

DRAFT WATER RESOURCES (JERSEY) LAW 200-
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WITNESS Mr. Craig Leach

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JEAN LE MAISTRE: Welcome to the scrutiny panel. I have to read what is here in front of you and tell you what it's all about. It's important that you fully understand the conditions under which you are appearing at this hearing.

"Shadow scrutiny panels have been established by the States to create ..."

So, thank you very much for your submission from Concern, and maybe we could start by asking you to elaborate on your view of the need of this law.

1. Need for a Water Resources Law in Jersey - Protection of public interest

CRAIG LEACH: We're obviously dealing with it from a very general level and as far as the need for the law, it's ... I think almost all developed countries have a water law because water is obviously very important by its nature, but its also a public interest commodity, as opposed to some of the views expressed that it belongs to the person whose land is sitting on top of it.

So, we see the need for the law is self-evident, really, and not one really worthy of much argument or debate.

JEAN LE MAISTRE: Could you explain what you mean by 'self-evident' because lots of things are important, but you don't need legislation to ensure that your can necessarily breathe or whatever?

2. Coca-cola plant in India

CRAIG LEACH: Yes. If you take it from an anticipatory point of view and that's why I gave you the example of what's going on in India - and I suppose one ought to mention global warming in this context - in that one day there's plenty of water to meet people's needs and for the farmers to grow their crops, and the next year

something happens - in India it's a Coca Cola plant - and the farmers are deprived of the water for their crops. So, that's a very important need for the law, in terms of anticipation.

So, they had a law - when the crisis developed - they had a law in place where they could have taken action. If the same -- similar thing happened in Jersey, there's no law, so a vital need for a law to deal with that crisis. So, that's why I think the Indian case is a very good example of need for the law.

Like all things, it's a question of reasonability in terms of water extraction, and a law should accommodate what is reasonable. But unfortunately, it can arise - and we've had that experience in Jersey before of competitive drilling as water levels declined in times of drought - which emphasises the need for the protection of a public interest that their water is given a degree of protection.

If I could, I just quote from the Indian judge just a couple of brief comments. The Kerala High Court ruled that the groundwater resources below Coca Cola's bottling plant, home to the tribal people there, are in fact property held in trust and the company was directed to find alternative sources, which they are doing.

But that shows -- that's a very good case in point that when there is a law which affects someone, they will take other action, as in Coca Cola increasing their catchment or of letting -- instead of water going to waste, they've taken action to gain it. The Court found that groundwater was a national resource which belonged to the entire society,

"Groundwater under the land of the company does not belong to the company [said the Justice]. Every landowner can draw a reasonable amount of groundwater, which is necessary for its domestic and agricultural requirements, but here (several inaudible words) 10,000 gallons of water is extracted per day, converted to product and transported, thus breaking the natural water cycle"

I hope that -- as I say, it should be -- it might be self-explanatory that the public need protection against over-extraction of water, particularly (overspeaking).

JEAN LE MAISTRE: The example you use there, of course, is to do with commercial use. Do you draw a distinction between commercial use and domestic use or ...?

3. Current lack of control on extraction in Jersey

CRAIG LEACH: Not necessarily. It depends how one defines it. Another example I -- because

we have anarchy in Jersey -- I use the word 'anarchy' in a sense that you can sink a hole whenever you want, wherever you want, extract as much as you want, without any constraint. So, for instance, if a particular landowner wanted to get into the water supply business, there's nothing to stop him.

I gave an example in Grouville, which we're told by BGS is a shallow aquifer, and the big apartment block there have decided to start extracting water from the water table. As I said, there I think it might not be a big problem but what I would say - especially if they then change it for their entire domestic needs, which is a possibility -- or take another example. If someone decides on a laundry, or a car washing facility, suddenly an extra big demand on that shallow aquifer. Who knows what will happen?

4. Anticipation of the Law - in case of future problems

That's where the anticipation of the law, where you'd need -- should something happen that affects the public. And the public there could include the local farmers, who've got farms dependant on the water table for their business. And then, if you have several large apartment blocks and these other commercial uses, whether they're domestic or commercial, and suddenly they're without their supplies for their agriculture, then you have a crisis on your hands without any law to help you resolve it.

5. Law provides a degree of protection

JEAN LE MAISTRE: The law, of course, does not guarantee protection for the existing users, does it?

CRAIG LEACH: No, but with licences and so forth, it can give a degree of protection. And what it's -- I'm sure the law in its practice is intended to be reasonable, as I quoted there, and to avoid abuses. If there's a particularly sensitive area - and a shallow aquifer might be a particularly sensitive area - to apply constraints that protect the general public.

JEAN LE MAISTRE: Mm hmm. Would you have any comment to make on the potential bureaucratic side of the law? Have you looked at the law in detail?

CRAIG LEACH: I did read the law, and I was quite impressed by it. Some time ago, when the draft first came up, some months ago, I went through it and, to my mind, it seemed a very good all singing/all dancing law. So, I was very pleased with it, in fact. I hope it goes through without too many amendments.

JEAN LE MAISTRE: Mm. Deputy Baudains?

6. Does over-abstraction exist now?

GERARD BAUDAINS: Thank you. I'm just referring to your submission. In the first sentence, you believe that the need for protection of the water table from over-abstraction should be self-evident. Well, clearly one would be concerned about over-abstraction. Do you believe that over-abstraction currently exists or might exist in the future?

CRAIG LEACH: I believe it has existed in the past. It might well exist in the future because there's nothing to stop it, nothing whatsoever to stop it, no law in place. Even in India, they have a law, and in most countries in the developed world, they have a law, but we don't.

GERARD BAUDAINS: But you're not aware of any at the present time?

CRAIG LEACH: No.

GERARD BAUDAINS: The other matter which I would like to look at; you mentioned just a few moments ago about the shallow aquifer. There's some evidence that we have on our files that the aquifer actually reaches down at least five times deeper than BGS suggest. What is your understanding of the term 'shallow aquifer'?

7 Deep aquifers may be subject to over-extraction

CRAIG LEACH: I just quoted from the BGS as being 'relatively shallow aquifer' but aquifers can go very, very deep. That's what it's saying now but, again going back to India, there's an aquifer there - a deep aquifer - but, if I can remember it, it went down due to over-extraction by 40 metres in a very short period of time. So, in that sense, even if it was a deep aquifer, it doesn't really change the argument for the need for protection.

GERARD BAUDAINS: The fact that it could be over-extracted?

CRAIG LEACH: Yes.

8 Multi-unit accommodation with communal borehole water supply

PHILIP RONDEL: You mentioned earlier protecting, shall we say, the commercial operations in Grouville, just per se for the (several inaudible words) because of possible multi -- these blocks of flats, I think they were, these units of accommodation. Well, given these units of accommodation in fact probably would not come on the proposed law because they would have a communal licence, communal supply, how would you like to see the law amended before we go down the road of actually bringing it forward to actually make sure that everybody -- the law applies to everybody, just not to some people?

CRAIG LEACH: If the law doesn't provide for an extraction licence for a bore hole - whatever the bore hole - that would be a weakness in the law, in my view. So, I would like to believe that when the law is introduced, that that particular bore hole at the Chateau Royale had an extraction licence to consume up to a certain level and no more. If the law doesn't do that then it's ...

PHILIP RONDEL: I'm just thinking -- I haven't got the law in front of me and I've (several inaudible words) papers.

The other things is, how would you see somebody who is permitted to take out some 600 gallons of water a day without a licence having to register -- sorry, not having to register. Somebody who's taking out 700 gallons of water a day would have to register, because they'd be over the limits. And then you've got somebody who's actually on the water main, can take as much water as they like out of the service, without having to register per se.

9 Importance of universal metering

CRAIG LEACH: It's an interesting point you raise there, and that stresses the importance of metering, so that the -- anyone on mains extracting -- and that's something we've been arguing for many years about universal metering in Jersey. So, that would capture the abuser that only pays on the basis of parish rates at the

moment.

So, that's it. That's my response: to avoid that abuse, the sooner we have universal metering, the better.

JEAN LE MAISTRE: So, you would find it as not being equitable for domestic owners of bore holes to have to register and be permitted a certain quantity per day, whereas domestic users, using water from the water works, would actually not have, at the moment, to register?

CRAIG LEACH: As I say, it's an interesting point. But I think the fact of payment is a great incentive to conserve, so I won't get a big hang-up about that, insofar as, if people are paying by volume then you (several inaudible words) equity.

JEAN LE MAISTRE: Thank you. Deputy Duhamel?

10. Promotion of conservation of flora and fauna

ROB DUHAMEL: Yeah, just a general one. The law -- the brief for the law was widened substantially to actually include,

"The promotion of the conservation of the fauna and flora that are dependant on inland waters and of the habitats of such fauna and flora, to the extent that those habitats are themselves dependant on inland waters, and the conservation enhancement of the natural beauty and amenity of inland waters and for related purposes"

Your organisation -- specifically, how would you see the law relating to those particular clauses?

CRAIG LEACH: I can't say we've come up with any specific relationship, except insofar obviously if -- in terms of the protection of the general water table will clearly have an impact upon surface streams, habitats and so forth. I don't know if that helps at all but, yes, we see protection of the water table as being an integral part of central land management.

ROB DUHAMEL: Mm hmm. So, I mean -- specifically, I mean, would your organisation be happy, for example, in times where there wasn't a drought, to actually pay greater attention to preserving and promoting the conservation of fauna and flora, than to perhaps allowing those waters to run into reservoirs for human use?

CRAIG LEACH: Hopefully, it would never come a black and white decision modelled on that basis, but I think the only sensible response I can give to that is that with proper

conservation, proper resource management, all our interests can be served, whether human or habitat.

ROB DUHAMEL: Right, okay, thanks.

JEAN LE MAISTRE: Deputy Baudains?

11. Determining the extraction level for a licence

GERARD BAUDAINS: Thank you. I wonder if I could just develop the -- go back just a little while and develop the Chateau Royale theme. I believe - what I'm understanding - your thinking is that a control in licensing, using that as an example, would be a benefit.

What I'm having difficulty understanding at the moment is how that would be a benefit because presumably - if I understand what you're saying - is that by regulating the amount that a person could draw out of that bore hole, in some way, we'd be protecting. But what I don't understand is who on earth is going to - and how are they going to - determine what is an acceptable amount, what figure to put on that license? Is it 500 gallons a day, 5,000 gallons an hour, who knows?

CRAIG LEACH: Of course it might be nil. If it's deemed to be a sensitive aquifer, for instance, affecting the livelihood of local farmers - a golf club might be something else - but if a particular aquifer was considered to be so sensitive that no further extraction should be allowed on it, then the law should provide for an application to be made for any extraction. And if it's deemed not to be in the public interest to allow any extraction, so be it.

GERARD BAUDAINS: And how does one actually determine all that? Did you think there's a difficulty in having ...?

CRAIG LEACH: I think the hydrologists would need to detail mechanics of this. I wouldn't be qualified to be an expert on it but I'm sure that the hydrologists can come up with a formula where, if they deem an aquifer to be sensitive, what level of extraction overall is a safe one.

12. How will information on abstraction be of benefit?

GERARD BAUDAINS: Yes. The other matter I would like to ask at the moment: What is being

proposed in this law is basically the metering of commercial bore holes -domestic ones drawing 3m³ a day or less would be registered, but not metered. So, we wouldn't have the information from them as to how much water they were actually taking. But, if one were to put a hypothetical case that all bore holes were metered and we had all the data from all those bore holes, how do you believe that would benefit us? Because basically this law is to gain that info -- well, first of all, you need the information before you could act anyway, so the real -- the first, primary objective of the law must be to get information.

How -- I'm not really able to wrap my head around how that data would actually be of benefit to us.

CRAIG LEACH: Well, we need to know what's happening; what's going on. I think we've been - even without any rules to find out - we've been flying blind in the past. So, information on extraction levels will be helpful in getting those figures, bearing in mind currently the (inaudible). So, you're quite right. We need information, yes, that's quite right.

GERARD BAUDAINS: I mean - sorry to butt in there - I mean I can fully understand monitoring water levels because then one is getting an idea of whether one is over-abstracting or whether there is a water balance or it's staying static. I'm just not sure how knowing precisely how much is being taken out, when we have no idea how much is overflowing from the aquifer through the beaches and down into the sea and things like that is exactly going to be meaningful.

CRAIG LEACH: I think you'll find, from the hydrologists' point of view, the more information they have on bore hole usage the better. I think that's been one of the difficulties they've had in the past, a limitation on the work of BGS, for example. If they had more bore hole information, then that would be very much helpful to them.

PHILIP RONDEL: Yes, could I come back here on a couple of points? Given that information is available through the Well Borers' Association and the like - although I haven't seen much of that presented in it - it was in the law or the background to the law. Even this morning, the president of Public Services suggested that possibly a bore hole would have been dug on the Ecrehous or whatever. It seemed to - in my view, this is - he seemed to pooh-pooh the whole idea that

that may be a little bridge too far. That doesn't seem to marry in what you're suggesting, that we need all this extra information, because the more information you can get, the better we'll all be.

13. **Current lack of information on water table levels through lack of bore-hole monitoring**

CRAIG LEACH: Yes. For example, I did make a fairly recent enquiry, from Chris Newton, I think it was, because I -- with the Chateau Royale, I would have liked to have got some more information in the Grouville Bay area, but the only bore hole being monitored on a regular basis - weekly or fortnightly, I can't remember - was some distance inland. From what I could see, there was very little information on water table levels available because of the lack of bore hole information.

So, that brings it together. We have far more information on what's going on, the more bore holes we have monitored.

14 **Groundwater connexion with France**

PHILIP RONDEL: So, you would like - I hope I'm not putting words in your mouth - given that we are only approximately 14 miles from our French neighbours, there must be an awful lot of information because the rock strata, etc, being so close must have an impact on the rainfall in Normandy on some of our water flows, through rock strata under the sea, etc. Would you have liked to have seen the enquiries made within our Public Services Department actually encompass some of those reports?

CRAIG LEACH: From the information that I have, the BGS report, we have the hydrological or geological knowledge of Jersey's water sources and it might be worth quoting what they said about what you've just mentioned, on the water streams, and -- if I can find it without taking too much of your time ... right.

I don't know if the panel have read the BGS report entirely, but the point I was referring to there is page 8, "Underground Water from France"

"This deeper fracture-bound ground water should not be confused with the mystical underground rivers that water diviners portray flowing from east to west, bringing water from the Pyrenees to succour Jersey and Essex and southeast England, under the driving force of the moon. No evidence to substantiate this vision has ever been presented by the diviners"

In other words, the scientists here are saying it's cobblers, to put it bluntly.

GERARD BAUDAINS: Yes, if I could come in there, I remember at the time the well drillers did offer actually to put a bore hole on the Ecrehous free of charge in order to further knowledge in this area, but it wasn't taken up by Public Services, who would have been required to supply the transportation (several inaudible words) cost. I would have thought -- you know, just in response to what you were saying there, there were efforts made to substantiate it but they were never (inaudible).

CRAIG LEACH: I find it difficult to make any rational comment, except to say that we've had the geological and hydrological surveys. They're there, they're factual, they're scientific and I don't see much benefit in imagining these ... well, they're mystical forces.

GERARD BAUDAINS: But could I press you on that because it's quite interesting because you're saying that, basically, we can never have too much knowledge. We need the knowledge of all these bores and (inaudible), and I would agree to some extent.

15 Water supplies on Les Ecrehous

But surely, investigation of the fact that we may or may not have deeper -- substantial deeper water would be benefit, that would surely be extra knowledge. Going back to the Ecrehous, we're all familiar with the size and the location of the place. If there is substantial water supplies on there, one might ask where they come from. And, in fact, when I was talking some time ago with the then Dr Robins of BGS, he admitted that if water was found there, that would throw the whole calculation on water balance into some disarray.

So, do you think we have sufficient information in those areas?

16 Reliance on scientific work undertaken by BGS

CRAIG LEACH: Well, it's unfortunate Dr Robins isn't here, as far as I know, to comment on what you've just said. But, as far as I'm concerned, we've had the work done and it's good, solid, scientific work that has been produced at - no doubt - considerable public expense and that's the information on which we can rationally proceed.

JEAN LE MAISTRE: Mm. Deputy Rondel?

17 Sledgehammer to crack a nut?

PHILIP RONDEL: Yes. You mentioned earlier that this was an all singing/all dancing law and we should wholly embrace it. Given that, would you consider that we're not using a sledgehammer to crack a nut here?

18 Reasonable application of Law

CRAIG LEACH: I don't -- not as far as I know. I think it's -- I accept the point. We need to be reasonable. You don't want to crush people's consumption but I think, within the law, that reasonableness can be achieved. What it -- who's it going to impact? When it is a commercial use, a reasonable extraction levels and so on. So, I think the law does need to be there in its present entirety, but it should be applied reasonably.

Again, it goes back to the anticipatory. If there's a crisis, you can do absolutely nothing about it today. With that law, even though all of it might not be enforced, you have something to deal with a crisis.

PHILIP RONDEL: The reasonableness can be applied in a number of different ways and sometimes it is. Sometimes it's applied, shall we say, to the letter and people consider that's reasonable. Other people will take a very light hand. Can you give me your view on the word 'reasonableness'?

CRAIG LEACH: I think -- I mean what's been trying to achieve, to some extent, is avoidance of abuse. So, clearly, if a particular landlord then supplies tankers of water throughout the island and starts exporting it to Guernsey or something, you would say, "That is abuse".

And I'd like to think that the experts in the field would know what an agricultural or other commercial application is reasonable use and apply that licence to that on a reasonable basis to stop that abuse. And the law is there behind you, if needed, for a particular crisis that might arise which we might not be aware of today.

19 Is increased regulation warranted?

JEAN LE MAISTRE: Deputy Duhamel?

ROB DUHAMEL: Thank you. It was recently agreed that a strategic aim for the government of the future should be a government with a light touch. Is it your opinion that this law is absolutely necessary and warrants the increased regulation and administration in order to carry it out?

20 Learn from experience of other countries

CRAIG LEACH: I think a light touch can be achieved with that law. It might be of interest also to see how other countries with the same law are managing it at a micro level, to know what is reasonable and so forth. So, I'm sure we could learn from other countries with the same or very similar law how, in practice, these levels (several inaudible words) and any other questions that arise are dealt with. Some countries have had this law for decades, obviously, so we've been very slow to protect ourselves (several inaudible words).

JEAN LE MAISTRE: Mm. Have you other countries that you can quote, which have a similar law to this or ...?

CRAIG LEACH: I've only looked at it from a general level of not having anarchy in water extraction. I think you'll find in France and Germany, there's --

JEAN LE MAISTRE: Because, you know, law can be different things.

CRAIG LEACH: Yes.

JEAN LE MAISTRE: We are aware that this is based largely on the UK legislation, but you have no comment to make on comparison with other legislation?

CRAIG LEACH: From a broad familiarity, that there are controls in most developed countries on water extraction, so that's where we're coming from.

JEAN LE MAISTRE: Any other questions?

21 Focus of Law on environmental protection rather than over extraction

GERARD BAUDAINS: Yes, we've been learning from other submissions that it would appear the focus of the draft law has now moved away from the concern about water extraction and moved on to concern about the environment and the desire to be in step with Europe. Does that alter any of your fears or thoughts on the

matter?

CRAIG LEACH: No, I think we're all singing to the same tune, that we want to protect the environment, make it sustainable, and protecting the water table is one element of that process. And it's to Jersey's credit, if somewhat delayed, that we're -- hopefully, we'll have a water law very soon.

22 How will information gathered under the law benefit the environment?

GERARD BAUDAINS: Yes, but the -- coming back to my earlier comment about even if we had all the information that we -- I know there's quite a number of bore holes are currently monitored. Even if we monitored all of them, how exactly is that actually going to benefit the environment? How do you perceive it?

CRAIG LEACH: Well, if --

GERARD BAUDAINS: The knowledge is one thing, but how does that translate into benefit for ...?

CRAIG LEACH: Well, at a very basic level to ensure that over-extraction isn't taking place and someone's not filling tankers to cover the whole island, then it has to be monitored.

23 Basically a preventative measure

GERARD BAUDAINS: So, basically it's a preventative measure that you're seeing it as?

CRAIG LEACH: Yes, at one level.

24 Additional Manpower concerns

PHILIP RONDEL: Okay. Have you any concerns about the additional manpower that will be required, given that the islands themselves keep on asking us to reduce the amount of bureaucracy and reduce the amount of manpower within the inter-States workforce? Have you or Concern got any views on the manpower that would be involved?

CRAIG LEACH: It's difficult for me to say that because I'm sure that there are other people who can answer that question much better but, using the expression 'light touch', one would hope that the potential dangers from over-extraction are not so numerous that the amount of bureaucracy and enforcement officers to monitor

them aren't so high.

Yes, commonsense would need to apply. But, if most developed countries of the world do it, I'm sure Jersey can do it.

JEAN LE MAISTRE: I'm not sure that we do many things with a light touch, but that's maybe not in this area.

Are there any other questions? If not, would you have any other comments that you would wish to make? Oh, yes. Sorry, Dr Sutton. Have you any particular questions?

25 Effect of climate change

DR SUTTON: In the closing part of your letter, you make reference to climate change without being specific. Do you have any views that it will be a sequence of unmitigated disasters or do you -- could it potentially be beneficial in water resource terms?

26 Anticipatory argument for the need for the law

CRAIG LEACH: Well, this really comes back to the anticipation -- anticipatory argument for the need for the law, that if -- so it's a general comment. If there's a global warming impact of several years of drought, we'd have a crisis on our hands with no law to deal with it. So, that was the general comment there.

As a general comment, I'd say Concern, as you know, have been for many years pressing for water management. And in terms of the laws, this is not strictly -- but in terms of regulations and laws governing water equipment, metering and anything else to make us realise, appreciate the cost of water and to manage its use, we feel that there's a lot that can still be done to improve management of water.

27 United Kingdom authority on water management

I was asked to suggest some experts for this panel. I suggested one who is a well-known UK authority on water management. I would like to think at some point, we'll take on board the micro, as well as the macro, management of the water resource, so that we manage our resources more efficiently.

JEAN LE MAISTRE: Okay, well thank you very much for your submission, and for coming to meet us this afternoon. It's much appreciated.

CRAIG LEACH: Thank you.

(meeting adjourned)