

**MID-TERM REVIEW OF THE OPERATING LICENCE FOR  
SYDNEY CATCHMENT AUTHORITY**

**SUBMISSION BY TOTAL ENVIRONMENT CENTRE TO  
THE INDEPENDENT PRICING AND  
REGULATORY TRIBUNAL**

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## **INTRODUCTION**

The mid-term review of the Sydney Catchment Authority (SCA) Operating Licence provides an opportunity to improve regulatory arrangements and rectify deficiencies identified in the two most recent Operational audits.

This submission presents recommendations for amending the current Operating Licence to address issues that have arisen since the grant of the licence and improve SCA's environmental performance.

## **OPERATING LICENCE OBJECTIVES**

Total Environment Centre (TEC) believes that, for the most part, the objectives of the Licence are appropriate and reflect the objectives of the *Sydney Water Catchment Management Act 1998*.

We believe however that an additional objective should be added to require the Authority to conduct its operations in accordance with ESD principles as defined in the *Protection of the Environment Administration Act 1991*. This is a principal objective listed under *Sydney Water Catchment Management Act 1998*, however it is not explicitly listed in the licence objectives, apart from the requirement to generally meet the objectives and other requirements of the Act. A specific licence objective would provide an appropriate reflection of the importance adhering to ESD principles. It would also ensure that the Authority's performance in this regard can be examined in the Operational Audit.

## **MEMORANDA OF UNDERSTANDING**

### ***Role of MOUs within the current Operating Licence and regulatory structure***

TEC acknowledges the statement in the Tribunal's discussion paper (IPART, 2002) that MOUs are intended to aid working relationships of organisations and ensure that responsibilities and obligations are clearly defined. We support the SCA's view that the role of the MOUs as a facilitator of cooperative relationships and joint projects is an effective one (SCA, 2002). In addition to providing a practical basis for guiding relationships between agencies, MOUs provide an essential means of ensuring that the nature of these relationships is publicly transparent and allowing the Authority's compliance with obligations to other agencies to be considered as part of the operational audit. For this reason, as detailed below, we believe that the key requirements of MOUs should be incorporated in the Operating Licence

### ***Whether MOUs adequately define the roles and responsibilities of the relevant organisations***

TEC notes the fact that the two most recent Operational Audits have criticised the MOU with the EPA as being inadequate in identifying the full range of cooperative arrangements which could be developed between the parties (SCA, 2002; IPART, 2002). Identifying and developing these arrangements is an essential part of protecting the catchment and ensuring that water quality objectives are achieved. For this reason the mid-term review should recommend the inclusion in the Operating Licence of a requirement for SCA to finalise a new MOU with the EPA that addresses the concerns of the auditor within 12 months. We

do not accept the Authority's argument that the MOU as it stands is sufficient to assist both agencies in performing their functions simply because both parties to the MOU are satisfied with its contents and no submission were received during its review in late 2000 (SCA, 2002). The fact remains that the Operational Audit has twice identified deficiencies with this MOU. These deficiencies should be rectified as a matter of urgency.

### ***Inclusion of MOU requirements within Operating Licence***

TEC strongly believes that, in the interests of transparency and accountability, the licence should include the key obligations, targets and timelines of MOUs and make performance against them subject to consideration in the operational audit. The report of the Sydney Water Inquiry following the 1998 water crisis highlighted limitations in auditing performance against MOUs due to a lack of targets and timelines (McClellan, 1998). Placing key obligations, targets and timelines of MOUs in the Licence would ensure that performance against MOUs can be properly assessed as part of the Operational Audit.

SCA has argued against including provisions of MOUs in the Operating Licence (SCA, 2002) on the basis that such an approach would amount to regulatory duplication and blur the distinction between the role of the Operating Licence and an MOU. TEC rejects this argument. It is important that SCA's obligations relating to public health, water quality and environment protection be included in the Operating Licence. The Operating Licence provides a simple and transparent mechanism for ensuring the Authority's operations are publicly accountable. It is essential that the Operating Licence be an overarching instrument that clearly sets out the authority's obligations and performance requirements. Relationships with other statutory instruments such as MOUs should be included in the Operating Licence. Placing these obligations within other instruments could lead to regulatory confusion and create barriers to review of performance by the Licence Regulator. The Operating Licence provides an integrating instrument that allows coherent management of SCA as a whole. No other regulatory agencies or instruments provide such a function.

## **WATER QUALITY OBLIGATIONS**

### ***Aesthetic guidelines***

TEC notes that compliance with requirements for aesthetic characteristics of water in the Bulk Water Supply Agreement (BWSA) with Sydney Water has generally been high (96%) with non-conformances largely beyond the control of SCA. We note also that these non-conformances did not significantly interfere with water treatment processes (IPART, 2002). In view of this the aesthetic guidelines would seem to be appropriate and should be retained.

### ***Health guidelines***

The current Operating Licence for SCA requires compliance with Draft 1996 Australian Drinking Water Guidelines established by the National Health and Medical Research Council (NHMRC) and Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ). We note that the NHMRC proposes to continually update the guidelines as new information becomes available (HWC, 2001).

TEC strongly believes that it is essential that the Operating Licence require SCA to comply with the most up to date standards for drinking water that are in place at any time. For this

reason we believe that the requirement to comply with the 1996 guidelines and any revisions to the health related aspects of those guidelines should be retained. This would promote public confidence that the most advanced standards of public health protection available are in place.

TEC welcomes the fact that the Authority is currently monitoring for *Cryptosporidium* and *Giardia* at a number of locations under its pathogen monitoring program (SCA, 2002). Following the 1997 Sydney water crisis, there is a need for water agencies to address the issue of *Cryptosporidium* and *Giardia* in order to ensure public confidence in the safety of drinking water. At present it is not possible to define standards for *Cryptosporidium* and *Giardia* in regulation due to a lack of information and technical limitations. For instance, not all strains of these micro-organisms are capable of causing infection in humans and it is difficult to determine whether *Cryptosporidium* and *Giardia* detected in water supplies are still viable organisms. In view of this the Operating Licence should require SCA to keep abreast of world best practice for *Cryptosporidium* and *Giardia* in drinking water and update standards as new information comes to light.

In a similar fashion the licence should also require SCA to remain up to date with standards in other health related issues such as endocrine disrupting chemicals and other pollutants in drinking water.

## **RISK MANAGEMENT PLAN**

### ***Adequacy, scope and effectiveness of SCA Risk Management Plan***

TEC notes that the 2000/02 Operational Audit was critical of narrow scope of the Risk Management Plan (RMP) and recommended that it take a more holistic view of pollution sources and control measures (IPART, 2002). It has also been acknowledged by SCA in their submission that the RMP does not fully address the requirements of the Operating Licence (SCA, 2002).

It is clear then, that the existing RMP is not an adequate instrument for identifying and addressing risks to catchment health and water quality. As a key tool in protecting the quality of Sydney's drinking water supplies the RMP must be revised to address this deficiency. The licence should, therefore, be amended to incorporate the Ministerial Requirements arising from the audit. In particular, the licence should require SCA to expand the RMP to incorporate existing knowledge regarding pollution sources and infrastructure, assess the effectiveness of control measures and determine whether additional measures are required.

### ***Continuing need for Risk Management Plan***

TEC notes comments by the SCA in their submission that the Catchment Rectification Action Master plan (CRAM) and Rectification Action Plans (RAPs) to be developed under the Regional Environmental Plan (REP) will not address the management of catchment infrastructure works to ensure the selection of best quality water for customers (SCA,2002). It is also important to note that the Authority's submission states only that risk control actions relating to catchment management in the RMP *may* form a portion of the RAPs. In view of this we support the Authority's view that the need for a pollution source Risk Management Plan to identify and address threats to water quality will remain.

## **REVIEW OF PERFORMANCE CRITERIA**

### ***Are the performance standards clear, concise and unambiguous?***

Current performance standards in relation to reliability, robustness and security are relatively clear, concise and unambiguous, in that they provide clearly defined parameters for the Authority to operate its system within. A more critical issue is whether the criteria are appropriate and adequately consider issues affecting security of supply. This is discussed further below.

### ***Are the current security criteria applicable and appropriate?***

It is difficult to provide detailed comments on system performance criteria at this point in time. TEC notes the SCA has engaged a contractor to investigate the criteria and modelling (SCA, 2002). We are also aware that the Tribunal will engage a consultant to investigate security of supply issues. TEC would welcome the opportunity to provide more detailed comments on the criteria when the results of those investigations become available.

In general, however, TEC believes that the standards should not be based solely on Sydney Water's Forecast Annual Demand, but should also incorporate environmental flow requirements for rivers and streams in the Hawkesbury-Nepean and Shoalhaven basins. SCA notes in its submission (SCA, 2002) that the findings of the Hawkesbury-Nepean Forum and Water CEO's Taskforce should be available for consideration in the end of term review. We are concerned, however, that no definite timetable has been provided for the completion of this process and that this information may not be available in time for consideration in the end of term review. The existence of these processes should not be an excuse for SCA to avoid addressing environmental flow issues. The Authority needs to provide leadership on the issue of environmental flows and generate data to assist the Hawkesbury-Nepean Forum and Water CEOs taskforce. For this reason the Operating Licence should be amended to include a requirement for SCA to develop a range of environmental flow scenarios prior to the completion of the current licence.

In considering security and quality of supply, attention must be given to the threat of activities such as coal mining in the catchment. In particular, subsidence resulting from longwall mining in the catchment will adversely effect security of supply through cracking of stream beds and damage to infrastructure such as weirs and pipelines. Instances of bed cracking resulting from long wall mining have already been observed in Native Dog and Wongawilli Creeks. TEC recommends that the licence be amended to require SCA to annually report in its Environment Report on stream, hillside and structure cracking and subsidence in its catchments at specific and cumulative levels (see [www.tec.nccnsw.org.au](http://www.tec.nccnsw.org.au) - *Mining and Water Don't Mix*) and examine potential losses resulting from activities such as mining in the catchment.

### ***Effectiveness of Catchment Authority in encouraging demand management***

TEC is disturbed to note recent trends which have seen an increase in total volume of water supplied to SWC and per capita consumption (SCA, 2002; SWC, 2002). We are particularly concerned to note an increase in demand over the last two years which sees SWC well short of achieving its 2005 demand management target of 364 lcd.

It is clear that immediate action is required to reverse this trend and meet current demand management targets, particularly if the NSW Government policy permanently deferring Welcome Reef dam is to be achieved. This is discussed in detail in our submission on the SWC Operating Licence.

While demand management is principally the responsibility of Sydney Water, the role of SCA should not be ignored. We note that the current Operating Licence requires SCA to assist SWC in achieving demand management and ensure that SWC does not have any further scope for demand management prior to considering augmentation of supply (IPART, 2002). These requirements must be retained. We also urge the inquiry to recommend codifying a range of measures for SCA to undertake to assist demand management. We welcome measures already implemented by the Authority such as a leakage assessment of the Warragamba pipelines, the upper canal and public picnic areas at dams as well as recalibration of flow meters to more accurately measure losses (SCA, 2002). These programs should be continued and expanded.

Any failure by SWC to meet demand management targets will result in a financial gain for SCA through the sale of greater volumes of water. This increased revenue should be directed into improving demand management. To this end the licence should be amended to require any revenue from water sold to SWC in excess of demand management targets be directed into the Authority's own demand management programs such as those above.

As a further step we urge the Tribunal to recommend the introduction of penalty pricing for any water sold to SWC in excess of demand management forecasts. This would provide SWC with a strong incentive to improve demand management. Additional revenue generated for SCA should be directed to promoting demand management as detailed above.

TEC also believes that the Operating Licence should require SCA to actively promote demand management and water efficiency amongst its other customers, such as local councils, industry and stock and domestic users. Although comprising only a very small proportion of total demand (approx 0.5%) any improvement in demand management among these customers will increase security of supply, offer environmental benefits through more efficient water use and avoid the need for local councils and other customers to seek additional sources of supply.

## **REFERENCES**

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