly understood by the resources sector and applied by DoW officers. CME is concerned uncertain drafting will lead to a misunderstanding or misapplication of risk-based assessment in practice and the loss of the efficiencies the new processes were designed to achieve. CME therefore requests DoW comprehensively consult with the resources sector in developing assessment criteria and methods.
(b) Licence trading and transfer

To date there has been little need in the resources sector to engage in large scale trading of water volumes. However, as the Western Australian climate changes it is likely trading concepts will be of increasing relevance in the future.

CME notes DoW’s intention to apply risk-based principles to the trading process and reiterates the comments above in relation to the need for drafting clarity.

In direct discussions with DoW, CME has noted the government’s intention to retain the current requirements for access to land in Schedule 1 of the RWI Act where the licence regime is to continue to apply to a particular water resource. These requirements, while not equating to a full separation of land and water rights as contemplated by the National Water Initiative, have allowed some freedom to trade.

CME notes where a statutory water allocation plan applies the water access entitlement consumptive pool regime, the requirement to have legal access to land will not link to the water allocation entitlement but to the ‘abstraction arrangements’ that will exist alongside the entitlement (section 3.2.4 of the position paper). This arrangement reflects the principles of the National Water Initiative.

Section 3.2.4 of the position paper notes "abstraction arrangements [will] require legal access to land to which the relevant approval relates". It is not clear whether the ‘legal access’ required will be the same as the legal access rules that will apply to the water licensing regime. This should be clarified in the Bill.

(c) Licence tenure

CME is supportive of the position paper’s proposal in section 3.1.3 to extend the possible term of the licence to up to 40 years. From a resources sector perspective, it will be preferable for there to be flexibility to align the terms of water licences with the terms of the relevant mining tenement(s).

The criteria for fixing licence terms of short duration should be clearly defined in the regulations.

(d) Variation of existing water volumes

The reliability of water volumes from year to year is essential for promoting certainty of investment and resources sector development, and CME is therefore concerned with the proposals in section 3.1.4 of the position paper.

CME notes the proposal to develop the rules or principles for varying licence volumes will be "tailored to local circumstances and developed in consultation with local advisory groups". However, it is not clear what guidance will be given in the Bill to develop those principles. Resources sector companies are primarily concerned with security of supply and, in principle, would not support seasonal variation of licences.

CME suggests licensed volumes should be varied only in specific circumstances, namely where:

- a statutory water allocation plan is in force;
- the plan applies the modified license regime to the particular resource; and
- variation of licence volumes can only occur when the particular resource is fully allocated.

Until a resource is fully allocated, CME considers variation of licence volumes is not warranted.
Uncertainty around the principles to be applied to the reduction in licence allocations, even where those variations may be seasonal or temporary, may encourage companies to adopt more conservative supply assumptions for planning purposes, which could lead to inefficient allocation of a particular water resource.

(e) Accessing the water

CME supports the possibility of both the water allocation entitlement regime operating alongside the licensing regime "in some circumstances" (section 3.2.4 of the position paper). However, it is not clear whether these circumstances will be detailed in the Bill or supporting regulations. In either case, the circumstances will need to be clearly articulated so existing and potential users of the resource have certainty around the regulatory environment.

If it is agreed a resource will migrate from a water licensing regime to a water allocation entitlement regime, the rules for transition of allocated volumes will need to be carefully considered. CME is concerned if a large licence volume is 'converted' to a disproportionately large allocation there is the potential for users to be 'gifted' additional water, potentially distorting the intended management of the resource going forward.

(f) Allocation mechanism for the release of unallocated water

CME supports the continuation of the 'first in first served' policy for the allocation of water and suggests consideration be given to the creation of 'higher' and 'lower' security licence allocations where the security reflects the potential variation of the licence volume over the term. Higher security licences should be given to those users who are early users of the resource and lower security licenses granted to later users of the resource who would be better able to accept a licence with a greater potential for the licence volume to be varied.

(g) Risk assignment framework and compensation

The risk assignment provisions to be applied where there is to be a permanent reduction of water allocation entitlements must cover a scenario where the reduction is due to a change in the levels of information available on the particular resource (section 3.3.7 of the position paper). The resources sector commits a high level of investment to developing water resource knowledge in the areas in which it operates and this new information could lead to changes in allocation entitlements. CME considers any risk assignment principles should acknowledge this significant contribution.

CME requests DoW clarify how the risk allocation principles in paragraph 49 of the National Water Initiative might be applied to acknowledge the resources sector contribution.

(h) Water reinjections

CME notes there will be further work by DoW on the policy for the reinjection of water into underground water resources (section 3.4.9 of the position paper). Reinjection raises several issues in the context of the Bill. For example:

- whether reinjection volumes will be credited and bankable under the revised licensing system and under a water allocation entitlement regime;

- if discharge to the environment is approved by the Department of Environment Regulation, whether the injection will be credited towards a net abstraction volume if the injection is made into the same system; and

- the current regulatory overlap and uncertainty between the RIWI Act, Environmental Protection Act 1986, DoW, Environmental Protection Authority and Department of Environment Regulation in relation to the management of aquifer injection.
Other issues

In addition to the issues raised by aquifer injection, the regulatory overlap in relation to dewatering activities is also problematic for the resources sector. The drafting of the Bill represents an opportunity to clarify the roles of the different regulators and a more fundamental consideration of the lead agency model as it applies to dewatering, aquifer injection and other water related activities with a significant potential environmental impact.

Should you have any additional queries, please contact Benjamin Hammer, Policy Adviser – Infrastructure, on (08) 9220 8527 or b.hammer@cmewa.com.

Yours sincerely

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Securing Western Australia’s water future

Argyle Diamonds welcomes the opportunity to provide comments to the Department of Water (DoW) regarding the Securing Western Australia’s water future position paper on reforming water resource management in the state.

The Argyle Diamond mine is one of the world’s largest producers of diamonds and the world’s largest producer of natural coloured diamonds. Argyle Diamonds is 100 per cent owned and managed by Rio Tinto Limited.

Argyle Diamonds contributes significantly to Western Australia’s economy through the creation of hundreds of jobs and the generation of millions of dollars in exports. Regionally Argyle Diamonds is a significant contributor to the East Kimberley in employment, infrastructure, tourism and flow-on business. Since the mine commenced, royalties paid to the state government have exceeded A$1 billion. Argyle Diamonds also contributes a significant amount to the Commonwealth government by way of income tax. In addition Argyle Diamonds contributes funds to charities, educational, cultural and community based programmes and special projects.

Lake Argyle – Power Generation

The primary source of power for the Argyle Diamond mine is the Lake Argyle Ord Hydro power station which is owned and managed by Pacific Hydro Limited. This power station generates approximately 220GWh per year which is used to supply not only the Argyle Diamond mine but also the nearby towns of Kununurra and Wyndham.

Of this 220GWh available power generation Argyle Diamonds utilised 144GWh in 2013 which represents approximately 75% of the mines power demand. The remaining power demand is supplemented by on-site diesel generation. Argyle Diamonds in partnership with Pacific Hydro Limited have recently made changes to the Argyle Diamonds power control system to maximise the available power generated by the Ord Hydro power station.

Argyle Diamonds understands the importance of the Lake Argyle water resource to the future development and sustainability of the East Kimberley however it would like to express concern with the current water restrictions structure which has limited power generation at the Ord Hydro power station in recent months. These power restrictions only impact Argyle Diamonds and not the towns of Kununurra or Wyndham.
Without a review of the current water restrictions Argyle Diamonds faces uncertainty in the coming months and years securing one of the most basic requirements for sustainable mining operations – power.

Argyle Diamonds in partnership with the Department of Water have over recent months been working on a new variation to the current set of enhanced rules water restrictions outlined in the Ord surface water allocation plan. Argyle Diamonds believe this new variation to the enhanced rules would result in the stability of the Ord Hydro power supply, thus eliminating all short term and ad-hoc power restrictions which are currently being imposed by Pacific Hydro Limited / Water Corporation.

**Lake Argyle – Water Consumption**

Argyle Diamonds utilises Lake Argyle as the sole source of potable water for its workforce. Previously Argyle Diamonds utilised onsite dam infrastructure (Gap Dam) however this source no longer meets the Australian Drinking Water Guideline values. Argyle Diamonds does not have any other suitable drinking water sources and relies on Lake Argyle as its only source of safe drinking water.

Argyle Diamonds is committed to reducing consumption from Lake Argyle and utilises recycled water for mine operations. During the 2012/2013 reporting period, usage totalled 0.32 Mm³ over 18 months, which represents 6.2% of the Lake Argyle (SWL 151367(8)) licence limits. Lake Argyle consumption has seen over a 95% reduction in use since 2005.

Argyle Diamonds considers its use a low risk to the water resource, other water users and the environment however allocation restrictions could potentially compromise mine operations if safe drinking water was unable to be supplied to the workforce.

**Summary**

Argyle Diamonds relies heavily on Lake Argyle for essential resources to mine operations - power and safe drinking water. Without these resources mining operations would be severely compromised.

Given this dependency Argyle Diamonds would like to work more closely with the Department of Water in relation to Lake Argyle water supply and water management options that delivers a balance between existing water commitments and any possible future commitments.

Yours sincerely

Gordon Bryce

Shane Johnson
Managing Director
ARGYLE DIAMOND MINE PTY LIMITED