

STATES OF JERSEY



DRAFT WATER RESOURCES (JERSEY) LAW 200- SCRUTINY REPORT (S.R.3/2004): RESPONSE OF THE ENVIRONMENT AND PUBLIC SERVICES COMMITTEE

**Presented to the States on 15th March 2005
by the Environment and Public Services Committee**

STATES GREFFE

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COMMENTS

1. Introduction

1.1 The Environment and Public Services Committee (the Committee) has carefully considered the Report dated 13th December 2004 by the Shadow Scrutiny Panel (the Panel) on the Draft Water Resources (Jersey) Law 200- (the Draft Law).

1.2 The Committee gratefully acknowledges the task performed by the Panel in scrutinising the Draft Law.

1.3 The Committee notes that the Panel's Report, in effect, concludes that no comprehensive water resources management legislation should be introduced on the Island for an indefinite period, basically for 3 principal reasons, which the Panel regards as conditions precedent to the introduction of such Legislation, namely –

It is necessary to determine whether the Island benefits from significant quantities of groundwater flows from France (“the water from France issue” – see paragraph 3.2 below).

Substantial further data needs to be collected on the Island's water resources (in particular, in relation to the assessment of recharge, the water balance and dependency of the local ecology on ground and surface water flows) (“the data collection issue” – see paragraph 2.1.3 below)).

Further investigations are needed in order to determine the extent of the exploitable sources of water that exist at depth beneath the Island (“the deep sources issue” – see paragraph 4.4 below).

1.4 This document sets out the Committee's Response to the main points raised in the Panel's Report, but is not intended as an exhaustive critique on that Report.

2. The Panel and its approach

2.1 General observations

In the view of the Committee, the Panel has given undue attention to certain aspects of the Committee's proposals and as a consequence has failed to focus on the fundamental issue, namely the **current** need for comprehensive water resources legislation on the Island (paragraph 2.3 below).

In particular, the Panel's Report deals at great length with –

2.1.1 *The historical background*

The Panel has clearly chosen to examine in great detail the “history” to the present proposals, spanning a period of some 15 years (1989– 2004).

However, in the view of the Committee the historical background is largely irrelevant to the current situation. Moreover, the Committee notes that the Panel's Report contains some factual errors in relation to its consideration of the historical background (paragraph 3.6 below).

2.1.2 *The deep sources issue*

Clearly, a considerable part of the scrutiny process focussed on this particular issue.

However, in the view of the Committee this was disproportionate, having regard to the salient facts, namely:

– There are only approximately 50 known boreholes at depths of 40 metres+ beneath the

Island, which is in sharp contrast to the 5,000+ boreholes that rely on the “shallow aquifer” (approximately 25 metres depth) [Sections 6.2.8 and 6.3.7 SSP Report].

- At least three-quarters of those approximately 50 deep boreholes were included in the British Geological Survey’s (BGS) monitoring programme on the Island [BGS 1991 Report Appendix I].

Notwithstanding the above comments, the Committee accepts that the deep sources issue should be furthered investigated (paragraph 4.4 below).

2.1.3 *The data collection issue*

It is acknowledged by the Committee that this was seen as a “priority” issue in the very early days of formulation of the current proposals (especially at the time of the Riley Committee in 1992). However, in the view of the Committee the Panel has not given sufficient cognisance to the extensive data that has been collected over the intervening period, both by BGS and by the Department itself, in relation to the shallow aquifer and the streams on the Island.

In any event, the question of data collection is, in the view of the Committee, an “on-going” process (not least because of the way that the climate and weather patterns are changing over time) and would, of course, continue and be supplemented following the enactment of the Draft Law. Indeed, the Panel recognises that data collection is a “long term” programme [Section 6.3.8 SSP Report].

2.2 Composition of the Panel and appointment of its Technical Adviser

In the respectful view of the Committee, the Panel’s task of scrutinising the Draft Law has not been assisted by 2 factors, namely –

The inclusion on the Panel of Deputies Baudains and Rondel, both of whom had previously declared their total opposition to the proposals. This has meant that because of the pre-conceptions of those 2 Members (particularly the former) the Panel has, for example, failed to objectively evaluate the evidence presented to it in relation to the water from France issue (paragraph 3.2 below).

The appointment of Dr. S. Sutton as the Panel’s Technical Adviser has meant that the Panel has been deprived of the benefit of an independent assessment of the complex technical evidence presented to it, having regard to Dr. Sutton’s previous involvement with this matter, at the behest of Deputy Baudains, on behalf of the Water Diviners & Engineers Association (WDEA) [Section 6.2.2 SSP Report].

2.3 Summary (paragraphs 2.1 – 2.2 above)

Having regard to its comments at paragraphs 2.1 – 2.2 above, in the view of the Committee the Panel has not focussed sufficiently on the 2 fundamental issues raised by the current proposals, namely –

2.3.1 The need to manage and protect the Island’s known water resources, comprising –

The shallow aquifer upon which 5,000+ boreholes currently depend for their water supplies: significantly, the shallow aquifer also provides baseflow to surface waters (see next bullet point).

Surface waters (including the flora and fauna dependent thereon) – both in terms of abstractions and impoundments. The obvious failure of the Panel to recognise the importance of properly managing such activities on the Island is particularly disappointing to the Committee, having regard to the fact that Jersey Water (which supplies approximately 87% of the population) relies

on surface waters for some 95% of its supplies.

2.3.2 The benefits of the Draft Law, as usefully summarised by the Panel [Section 6.3 SSP Report] viz.–

“
Complementing the Water Pollution (Jersey) Law 2000
Protecting the rights of water users
Ensuring the long-term sustainable management of the Island’s water resources
Implementing the E.U. Water Framework Directive
Managing drought situations
Combating the effects of global warming
Providing information on boreholes and abstractions on the Island.”

3. Comments on specific issues

(a) Main issues

3.1 Criticisms of BGS

3.1.1 The Committee regards the Panel’s severe criticisms of BGS’s work in Jersey as entirely unjustified [Section 3.1.3 SSP Report]. On the contrary, the Committee believes that BGS have undertaken an extensive study of the Island’s water resources and has every confidence in their work. In this connection, the Committee makes 2 further comments, namely –

BGS is a quasi- Government Department, being an ‘arm’ of the U.K. Government’s Natural Environment Research Council, having been established by Royal Charter. As such, BGS is not a commercial consultancy firm and is therefore in a position to act at all times in an entirely **independent** manner. Moreover, it is an organisation with a world-wide reputation for its expertise and professionalism in water resources investigations.

Over the past 15 years, BGS have produced some 20 Technical Reports on the Island’s water resources; these have included their very detailed and comprehensive 1991, 1998 and 2000 Reports. This has represented “good value for money” for the Island.

3.1.2 The President has already given a full explanation in the Assembly, on the 18th January 2005 (Oral Question No. 2298), concerning the non-attendance of Dr. N. Robins (BGS) at Hearings of the Panel. No useful purpose would be served in repeating the same in this Response document, except to emphasize that Dr. Robins was tendered as a witness but the invitation for him to attend was “**withdrawn**” by the Panel itself [Section 7.3 SSP Report].

3.2 The water from France issue

3.2.1 The Committee is extremely surprised at the conclusion reached by the Panel on this particular issue, namely, that there is a “debate” still to be had on the possibility of groundwater connection with mainland France and that it needs to be further investigated [Sections 3.1.10 and 3.2.2.a SSP Report].

3.2.2 In that connection, the Committee takes into account the considerable weight of technical evidence that was placed before the Panel, but effectively none of which supported the Panel’s conclusion and recommendation on the issue, namely –

The BGS 2000 Overview Report [pages 10 – 12].

The “independent” (quote) Report by CES Environmental Management Consultancy January 2001, which had been specifically commissioned by Deputy Baudains.

The Submission of the Groundwater Review Group, consisting of Jersey-based geologists, (GWRG) to the Panel in October 2004 [Section 6.2.9 SSP Report].

- 3.2.3 Furthermore, the Committee is advised that it was understood at the time (following a series of meetings with them in 1993/1994 – paragraph 3.6.3 below) that the WDEA had in fact abandoned this particular issue, as a consequence of the advice that they had received from their Consultant (Dr. Sutton).
- 3.2.4 In the circumstances, the Committee considers that the required “debate” in relation to the water from France **has** already taken place and that therefore this particular issue is now closed (c/f investigations of the deep sources issue – see paragraph 4.4 below).
- 3.2.5 Accordingly, it follows that the only sources of fresh water available in Jersey are those derived from the rainfall that actually falls on the Island.

3.3 Voluntary approach to data collection

- 3.3.1 The Committee does not accept the Panel’s contention that it would be adequate to rely on an entirely voluntary approach for the purposes of further data collection on the Island’s water resources [Sections 3.1.8 and 3.2.1 SSP Report].
- 3.3.2 Indeed, such an approach was not supported by the GWRG, either in its Position Paper in February 1994 nor in its Submission to the Panel in October 2004 [Sections 6.1.1 and 6.1.3 SSP Report].
- 3.3.3 Moreover, as the Panel acknowledges, in excess of 120 countries worldwide (including the U.K. and France) have already implemented water resources management legislation, which (inter alia) provides for appropriate data collection measures within a ‘Legal Framework’.

3.4 Use of Planning legislation

The Panel contends that the existing Planning legislation on the Island can be used to ensure that proposed new developments do not potentially derogate “neighbouring water resources” [Section 6.3.2 SSP Report]. However, the Committee is advised that such a contention is unsound in law, essentially since Planning Applications cannot (i.e. in the absence of a Water Resources Law) be rejected on water resources grounds. Indeed, the advice of the Law Officers on this point was taken by the relevant Committee at the very outset of this matter; regrettably the Panel appear to have overlooked that advice [Act of Island Development Committee 9th April 1992].

3.5 Impacts of the Law

- 3.5.1 The Committee is satisfied that, on the basis of the information currently available to it (but which will be supplemented following the introduction of the Draft Law), a proper analysis of the impacts of the Law has already been undertaken [Section 3.2.2f SSP Report].
- 3.5.2 In a nutshell, this is summarised as follows –

Cost of implementing the Draft Law = approximately £120,000 per annum recoverable on the “user pays” principle.

approximately £100,000 of which would be borne by Jersey Water, resulting in an additional £3 approximately per annum to the average household water bill.

All abstractions below 3m³/day would be exempt from the requirement to obtain an abstraction licence; this would include the vast majority of domestic properties.

Only an estimated 400 licences would be required (mainly commercial abstractors).

The cost per licence would equate on average to approximately £50 per annum per licence-holder [Section 6.4.4 SSP Report].

(b) Ancillary issues

3.6 Factual errors in the Panel's Report

As previously stated, in the view of the Committee the “historical background” to this matter is largely irrelevant to the current situation (paragraph 2.1.1 above). Nevertheless, since the Panel has in its Report chosen to include serious criticisms of the previous Public Services Committees, their Departments, Senior Officers and Consultants, the present Committee feels obliged to respond (albeit briefly) to those criticisms, especially since they are based on an erroneous understanding on the part of the Panel as to the correct factual position at the time. The relevant details are as follows –

3.6.1 *Information Paper (January 1994)*

By reference to this Paper, the Panel criticises the Senior Officers at the time for giving “inadequate briefing to the Committee” [Sections 3.1.4 and 6.2.3 SSP Report].

However, the true factual position is quite different, namely:

- The Information Paper was not a Report (i.e. a brief) to the Committee; it was as its title makes clear an “Information” Paper – to be issued **by** the Committee – to stakeholders, explaining the Committee’s proposals at the time for water management legislation.
- It correctly stated that the GWRG “fully supported” the findings of BGS [1992 Riley Report paragraphs 1 and 14].
- The Paper was settled on 14th January 1994 and since the 6 Recommendations of the GWRG (contained in their Position Paper) was not issued until 22nd February 1994, it follows that the Information Paper prepared by the Senior Officer concerned, on behalf of the Committee, could not have included any reference to those Recommendations (paragraph 3.6.5 below).

3.6.2 *Results of Trinity Catchment Study (1998)*

By reference to his Note to the Committee dated 16th March 1999, the Panel criticises the then Chief Engineer for (inter alia) “not reporting to the Committee ... the revision of the recharge estimates following the Trinity Catchment Study” [Sections 6.2.6 and 6.2.12 SSP Report].

However, closer scrutiny of the Evidence presented to the Panel would have revealed that the reverse was true, namely:

- The Note to Committee (which was duly considered by the Committee at its meeting on the 22nd March 1999) was strictly in accordance with the then findings of BGS [1998 BGS Report pages iv and 32].
- In particular, the Note specifically quoted the revised re-charge estimate of “132 mm per annum”, which had been assessed following the conclusion of the Trinity Investigations [Section 6.2.5 SSP Report].
- In any event, a full copy of the 1998 BGS Groundwater Study Report (which had been published following the conclusion of the Trinity Investigations) was circulated to all members of the Committee prior to the meeting.

3.6.3 *WDEA*

The previous Departments and their consultants (BGS) are criticised by the Panel for “consistently discount(ing) the knowledge and experience” of the WDEA and of treating “them with disdain” [Sections 3.1.2 and 7.5 SSP Report].

However, that is not borne out by the true factual position:

- For example, following the Proposition of the States (P.78/92), during the period 1993 – 1994 alone there was **extensive** dialogue with the WDEA (both by correspondence and a series of ‘high level’ meetings involving relevant States’ Members and Senior Departmental Officers as well as BGS). In addition, the JFU and JHA (being the only other objectors to the current proposals) were also involved in that dialogue.

3.6.4 *Dr. Sutton’s Reports*

The Panel criticises the then Department and its consultants (BGS) for “dismissing” Dr. Sutton’s original May 1993 Report without, in effect, giving it due consideration; moreover, they are also criticised for cancelling a scheduled meeting in Jersey to discuss the same with (inter alia) Dr. Sutton and Dr. Sharp, who was the coordinator of the GWRG [Sections 6.2.2 – 6.2.3 SSP Report].

However, the correct factual position is as follows:

- Dr. Sutton’s 1993 Report was, at the time, the subject of detailed written Critiques by both BGS and the GWRG.
- The joint meeting with Dr. Sharp was cancelled by him for “personal reasons” [Act No. 2 Public Services Committee 13th September 1993].
- Nevertheless, a meeting did take place in the U.K. between Dr. Sutton and BGS to specifically discuss his May 1993 Report.

Finally, in relation to Dr. Sutton, the Committee wish to point out to the Panel that the Committee did **not** “acknowledge that (his) Technical **Assessment** (per his 30th June 2004 Report) was fair and reasonable” [Sections 6.2.1 and 7.1 SSP Report]. Closer examination of the evidence by the Panel would have revealed that in fact what the Committee acknowledged was that Dr. Sutton’s “**summary of BGS findings** presented is fair and reasonable” [Environment and Public Services Committee’s Final Sub. Doc. 7th October 2004 paragraph 12]. Indeed, the Committee has not at any stage ever accepted Dr. Sutton’s Technical Assessment on the Island’s water resources.

3.6.5 *GWRG*

The Panel criticises the previous Committees for “ignore (ing) ... the knowledge and expertise” of the GWRG “since February 1994” [Section 7.6 SSP Report].

However, here again this is not borne out by the true factual position, namely:

- The previous Committees, their Departments and Consultants (BGS) continued to involve the GWRG **after** receipt of its Position Paper in February 1994.
- For example, there was liaison with the GWRG in relation to the production of the comprehensive 1998 BGS Groundwater Study Report and the intervening Institute of Hydrology Report on the Trinity Catchment Investigations.

3.6.6 *Summary (paragraphs 3.6.1 – 3.6.5 above)*

Having regard to the correct factual position, the Committee regards the Panel's various criticisms of the previous Committees, their Departments, Senior Officers and Consultants in relation to this matter as completely unjustified.

4. The Panel's Recommendations – accepted by the Committee

4.1 Drought situations

The Committee is pleased to note that the Panel recognises that Legislation is now required to deal with any drought situations on the Island, in effect as proposed in Part 4 of the Draft Law (Drought Measures) [Sections 3.1.7 and 6.3.5 SSP Report].

However, the Committee does not accept that drought situations can be properly managed in isolation from the overall management of the Island's water resources.

4.2 Abstraction returns (below 3m³/d)

The Committee notes with interest the view expressed by Deputy Baudains in relation to the need for abstraction returns from (inter alia) "private domestic boreholes" notwithstanding the fact that they would only be required to register under the Law [Section 6.3.8 in SSP Report]

However, the Committee has in producing the Draft Law sought to strike a balance between, on the one hand, imposing appropriate controls on water abstractions and, on the other, of not introducing "unnecessary regulation and bureaucracy" in accordance with the States' Strategic Plan (P.134/2004) [Section 6.5 SSP Report].

But if the Panel, on reflection, still consider that it would be advantageous to require such returns to be made and so recommend in their Counter-Response to this document, then the Committee is mindful to seek an appropriate Amendment to the Draft Law to that effect before it is lodged "au Greffe".

4.3 Publicity for proposals

The Committee acknowledges that a "further public promotion" will need to be carried out in order to fully explain the implications of the Draft Law once it has been approved by the States, in accordance with the requirements of the E.U. Water Framework Directive [Section 6.3.4 SSF Report].

In the meantime, the Committee is currently producing a brochure and holding Exhibitions in order to explain its proposals, in advance of presenting the Draft Law to the States for approval. This is in addition to the extensive consultation process undertaken by the Committee in 2003, when 90 stakeholders/States' Members were consulted and to which there were only 5 objectors (i.e. the WDEA, JFU, JHA and Deputies Baudains and Rondel) [Section 6.1.3 SSP Report].

4.4 Investigations of deep sources issue

The Committee accepts that further investigations are needed into this issue [Section 3.2.2a and b SSP Report].

However, the Committee does not accept the Panel's contention that the Draft Law should not be introduced "until this work (has been) done" [Section 3.1.9 SSP Report]. In this connection, the Committee notes that the Panel's Technical Advisor (Dr. Sutton) is recommending, in effect, a 2-

stage investigation process, namely:

- A ‘desk study’ for a minimum period of **5 years** and
- depending on the outcome of that study, further site investigations (involving a “purpose-built and **expensive** test”) [Section 6.2.11 SSP Report]. He does not specify the length of time required for such investigations, but the Committee is advised that, in practice, they would take several years to complete; indeed it is quite conceivable that such a desk study and site investigations would take altogether some **10 years** to conclude.

4.5 Engagement of a Hydrogeologist

The Committee acknowledges that a hydrogeologist will be required to administer the Law and assess (inter alia) the water requirements of the local ecology [Section 3.2.2e and h SSP Report]. Indeed, the Committee has already made provision for a post of hydrogeologist in its staffing structure. Moreover, the Committee’s estimate of the costs of implementing the Law (approximately £120,000 per annum) include the cost of engaging a full-time hydrogeologist.

However, it is a matter for the Committee to decide at the relevant juncture as to whether the post should be full-time or, as the Panel recommend, part-time, and indeed as to whether the necessary expertise should be “obtained on a contract basis” [Section 6.4.4 SSP Report].

5. **Conclusions**

Having regard to the foregoing, the Committee has reached the following conclusions –

5.1 So far as the principal reasons put forward by the Panel for postponing indefinitely the question of the introduction of the Draft Law are concerned (paragraph 1 above)–

The water from France issue has already been addressed (paragraph 3.2 above).

In relation to the data collection issue:

- substantial data on the Island’s water resources has already been collected over the past 15 years;
- that data will be supplemented as a result of the implementation of the Draft Law;
- in any event, collection of data is an on going process (paragraph 2.1.3 above).

The deep sources issue will be further investigated, but it is not necessary to postpone the introduction of the Draft Law pending the outcome of those investigations (paragraph 4.4 above).

5.2 The Committee is convinced that, irrespective of the outcome of the further investigations into the deep sources issue, there is an urgent need to introduce the Draft Law, particularly bearing in mind that –

Over 5,000 borehole abstractors on the Island rely on the **shallow** aquifer for their source of water. It also provides important baseflow to surface waters (see next bullet point).

Surface water (including the flora and fauna dependent thereon) abstractions and impoundments need to be properly managed for the benefit of the whole community. In this connection, the Committee is mindful that Jersey Water relies on surface water for approximately 95% of its supplies.

5.3 As concluded by the Riley Committee in 1992 when the need to introduce water resources management

legislation on the Island was first identified, the Committee considers that the costs involved of implementing such a Law “will not be onerous ... compared with the potential consequences of doing nothing” [Section 6.1.1 SSP Report].

5.4 As the “Panel recognises there is no room for complacency in the light of persistent warnings about global warming” [Section 6.3.6 SSP Report]. Accordingly, the Committee intends, in accordance with the Proposition of the States (P.78/92), to present the Draft Law to the Assembly for debate as soon as practicable (subject only to the usual confirmation from the Attorney General in relation to its compliance with the Human Rights Convention).

5.5 Ultimately, it will be a matter for the States to decide whether or not comprehensive water resources management legislation is needed on the Island. In arriving at a judgement on that question, the Assembly will need to decide whether to accept the **professional and independent** advice of BGS (based on 15 years’ studies on the Island) or whether to rely on the views expressed by the WDEA, for which **no scientific data** has been produced [paragraph 3.1 above].

6. **Addendum**

At its meeting held on 3rd March 2005, the Committee approved this document as its formal Response to the Panel’s Report dated 13th December 2004.