

LAND COURT,

BRISBANE

9 December 1994

**Re: Appeals under Water Resources Act 1989 (s.4.26)
A93-38/39.**

MP Stephen Pty Ltd

v.

Chief Executive, Primary Industries Corporation

DECISION

These are appeals (2) against decisions of the Chief Executive, Primary Industries Corporation (DPI), relating to the imposition of certain conditions on the renewal of Waterworks Licences Nos G35479 and G35480 issued to the appellant in May 1993 for a term expiring on 31 October 2002.

The licences authorise the diversion of water from Oakey Creek by two (one each) 65mm centrifugal pumps to Lot 3 on RP 122994 (G35479) and Lot 6 on RP 124540 (G35480), parish Jondaryan, which lots are in the ownership of the appellant and are separated by Oakey Creek. The licences are for "irrigation" and "water harvesting" purposes specifying an area of 12 hectares (each) as the area to be irrigated for grain crops. The original licences issued in 1980 for the same purpose specifying the same area and carrying these special conditions:

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1. Pumping under the authority of this licence is prohibited whenever restrictions are imposed on irrigation from Oakey Creek.
 2. The pump authorised by this licence shall not be installed until the proposed 130 megalitre storage is constructed. "

The licences were renewed in 1989 expiring on 31 October 1992. These renewed licences were issued with conditions which dealt with the installation of a meter by the licensee if required by DPI to record the volume of water passing through the works (Conditions 1.012, 1.014, 1.015 and 1.016) and otherwise provided:

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- 1.020 Pumping under the authority of this licence is prohibited whenever restrictions are imposed by the Commissioner on pumping from the watercourse, lake or spring on which the licensed work is authorised to be installed, or voluntary restrictions on irrigation have been recommended by the Water Advisory Board in whose area the watercourse, lake or spring is located.

- 1.080 Water may be pumped directly onto the ground or held in

storage for later use.

- 1.092 Pumping under the authority of this licence for waterharvesting purposes is permitted only when there is a flow exceeding 0.3 cubic metres per second downstream of the pump site. This flow is to be determined by a mark on a gauge board to be installed by the Commission. The gauge board or mark may be altered from time to time by the Commissioner to reflect more accurately the prescribed surface flow."

The licensee appealed those decisions on a number of issues but contested the last condition (1.092) and was successful in having the opportunity to waterharvest reduced from a flow rate of 1.5m³ per second to a flow rate of 0.3m³ per second (A87-67/8 - decision 31 March 1989).

Since then a few things have happened in relation to this creek system including a reassessment of the water resource. Changes of a regulatory nature and, as the evidence will show, rather devastating climatic conditions have had an effect on the system. But first the history of the licences needs to be completed.

On 1 October 1992, the licensee applied for renewal of the licences. The applications were made for renewal for the same purposes and stated that crops to be irrigated (spray method) in any one growing season were barley, sorgum, lucerne, corn and sunflower. The licences were renewed and among other conditions carried these conditions -

- " 1.080 Water may be diverted for waterharvesting purposes under the authority of this licence may be supplied directly onto the ground or held in storage for later use.
- 5.054 Notwithstanding any other Term of this licence, the total volume of water to be diverted under the authority of the licence for irrigation purposes during any year, being that period from 1 Sept to 31 August, shall not exceed 96 megalitres.
- 5.058 A meter of a type approved by the Commissioner to record the volume of water passing through the licensed work shall be purchased, installed and maintained at the licensee's expense. Such meter shall be installed to the satisfaction of the Commissioner within the time specified by notice in writing from the Commissioner. The licensee shall not remove the meter for any reason without the written approval of the Commissioner, nor shall the licensee take any action which results in the meter failing to register correctly the volume of water diverted by the licensed work.
The Licensee shall at all times maintain the meter to the

satisfaction of the Commissioner.

- 5.062 The licensee shall record the water meter reading at the end of each calendar month, and shall forward such record to the District Manager at the end of each three monthly period following 1 September each year. Such records shall be made available immediately upon request to any Commission officer.
- 5.064 Notwithstanding Term 5.062, the licensee shall record the water meter reading at the start and end of each period of diversion for waterharvesting, and shall submit such record to the District Manager immediately upon cessation of operation, or as soon as practicable thereafter.
- 5.066 In every case the quantity of water shown by the index or register of the water meter to have passed through such meter shall be taken prima facie to be the quantity of water which has actually passed through the meter.
- 5.068 Where the Commissioner has reason to doubt the accuracy of the meter reading, he may calculate the volume of water diverted by any means that he deems appropriate. "

Shortly after issue it was realised that conditions 1.020 and 1.092 attaching to the previous licences were omitted from these licences in error. DPI has asked that they be reinstated by the Court in lieu of reinstatement by way of amendment, modification or variation of the licences as is provided for in the Act. The appellant has no objection to the flow rate continuing for waterharvesting purposes but it seems on the evidence that the prohibition of pumping when restrictions are imposed is some cause for concern. With that runs the objection (the substance of the appeal) to the imposition on the licences of conditions 5.054 and 5.058 and following inter related conditions. The background would be incomplete without it being said that back in 1987 or thereabouts the licensee applied to have the licences converted from conditional status to unconditional status. The applications were subsequently withdrawn for reasons which are equivocal and need not be discussed, save to say that the concerns then in the mind of the appellant were intertwined with the objective sought to be achieved in this appeal process.

The appellant's land is situated towards the end of Oakey Creek (before the junction of the creek with the Condamine River) on a system referred to in evidence as the Gowrie-Oakey Creek system. There is roughly 120 kms of creek in the system. Water is taken from the system for irrigation purposes and waterharvesting purposes and the aquifer is tapped by bores. Thus an irrigation enterprise could comprise all

three components. This sort of enterprise is referred to as an integrated system. The term is applied to the enterprise conducted by the appellant which consists in the aggregate of an area of the order of 160 - 200 ha of irrigated land. Cattle are also grazed on the property. DPI is vested with management and control of the system and looks for assistance from user representatives comprising the Gowrie Creek Water Advisory Committee and the Oakey Creek Water Advisory Committee. This form of user participation in management has been in place for years and is common throughout the State. The worth of these committees and sub-committees in management is no better shown than in what I may describe as "the Callide Valley experience" discussed in *Moir v. Commissioner of Water Resources* (1992-93) 14 QLCR 125. That experience may also serve as an excellent example in demonstrating the results which may follow from the installation of meters.

I turn then to the evidence in this case.

For the appellant evidence was given by Mr CM Stephen who is a director of the appellant company and by Mr JR Lawrence, a specialist hydrologist engineer. He also gave evidence on behalf of the appellant in the previous appeal. DPI called Mr RW Robson, Senior Technical Officer within the Water Resources Business Unit of DPI, Mr GH Hausler, Manager, Surface Water Assessment within the same Unit of DPI as Mr Robson, Mr JA Speed, licensee/irrigator from the system and Secretary/Treasurer of the Oakey Creek Water Advisory Committee, Mr HA Butt, a licensee/irrigator and Mr AS Johns, licensee/irrigator and also a member of the Oakey Creek Water Advisory Committee.

Oakey Creek has a catchment area of about 2000 square kilometres covering a large area of agricultural land and including from the source of its tributary in Gowrie Creek the City of Toowoomba and downstream the Towns of Oakey, Jondaryan and Bowenville. Other tributaries comprise Cooby Creek, Meringandan Creek and Westbrook Creek. These latter tributaries, although of benefit to the system, do not possess a sustained base flow and hence have no significance in terms of irrigation sustainability. Gowrie Creek has its source within the urban area of the City of Toowoomba and takes outflow from the City's Wetalla sewerage treatment plant. Average rainfall along the system varies from around 660mm in the west (downstream end) to 970mm in the east. The primary contribution to the base flow of the system has been identified as coming from

- (a) drainage of shallow basalt aquifers underlying Toowoomba;
- (b) urban stormwater runoff; and
- (c) the outflow from Wetalla.

Gauging stations are located at Cranley on the outskirts of Toowoomba (upstream of

Wetalla) at Oakey and at Fairview towards the western end of the system. A report prepared on the system by DPI and concluded in 1990 outlines historically the system of licensing. It records that significant expansion occurred from the late 1950s to the mid 1960s when the Oakey Creek Water Advisory Board (now Committee) expressed concern that the stream was becoming fully committed. An embargo was placed on the issue of further licences. Further licences however were issued but only issued on conditions governing pumping restrictions and provision for off-stream storage. Such was the policy applying when the appellant received its licences in 1980. The provision for off-stream storage was later relaxed. At the time of writing the 1990 report there existed 60 unconditional licences authorising the irrigation of 599 ha and 31 conditional licences authorising the irrigation of 284 ha - a total of 883 ha. DPI at the time was holding 10 applications for new licences for a total of 164 ha and 5 applications to convert 59 ha of conditional licences to unconditional licences. A model was developed spanning a 17 year period from 1971 to December 1987, drawing a comparison between available water and total water need. Irrigators were requested to provide information on pump size and type, type and area of crops grown and irrigation usage for the various crops in an average season. Responses were of the order of 68%. Allowances were made for stream flow losses and riparian requirements and demand for crops on statistics provided by the users. A number of different levels of development were modelled including the area then authorised unconditionally (600 ha) and the total area authorised of 900 ha and for comparative purposes an area of 1050 ha. Outflow from Wetalla was estimated to have increased from 4000ml per annum in 1971 to approximately 6500ml in 1990 and was expected to reach 7000 - 7500ml per annum by 1995. In that part of the report reviewing system management, the report records the opinion that better communication could be achieved if the two water advisory committees were merged; that co-operation is needed of all irrigators to ensure that restrictions are not breached and under the heading "Use in excess of licence entitlement for irrigation from the creek system" it is said "licensees are not presently restricted to a volumetric allocation but rather to an area that they are authorised to irrigate. In many cases it is difficult to determine what area a landowner is irrigating from the creek because water from an offstream storage and/or bores may be used in conjunction with the irrigation water taken directly from the creek." The comment followed with a solution either of

- (a) landowners identifying a specific area and crop type or
- (b) installation of water meters restricting use to a volumetric allocation.

Issues identified in the summary include

- (1) a finding that the base flow had increased considerably since 1967;

- (2) recognition of the value to the system of the Wetalla input;
- (3) consideration of means of securing that input;
- (4) a finding that as at 1987 the system could have supported 850-900ha of unconditional irrigation licences on a similar level of reliability to that which existed for 600ha in 1971;
- (5) the assumption that if the increase from Wetalla reached the expected volume by 1995, the irrigation area could be expanded to 1000-1050 ha at similar reliability levels;
- (6) an expectation among irrigators that existing conditional licences would be given preference in the granting of any future additional unconditional licences in historical order of grant.

The report concluded with recommendations that matters be discussed with the water advisory committees covering among other things the conversion of all conditional licences to unconditional licences (883ha) and/or the issue of additional conditional licences taking the area of licensed irrigation up to 1000ha and finally for licensees holding irrigation licences to either (a) nominate a specific area on the ground or (b) install a water meter and restrict diversion to a volume based on the licensed area.

And so the report went on its way ending in the adoption of "Operating Guidelines" dated August 1991. These guidelines differed from the recommendations made in the report by retaining a classification of conditional and unconditional licences

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" **'Group A' Licences will replace those Licences previously known as 'unconditional licences'**. These former unconditional licences will be amended by the addition of a Term which will identify them as 'Group A' Licences.

'Group B' Licences will replace those licences previously known as 'conditional licences'. These former conditional licences will be amended by the deletion of the current Term which prohibits pumping during periods of restriction, and the addition of a Term identifying them as 'Group B' licences. To comply with the provisions of the Water Resources Act, it will be necessary for individual licensees to apply to have their current 'conditional' licences amended to 'Group B' licences. Such application must be accompanied by the normal advertising fee.

Differentiation between 'Group A' and 'Group B' licences will be drawn through the management of pumping restrictions. While 'Group B' licences will not be prohibited from pumping during periods of restriction, they will nevertheless generally be subject to a less favourable restriction regime than 'Group A'. The operational difference between 'Group A' and 'Group B' licences is further explained in Section 4 following. "

Under the guidelines, applications for licences for new or increased areas would only be approved under 'Group B' licence arrangements. In fact 11 new licences (including area adjustments) were advertised and granted taking the area of permitted irrigation to 1020ha. No objections were received to the grant of such licences. On the 1990 model studies this commitment, assuming a 1987 supply of water, would possess an uninterrupted supply in 75% of months. On page 10 of his report Mr Robson says:

" In allocating irrigation access to a water resource, the Chief Executive seeks to balance irrigation commitment with reliability. The benefit of 1 000 hectares of total irrigated area on the System provides an acceptable balance with reliability given that the significant benefit of the additional irrigated area in total outweighs the relatively small extent of unreliability. "

The guidelines went on to provide in so far as is relevant for -

(a) Restricted water harvesting - (3.2.2)
 " Access to lower range flows which are excess to requirements will be granted for pumps of equivalent size to irrigation pumps under 'restricted waterharvesting' arrangements. "

Pumping under this arrangement however will be permitted only by announcement made at times when stream flow is in excess of requirements.

(b) Irrigation - (4.1)

" 'Group A' and 'Group B' licensees will be required to limit their operation to conform with the area specified on their licence, or, in particular cases as determined by the Commission, to an annual volumetric equivalent thereof.

Licensees operating according to area limitation will be required to define the area to be irrigated under the licence during each season. The licensee will be required to prepare a plan showing the location and dimensions of the particular area, and to submit this plan to the Commission prior to commencing to irrigate the area.

In cases where the licensed area is a part of, or is associated with, a larger irrigation area supplied from several sources (viz bores, ring tank), the operation of the on-stream irrigation pump will be permitted only at times when water is actually being applied to the licensed area as defined on the plan provided to the Commissioner.

In those cases where either the Commission considers that it is inappropriate to limit operation solely according to area definition or a licensee finds it inconvenient to operate according to such limitation, an annual volumetric limitation will be applied and the licensee will be required to install a water meter to record usage. Diversion of water will be limited to an annual maximum volume equivalent to eight megalitres per hectare of licensed area.

Where a meter is installed, pumping will remain subject to normal pumping restrictions, and there will be no guarantee of the availability of the annual maximum authorised volume. The purchase, installation and maintenance of the meter will be at the licensee's expense, and the licensee will be required to provide a certificate as to the accuracy of the meter on an annual basis. Subject to other commitments, the Commission would be available to provide service in this regard. "

(c) Pumping restrictions - (4.4)

" Pumping restrictions will be imposed and managed by the Commission in consultation with the Water Advisory Committees.

At time of adequate flow there will be no operational difference between 'Group A' and 'Group B' licences. However, at times of shortfall in supply, restrictions will generally be imposed such that 'Group B' operations are relatively more restricted than 'Group A'. At times of severe shortfall, 'Group B' will be subject to a total ban on operation sooner than 'Group A'.

While always recognising the differing restriction thresholds for 'Group A' and 'Group B' operations, the practice of maintaining a slightly more favourable restriction regime on Gowrie Creek in comparison to Oakey Creek will be maintained. Generally, Gowrie Creek operators will be assigned one day per week more pumping opportunity during restriction periods than Oakey Creek operators. "

As noted by Mr Robson in his report (Exhibit 20) the guidelines provided for an ongoing differential licensing and management approach between unconditional (Group A) and conditional (Group B) licences, both of which carry conditions dealing with restrictions on diversion of water imposed by DPI or when voluntary restrictions have been recommended by the water advisory committees. Such restrictions were to be those announced for each group. The arrangements upgraded the status of conditional licences by providing such licence holders with some opportunity to pump during periods of pumping restrictions (when prior thereto such licensees were first off the system). Briefly the arrangements provide -

- 1) All licensees on an integrated system had to install a meter. The maximum entitlement to these integrated system users (conjunctive users) was converted to a volumetric entitlement equivalent to 8 megalitres per hectare of licensed area.
- 2) Licensees who irrigated only from the creek were required to provide a dimensional plan of their selected irrigation area on a seasonal basis for surveillance purposes by DPI.

- 3) A category of restricted water harvesting was made available to both Group A and Group B licensees available only to those licensees whose operations are metered and as provided by DPI announcement when stream flow is in excess of riparian and irrigation demand (including circumstances on the Condamine River downstream of Oakey Creek).

According to Mr Robson the arrangements were complete except for the appellant which declined the invitation to convert the subject licences to Group B status.

The above arrangements having been in practice for a period were refined in 1994 but before discussing these arrangements I should deal with the evidence of Mr Hausler.

Mr Hausler manages a group within DPI which carries out hydrologic and river hydraulics for the management of surface water resources throughout the State. At the time of the 1990 review of the system a mathematical model was set up to simulate the performance of the system under the various levels of irrigation commitment mentioned earlier herein. A similar procedure was again used to re-assess the reliability of water supply for the period 1971 to 1993. In the exercise use was made of additional climatic information which became available since the 1990 study. The research carried out by Mr Hausler into rainfall over a 108 year period at Toowoomba and a 95 year period at Oakey revealed that the past four years have contained the driest 2, 3 and 4 year periods on record. In estimating the reliability of supply for irrigation it was assumed that the combined flow at Cranley and the outflow from Wetalla contributed to the irrigation supplies along the system. As most licensed areas were unmetered, no actual water use was available and so estimates of water use were made based on a combination of crop types including lucerne, winter and summer crops running from the basic area (pre-conditional licences) through to the area of 1020ha committed under the 1990 guidelines. Mr Hausler's conclusions are repeated -

" Examination of the above table indicates that, based on climatic conditions 1971 to 1993, the expected reliability of supply for irrigation has remained reasonably constant when the combinations of licensed areas and Wetalla Treatment Plant outflows for 1971, 1980, 1987, and 1993 conditions are compared. The percentage of months with severe shortfalls, and in which restrictions to supply can be expected, varies from about 22% to 26%. The decrease in reliability of supply that could be expected with increasing licensed area has been compensated to a major extent by the increase in reliability resulting from the increase over time of the discharge from the Wetalla Plant.

The results in the above table show that there has been no significant decrease in the expected reliability of irrigation supply from the creeks with the change of conditions over the period from 1971 to date. The increase in licensed area over that time is 80% (that is: areas have increased from 600 to 1020 hectares). Taking into account the increased outflows from Wetalla, this area increase has

been estimated to cause a drop in reliability of irrigation supply of 4% (that is: an increase in the total months of irrigation supply shortfall of 10 months over a 20 year period). The benefits from the increased licensed area of irrigation which can be supported, more than outweighs the small decrease in reliability of irrigation supply. "

The exercise performed by Mr Hausler in terms of demand and cropping mix appears to have been taken from material provided by growers as a lead up to the 1990 assessment. It may be observed that only 68% of growers answered the questionnaire. When it is accepted that different crops require different amounts of water and that crops may change from season to season it may be appreciated how much easier and certain the results could have been had actual water use correlated with crops been available. The unknowns in the 1990 exercise surfaced within two years of the 1991 guidelines being put in place. The 1990 report carried in part an undertone that under past practices the correlation of water use and entitlement was equivocal. Mr Robson said that comments had been made to him by licensees that they had no idea of the volume of water they were using. In late 1993 the 1991 arrangements were reviewed by a consultative sub-committee in the light of operational experience. The sub-committee recommended refinements. A discussion paper was drawn up and circulated to all licensees on the system. Public meetings were held and the recommendations supported. The recommendations are currently being implemented which provide for continued differential licensing -

- . the installation of meters on all irrigation/industrial pumps on the system
- . the implementation of annual volumetric entitlement on all irrigation/industrial licences
- . the establishment of individual notional annual volumetric entitlement based (Oakey Creek) on a unit of 180 megalitres translated from a "standard" 12 hectare licence.

The discussion paper which is attached to the report of Mr Robson contains a few findings which are worth repeating. Firstly it is noted that under the pre 1991 system there was no direct limit on water use - limited only in terms of time of access; secondly that over the last two years restrictions have been the rule rather than the exception; thirdly that limitations on pumping rates have been implied through stipulation of pump size - generally 50mm on Gowrie Creek and 65mm on Oakey Creek

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- " Limitation on pumping rates has historically been implied through stipulation of pump size - generally 50mm on Gowrie Creek and 65mm on Oakey Creek. This implied control has been adequate in the context of historical pump technology,

but is inadequate with new generation pump technology providing much higher discharge from equivalent sized pumps.

In this context, there is a need to establish direct control over individual diversion rates in order to ensure reasonable equity in terms of both the distribution of water through the system and individual access thereto. "

The proposals envisage that access to "off entitlement" water could be provided by Departmental announcement under appropriate circumstances which is expected to be infrequent; that the volumetric entitlement be based on a standard 180 megalitre equating generally to a standard 8 hectare on Gowrie Creek and 12 hectare on Oakey Creek; that restrictions be volume based rather than time based and that a daily diversion rate be limited to 2 megalitres per pump. The recommendations would allow for the establishment of a notional volumetric entitlement for irrigation purposes of 180 megalitres on each licence, subject of course to ancillary recommendations including the installation of meters. Mr Robson said that the DPI is presently implementing these recommendations.

The thrust of the appellant's case seems to be one related to the opinions expressed in the evidence of Mr Stephen which basically are that he sees the implementation of the 1991 guidelines as an interference with historical rights established by the grant of these licences in 1980. He is of the opinion that the additional water found to be available for allocation following the 1990 investigation should have gone the way of the recommendation by allowing for the upgrading of conditional licences to unconditional licences. He sees the grant of new licences (including additional areas) and the option of waterharvesting through the irrigation pumps when available as an interference with rights implicit in the existing licences, more particularly in reducing the appellant's opportunity to waterharvest when the flow is in excess of 0.3 megalitres/second.

Mr Lawrence who considered the availability of the resource and its variation over time had made a number of assumptions which were proved to be incorrect, including conclusions drawn about periods of restrictions, stream losses and stream flow from beginning to end. Otherwise he generally addressed what he considered were the inadequacies of the 1991 guidelines in preserving what he believed were the rights of the appellant. On matters specific in his evidence, I prefer the evidence of DPI officers.

The operation conducted on the appellant's property is an integrated system covering a substantial area of land. The subject licences are a component of that system. The intent of each licence was to irrigate 12 hectares in any one growing season. The volumetric entitlement arrived at in the 1991 investigation and used again

by Mr Hausler was based on a mixture of crops, consistent with the mixture stated by the appellant in applications for the original licences and for their renewal. Mr Robson has calculated that the appellant's total entitlement to Oakey Creek including the licence for waterharvesting with a 300mm pump is about 1500 megalitres per annum assuming a system standard entitlement of 8 megalitres/hectare. He concedes that the grant of the additional licences following the 1991 investigation has had an impact on the opportunity to pump for waterharvesting purposes but emphasises that in the scheme of things the impact is not unreasonable. Moreover, he says that all new licences were advertised and that no objections were received. The impact upon the system as a whole (although it would appear that the impact has been inconsistent subject to the qualification that the arrangements have been tested in the driest period in rainfall history which is probably a good thing) was identified by Mr Hausler and has been accepted by the majority of users. In the opinion of Mr Speed, management is virtually impossible without meters. Mr Butt says that the method of volumetric entitlement is a useful tool in monitoring the system whilst Mr Johns is of the opinion that a fairer share of water will follow the installation of meters. They have no dispute with the arrangements applying to Gowrie Creek irrigators where there exist few dams, smaller pumps and less opportunity to waterharvest because of the attenuation of the stream as it proceeds to and after Oakey. I come now to the principles which apply.

In *Shooter & Ors v. The Commissioner of Irrigation and Water Supply* (1972) 39 CLR 11, the Learned Member in speaking about the consideration which should be given in weighing up the balances between licensees and applicants for a license said that the provisions of the Act whilst concerned with over appropriation were also concerned with "ensuring that each applicant is fully considered with the balances held fairly, and adjusted equitably as between the applicant and other riparian owners who may be affected. The fact that the Legislature has insisted so strongly on the rights of both applicant and any objector to be heard, and has spelled out so clearly the appeal provisions suggests strongly that it is the right of each individual to establish a claim to some water and each licensee to object, that is its chief concern." That is not to say that there can never be a point when applications for new licences will be refused on good and sufficient grounds. Rather the words of the Learned Member are directed towards the very circumstances present in the subject case. Investigations revealed that the resource could withstand the irrigation of further land. The approach taken and implemented by DPI with user participation put the philosophy expounded by the Learned Member into effect by enabling a number of new irrigators to come on stream. They were allowed to share the resource under Group B terms and conditions.

Mr Robson says that the Department would have no objection to the appellant's

licences remaining on the terms and conditions as determined by the Court in 1989. Such however would leave the licences in a category of their own which is not desirable both in the interests of the appellant and in the public interest. Nor would it in my opinion be in accordance with the law. The arrangements which have been implemented and are currently being reviewed under the 1994 guidelines (including, I emphasise, a requirement to meter all pumps) have been determined by a democratic process involving both users and DPI. The ramifications of the drought and the testing in practice of the 1991 arrangements (including the grant of new and expanded licensed areas) have had their effect across the board. The majority of licensees have willingly accepted "the balances" being "adjusted" and have worked out what is believed to be an equitable system. Whilst inherent in the Act is the principle that "rights" having been granted cannot be taken away without good cause, there stands beside that principle the philosophy I have just discussed coupled with a duty on DPI to manage the system in the interests of users and in the public interest. Management in the context of the Act includes the power to regulate -

" regulate the supply of water under a licence, permit, other authority or water allocation under this Act so as to comply with the quantity entitled to be taken and used." s.3.8.(1)(d).

This form of regulation which seems to be present in the guidelines being put into effect has been determined not arbitrarily by DPI or an officer of DPI but by, commendably, a process involving user participation. Further in understanding the concepts of regulation adjustment and management sight should not be lost of the statutory condition applying to all licences that water taken under the authority of the licence is beneficially used. s.4.19. The arrangements which have crystallised into the 1994 guidelines seem to me to possess all the ingredients of good administration and, as Mr Johns put it, will enable, among other things, the monitoring of the system more effectively from beginning to end. In the circumstances I have concluded that the appellant's licences should be amended to Group B status carrying the terms and conditions applicable to such licences.

Accordingly, the appeals will be allowed in order to give effect to these requirements.

The appeals are allowed, the decisions of the Chief Executive, Primary Industries Corporation, are varied by deleting all conditions attached to the licences under the heading "Schedule of Terms for Licence No" and by inserting in the stead thereof the following terms and conditions -

" 1.001 The licensee shall install the work for which the licence is granted within two (2) years from the date of grant of the licence.

- 1.002 The licensee, after installing the work, shall to the satisfaction of the Chief Executive beneficially use the water which is entitled to be diverted under this licence.
- 1.003 The licensee shall notify the Chief Executive immediately of any change or divestment of interest in the land whereon the licensed work is constructed or proposed to be constructed or on which the water is used or proposed to be used.
- 1.004 The holder of this licence shall pay such fees and charges as are determined by the Chief Executive from time to time. Such fees and charges being payable at any place specified by the Chief Executive, on the due date and must be paid within 30 days of the date of issue of the invoice.
- 1.080 Water may be pumped directly onto the ground or held in storage for later use.
- 5.052 This licence is a Group B licence. At times when restrictions are imposed by the Chief Executive on the diversion of water from Oakey Creek, or when voluntary restrictions have been recommended by the Oakey Creek Water Advisory Committee, the restrictions to which diversion under the authority of this licence shall be subject, shall be the restrictions announced for Group B licences.
- 5.054 Notwithstanding any other Term of this licence, the annual notional volumetric entitlement to be diverted under the authority of the licence for irrigation purposes during any year, being that period from 1 September to 31 August, shall not exceed 180 megalitres.
- 5.056 Diversion of water under the authority of this licence for the purpose of restricted waterharvesting shall be permitted only in accordance with announcements made by the District Manager, Water Resources, Toowoomba.
- 5.058 A meter of a type approved by the Chief Executive to record the volume of water passing through the licensed work shall be purchased, installed and maintained at the licensee's expense.
Such meter shall be installed to the satisfaction of the Chief Executive within the time specified by notice in writing from the Chief Executive. The licensee shall not remove the meter for any reason without the written approval of the Chief Executive, nor shall the licensee take any action which results in the meter failing to register correctly the volume of water diverted by the licensed work.
The licensee shall at all times maintain the meter to the satisfaction of the Chief Executive.
- 5.062 The licensee shall record the water meter reading at the end of each

calendar month, and shall forward such record to the District Manager, Water Resources, Toowoomba, at the end of each three monthly period following 1 September each year. Such records shall be made available immediately upon request to any Departmental officer.

- 5.064 Notwithstanding Term 5.062, the licensee shall record the water meter reading at the start and end of each period of diversion for restricted waterharvesting and/or waterharvesting, and shall submit such record to the District Manager, Water Resources, Toowoomba, immediately upon cessation of operation, or as soon as practicable thereafter.
- 5.066 In every case the quantity of water shown by the index or register of the water meter to have passed through such meter shall be taken prima facie to be the quantity of water which has actually passed through the meter.
- 5.068 Where the Chief Executive has reason to doubt the accuracy of the meter reading, he may calculate the volume of water diverted by any means that he deems appropriate.
- 1.092 Diversion of water under the authority of this licence for the purpose of waterharvesting is permitted only when there is a flow exceeding 0.3 cubic metres per second downstream of the work site. This flow is to be determined by a mark established or to be established by the Chief Executive, or by other means specified in the letter accompanying this licence. The mark may be altered from time to time by the Chief Executive to reflect more accurately the prescribed surface flow.

President of the Land Court