



States of Jersey

FROM:

Chairman, Shadow Scrutiny Panel
Senator E.P. Vibert

Senator P.F.C. Ozouf
President,
Environment and Public Services Committee

15 April 2004

Dear Philip,

**Shadow Scrutiny Panels: Proposed Review of draft Water Resources
(Jersey) Law 200-**

The Scrutiny Panel under my Chairmanship has decided to undertake a review of the draft Water Resources (Jersey) Law 200- and has agreed the following terms of reference -

To review the consultation draft of the proposed Water Resources (Jersey) Law 200-;

To consider the evidence supporting the rationale for the draft Law's stated objective of 'protecting water resources in Jersey'; and

To review the degree of regulation to be applied under the Law and the resultant resource implications.

The Panel's objectives in selecting this topic for review are to establish whether there is a real need for this piece of legislation; to examine the supporting evidence; to assess the stated benefits which the draft Law aims to achieve; and to consider whether those benefits might be met through an alternative, more cost-effective approach to regulation. The Panel will also seek to assess the impact of the draft law on businesses in the Island, particularly Tourism and Agriculture.

Since an accompanying report has not yet been published, the Panel is unable to consider at present the basis for the draft legislation. The Panel accordingly

requests that the Environment Department be instructed to prepare a report for the Shadow Scrutiny Panel setting out -

- the evidence on which your Committee is relying in support of the stated need to protect the Island's water resources;
- the available baseline information on groundwater levels, volumes of private water abstraction and water usage in Jersey;
- the perceived environmental benefits deriving from the proposed legislation;
- how the proposals for managing the water supply compare with other jurisdictions, particularly the United Kingdom, other Channel islands and France;
- the rationale for the proposed regulatory regime, together with the financial and manpower resource implications for monitoring;
- the estimated impact on both industrial and domestic water consumers.

Naturally, if the Environment Department is aware of other issues not listed above, which it considers relevant to the stated terms of reference, the Panel would be pleased to receive such details also, together with any relevant documentation.

In addition to considering the report from the Environment Department, the Panel will also seek evidence from interest groups affected by the proposed legislation in the Island and would request the assistance of the Environment Department in providing contact details for relevant bodies who might be consulted by the Scrutiny Panel.

The Panel will also encourage the general public to give their views of the legislation and, to this end, will shortly issue a press release outlining the scope of the Scrutiny Review, together with a general call for evidence.

The Panel envisages that, once it has considered written evidence submitted to it, it will invite witnesses to attend a public hearing in which it will be possible to discuss their evidence with them in person. The Panel will also wish to call you as President of the sponsoring Committee to attend a hearing to scrutinise the draft legislation in detail.

The Panel will be developing a detailed project plan for the review, including the dates for the hearings, and will contact you again in due course with details. In the meantime, the Panel can indicate that it would intend to hold its hearings towards the end of June and would hope to receive written evidence from the Environment Department by the middle of May. Please let us know as soon as possible if meeting this proposed timetable would cause particular difficulties.

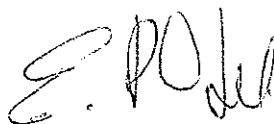
I am conscious that my position as a member of the Environment and Public Services Committee creates a conflict with my position as Chairman for this

Scrutiny Review. Accordingly during the course of this review another member of the Panel will be taking over the role of Chairman. In addition, the Panel is mindful that two members of the Panel, Deputies G.C.L. Baudains and P.J. Rondel have previously stated their opposition to the proposed law. The Panel does not believe that these members are compromised in taking an active part in the Scrutiny. On the contrary, the Panel considers that their knowledge of the issues will be an asset throughout the Review process.

The Panel would wish to emphasise the fact that this Review, carried out during the Shadow Scrutiny period, is an opportunity for training for both States members and officers in the skills and approaches which will be required under the full Scrutiny process. The States, in approving P.186/2003, gave the Shadow Panels responsibility for developing the practical arrangements for a system of scrutiny appropriate to Jersey as well as guidelines to govern the process. Following each piece of work, a review group, including chief/departmental officers and Committee members, will be asked to assess the effectiveness of the process and identify any problems encountered by either side during the review process. The Panel will be interested to hear at any stage the views and comments of your Committee and its officers and looks forward to your co-operation and assistance in producing a worthwhile outcome for the Scrutiny Review.

The lead officers for this Review will be Mike Haden and Kay Tremellen-Frost. Any Correspondence should be forwarded to them at the Scrutiny Office, c/o States Greffe, Morier House, by fax to 512798, or by e-mailed to m.haden@gov.je or k.tremellen-frost@gov.je.

Yours sincerely



Senator E.P. Vibert
Chairman
Shadow Scrutiny Panel

CC Mr. C. Newton, Director of Environment
Mr. G. Jackson, Assistant Director - Environmental Protection

Scrutiny Office
States Building
Royal Square
St. Helier
JE1 1BA

Direct Line: 01534 512750
Fax: 01534 512798
e-mail: scrutiny@gov.je

Senator P.F.C. Ozouf,
President,
Environment and Public Services Committee

28th July 2004

Dear President

Shadow Scrutiny Panel - Review of draft Water Resources (Jersey) Law 200-

I would like to thank you, on behalf of the Scrutiny Panel, for attending the public hearings on 19th and 26th July 2004 with your team of advisers to discuss the draft Law.

As indicated during the hearing on 26th July, the Panel had certain points it wished to clarify with regard to the evidence given on 19th July on the rationale for the draft Law's stated objective of 'protecting water resources in Jersey'. As the hearing on 26th was devoted to specific scrutiny of the draft legislation, the Panel has decided to request that these points be addressed in writing, rather than taking up further time in the hearing itself.

The Panel understands that the Environment and Public Services Committee believes that the draft law is required for the protection of a finite resource (both in quality and quantity) which is essential for the community. However, the evidence for a resource under stress, as highlighted in the early studies of the British Geological Survey, now appears to be less prominent. In the evidence which has been submitted, there has been no definitive indication of either systematically falling groundwater levels or deteriorating groundwater quality since monitoring of quantity started in 1993. The basis for a Law seeking to control abstraction now appears to rest more on the protection against potential future problems which may result in a shortage of water.

The following questions arise -

- Does the Committee have any evidence for the likelihood and nature of these potential future problems causing severe depletion of the water supply?
- Given previous rainfall history, could the Committee inform the Panel how often it believes it may be necessary to impose restrictions under the Law – every 5 years, every 10, every 25?
- Should problems occur because of drought, could they be addressed by invoking a revised Drought Law rather than by a complex piece of legislation as proposed?

Evidence received by the Panel suggests that BGS data is incomplete. For example, BGS' recharge estimations appear to exclude several inputs; BGS assume that Jersey's aquifer is 'shallow' and 'probably only 25m thick' when there is considerable evidence that even greater supplies exist at depths below 100 m. (this evidence was given to BGS and the Public Services Department about 10 years ago); and BGS appear to refuse to accept or even investigate possible recharge sources.

This leads to Panel to pose the following questions

- Does the Committee believe that BGS data is robust enough to use with borehole abstraction data as a means of calculating water profiles and reserves?
- Given the complex geological situation in Jersey, how will it be possible to develop a robust model which predicts with reasonable accuracy any resource deficit in any given year or period?

The Panel looks forward to receiving your response to these questions in due course.

Yours sincerely

Senator J.A. le Maistre
Chairman, Review of draft Water Resources (Jersey) Law 200-

Cc Mr. C. Newton, Director of Environment
Mr. G. Jackson, Assistant Director - Environmental Protection

Scrutiny Office
States Building
Royal Square
St. Helier
JE1 1BA

Direct Line: 01534 512750
Fax: 01534 512798
e-mail: scrutiny@gov.je

Senator P.F.C. Ozouf,
President,
Environment and Public Services Committee

10th August 2004

Dear President

Shadow Scrutiny Panel - Review of draft Water Resources (Jersey) Law 200-

Further to the Scrutiny officer's initial e-mail of 4th August 2004, I write to confirm that the Scrutiny Panel wishes to invite you to return for a further question session in the autumn relating to the additional evidence supplied at the hearing, namely the table relating to Annual Renewable Fresh Water per person, and also to the BGS Overview document, entitled 'Water Resources of Jersey' which was delivered after the hearing.

The above table was produced at the hearing in order to support the case for the urgency of the legislation and the regulatory framework. Subsequently the Panel has received comments from our adviser, Dr Sutton, on both of these submissions (these comments have now been supplied to your Department) and the Panel now wishes to discuss these submissions further with you and your team.

In addition, the Panel heard strong evidence in the afternoon session of 26th July from George Langlois, a water diviner, and Lewis de la Haye, a local well driller, regarding their belief that there are ample reserves of water at deep levels and that local knowledge of water resources has been consistently discounted by PSD over several years since 1992. The Panel wishes to pursue further enquiries on these lines. The Scrutiny Office will shortly be in a position to send you copies of the material supplied by Mr. Langlois at the above hearing.

The Panel's attention has now been brought to the Groundwater Review Group, a group of 'eminent local geologists' consulted by BGS throughout its research (reference Public Services Committee's Information Paper on Jersey's Groundwater Resources, dated 14th January 1994). The Panel is surprised that the existence of this resource local knowledge and expertise was not mentioned in the Committee's initial submission. It feels that it would be useful to its review and to its understanding on the rationale for the draft law to hear the views of members of this group on the need for water resource management.

The Panel also believes that it would be helpful for the forthcoming hearing to have the opportunity to discuss the conclusions of the BGS studies with Dr N. Robins, who has led the work in the Island for most of the period during which research has been carried out. The Panel requests your Committee to convey its invitation to Dr Robins to attend a public hearing in Jersey. Since this is a specific request from the Panel for an individual expert witness to attend the Panel believes that it would be appropriate to offer to meet the expenses and fee for the witness on this occasion.

In the initial communication from the Scrutiny Office relating to this additional hearing, it was indicated that the Panel would meet you in an hour's session on 20th September just prior to the

scheduled additional hearing of the Review of the Agri-Environment Scheme. In the light of the additional witnesses the Panel wishes to hear it now considers that it would be more appropriate to set aside a separate occasion dedicated to the review of the Water Resources Law. This date has not yet been confirmed and the Scrutiny Office will seek to arrange a mutually convenient occasion at a later date.

The Panel also requests the Committee to supply the following information

- a) Copies of the reports of the Groundwater Review Group submitted to the Public Services Committee around 1991 and 1992 together with any correspondence relating to this Group and records of meetings held between this group, Senator John Rothwell (the President of Agriculture and Fisheries at the time) BGS and the Dowsers (Water Diviners);
- b) The total cost to date to the States of the work carried out by BGS since the commencement of its contract in 1990;

And to provide a written response to the following questions

1. The Panel was told in the hearing on 26th July (sections 28 & 29 in edited version) that the UK has limited their licence of boreholes to those drawing 20 cubic metres a day and that this will be changed to 10 in some areas.

Do we know how many areas this will apply to and is this the lowest level?

Do we know what the limits are in other EU countries before a borehole has to be licensed

Is there anywhere as low as 3 cubic metres per day?

2. In the Public hearing on 19th July (section 14 in edited version) Dr Peach said: *If I were presented with evidence that there were substantive exploitable supplies from 100 metres, 200 metres depth, which I haven't seen and I don't see any scientific investigative evidence. I haven't seen any to show that. Then I would want to be assured of the sustainability of those supplies, clearly because, you know, it might be a (several inaudible words) and things like this that store water, and there would need to be investigations of that nature. And that would alter -- there's no doubt that would alter the calculation of the total water buffers, but I haven't any of that with me.*

What evidence would be required to prove these "substantive exploitable supplies"?

3. It appears that the Environment and Public Services Committee discounts water resources below the shallow aquifer at 25 metres. In this case would the Committee consider a licence exemption for bores in respect of depth below 25 metres as well as capacity, that is less than 3 cubic metres a day?

The Panel looks forward to receiving your response to these questions in due course.

Yours sincerely

Senator J.A. Le Maistre
Chairman, Review of draft Water Resources (Jersey) Law 200-

Cc Mr. C. Newton, Director of Environment
Mr. G. Jackson, Assistant Director - Environmental Protection



SCRUTINY OFFICE RECEIVED	
15 OCT 2004	
SCANNED	
REGISTERED	
ACTION	

7th October 2004

PRESIDENT (E&PSC) to CHAIRMAN (SSP)

Dear Deputy Rondel

Ref. Draft Water Resources (Jersey) Law 200-

I enclose my Committee's Final Submission to the Shadow Scrutiny Panel (the Panel) in relation to the above, which we trust deals with all your outstanding questions.

[A] COMMENTARY

1. From the enclosed document the following main points emerge –
 - 1.1 We stand by the document which was tabled on the 26 July, which we believe represents a reliable “indicator” of Jersey’s relative overall position in the world in terms of water scarcity; this is further demonstrated by the need for a desalination plant on the Island. This **alone** in our view represents an overwhelming **technical** justification for the Law, which as was explained to the Panel is in addition to the **overriding need** to protect and manage the Island’s known water resources for present and future generations.
 - 1.2 Whilst the existence per se of sources of water at depth beneath the Island cannot be seriously disputed, we reject entirely the proposition put forward by the Water Diviners that these water resources have their origins in France and that they amount to unlimited water resources which would somehow obviate the need for the Law. It will, of course, ultimately be a matter for the States to decide – when the Draft Law is presented to the Assembly – whether, as did the Riley Committee, to accept the **professional and independent advice of BGS** or whether to rely on the views expressed by the Water Diviners / Drillers, albeit supported by Dr Sutton (see below), for which **no scientific data** has been produced. In this connection, we would add that BGS are the advisor to the British Government – and indeed to many other governments worldwide – on geotechnical matters; moreover, as a part of the UK’s National Environment Research Council, they – unlike other Consultants – are a **non-profit** making organisation and as such **completely independent**. I believe that the States of Jersey are extremely fortunate to have the benefit of their expertise.
 - 1.3 I am satisfied that the views of the Water Diviners / Drillers have **already been fully taken into account** by the Promoting Committee. Nevertheless, as you will note from our Final Submission document I have again – entirely out of deference to the diviners / drillers – arranged for my Officials to re-open a dialogue with them in an attempt to resolve our fundamental differences. In addition, my Committee has agreed to participate in a collaborative investigation intended to

determine conclusively the **extent** of the limited resources that are available at depth below the Island. As I write the well drillers and diviners have not responded with their choice of site to carry out such an investigation.

[B] **Dr SUTTON**

2. In the light of recent disclosures by the Panel, we wish to have clarified the precise role of Dr Sutton in relation to this matter.

The FACTS

- 2.1 Our understanding was that Dr Sutton had been brought over from the UK by the Panel specifically in order to act as its Technical Adviser. Indeed your document inviting us to attend the first Hearing on the 19 July 2004, stated “The Panel engaged an expert adviser, Dr Sutton of Entec UK Ltd, to **evaluate the evidence** it receives in relation to the draft law”. It is clearly implicit in such an arrangement that the expert appointment **should be** totally independent.
- 2.2 Consequently, when we received from you in early August, copies of the Water Diviners’ Evidence (comprising largely of newspaper cuttings) we were astonished to discover that in fact **Dr Sutton had previously acted as Adviser to the Water Diviners & Drillers**; as you know the diviners/ drillers are completely opposed to my Committee’s proposals. Indeed, we have since ascertained that Dr Sutton has acted in that capacity for **many years**. Surely there is a ‘conflict of interest’ issue here, which should have prevented a professional person from also acting as Advisor to the Panel.
- 2.3 In his Report to the Panel (“Technical Assessment of Evidence Presented”) dated 30 June 2004 - but which was not disclosed to us until August – Dr Sutton states-
 - “Throughout the BGS work many opinions and some of the data has been consistently queried by the Water Diviners and Engineer’s Association of Jersey (WDEA) who have presented their views in writing and **have commissioned external reviews of the BGS reports.**”
 - “A WDEA commissioned report (Water Resource Review of Jersey, **Environmental Management Consultants, “EMC”**; January 2001) confirms the over simplification of the BGS model and concludes that ‘currently there is no evidence of stress on the groundwater resources of the Island’.”

However, Dr Sutton failed to state in his Technical Report to the Panel that the Consultants (EMC) had in fact supported many of the Findings of BGS [see para 8 in our Final Submission document]; with respect, hardly a “neutral” approach by Dr Sutton. This is particularly disconcerting bearing in mind that the EMC Report was specifically **commissioned by Deputy Baudains** on behalf of the WDEA.

- 2.4 Again, when during the Afternoon Session on the 26 July – when Dr Sutton, rather curiously in view of his role as their advisor, was invited by the Panel to actually

give "Evidence" – he manifestly failed to mention his previous involvement on behalf of the Water Diviners / Drillers. On the contrary, he told the Panel "**I have not worked directly in Jersey**"

- 2.5 It is clear to us – perhaps not surprisingly having regard to the complex nature of the technical evidence which we have had to present to the Panel – that the Panel is placing a **great deal of reliance** on the advice that it is receiving from Dr Sutton. This is self evident from (inter alia) the Press Release, which the Panel issued immediately after the Hearing on the 26 July.
- 2.6 Finally, we understand that the environmental pressure group "Concern" – who are, of course, fully supportive of my Committee's proposals – when asked by the Scrutiny Office to make a recommendation, apparently recommended a Mr Paul Herrington from the UK to act as Technical Adviser to the Panel; but seemingly their recommendation was not adopted by the Panel.


Issues Arising

3. Having regard to the foregoing, I believe that my Committee is entitled to know from you personally as Chairman of the Panel –
- 3.1 Who recommended Dr Sutton to the Panel?
- 3.2.1 Were all the Panel Members (other than, of course, Deputy Baudains) aware – at the time of his engagement – of his previous extensive involvement on behalf of the Water Diviners / Drillers.
- 3.2.2 If not, when did those Members become aware of that situation

Clearly, these are important issues, particularly since the Panel is having to place so much reliance on Dr Sutton's Advice, who in our view **could not conceivably be regarded as independent**. I accordingly look forward to hearing from you on this point at your earliest convenience.

I would be grateful if you would please arrange to have a copy of this letter (and its enclosure) passed to the other Members of the Panel. Thanking you in anticipation.

Yours sincerely



Senator P F C Ozouf
President – Environment & Public Services Committee

cc Mr J Richardson }
Mr C Newton } E&PS Dept
Mr G Jackson }
Mr T Williams, Environmental Lawyer (UK)
Dr D W Peach, BGS

Enc

Scrutiny Office
States Building
Royal Square
St. Helier
JE1 1DD

Telephone: 512750
Fax: 512798
e-mail: scrutiny@gov.je

Senator P.C Ozouf
President,
Environment and Public Services Committee

26th October 2004

Dear President

Shadow Scrutiny Panel - review of draft Water Resources (Jersey) Law 200-

Thank you for your letter of 7th October 2004 in response to the Panel's questions in our letters of 28th July and 10th August 2004.

Your department was informed by e-mail from the Scrutiny Officer on 16th and 30th September that we would not require another submission, simply an answer to the specific questions stated in the above letters. The Panel has noted those parts of the submission which deal with answers to the questions asked and will address them in its final report.

The Panel wishes to address two points, one from your letter and one from the 'final submission' -

1. Your comments with respect to Dr Sutton.

The Panel's view is that the engagement of our consultant, and our use of them, is entirely a matter for the Panel. It is not for you to demand answers to questions about this matter. This matter will be addressed in our report, which will deal with the stance taken by you and your department on this and a number of other matters.

2. Our request for information about the fees paid to BGS by the taxpayer

Any member of the House could ask this question of you and you would be expected to provide the answer. In fact, this question has already been put on two occasions: the first by Senator Rothwell on 12th October 1993, when the House was told,

From its original involvement in 1989 until the present day, British Geological Survey have been paid a total £165,961.07, and further commitments amount to £5,200.00;

On the second occasion on 9th September 2004, in reply to a question by Deputy G. Baudains, Deputy Maurice Dubras the then President of the Environment and Public Services Committee, gave the costs for the last three years, as follows -

2001 £9,100

2002 £9,866

2003 £13,500

When pressed by Deputy Baudains, in a supplementary question, for the total cost, the following exchange took place -

Deputy Dubras: *'Unfortunately over the period of time people involved in the Department have either changed roles, moved on or retired. The information we have is only in a consolidated and available form in the last few years. Therefore I am not going to be able to supply the information sought by the Deputy.'*

Deputy Baudains: *'Do I understand the President correctly in that he is saying that the actual costs, the amount paid to BGS, are not available?'*

Deputy Dubras: *'That is correct. On the hoof, as it were, the only way I could imagine probably is to ask the Treasury to go through all its contract payments, or to seek the assistance of BGS to advise us how much we've paid them over the years. I don't know which would be the easier way. I'd have to consult the President of Finance and Economics to advise me on that.'*

Could you confirm that this is still the case; in other words, your Department simply does not know the total cost of the contract with BGS over the period since 1989. If, on the other hand, the Department has already taken steps, as suggested by the previous President, to ascertain the costs, could you explain why this information should not be imparted in full to the Scrutiny Panel, when clearly much of the information is already in the public domain?

In addition, it is noted that the then Vice President of the Public Services Committee on 12th October 1993 quoted the verbatim brief for the British Geological Survey, provided in 1989. He also outlined the work being carried out by BGS at that time and stated -

The time span for this work will depend upon the outcome of the ongoing studies but it is not expected to be less than two more years.

Would you please inform the Panel

- a. why the BGS contract has continued for eleven more years; and
- b. whether the brief provided to BGS has altered since the original terms were set.

We would be grateful for an early reply.

Yours sincerely



Senator Ted Vibert, Chairman
(in the absence of Senator J. Le Maistre)

Senator J. Le Maistre
Scrutiny Office
States Building
Royal Square
St. Helier
JE1 1DD

PO/TS

24 November 2004

Dear Senator Le Maistre,

Shadow Scrutiny Panel – Review of Draft Water Resources (Jersey) Law 200-

I refer to your letter of 26th October in response to my Committee's final written submission of 7th October. I will deal with the points in your letter in the order that you raise them.

1. Dr Sutton

I note your views on the matter of your panel's technical advisor; however I maintain my strong concerns about Dr Sutton's independence as an advisor to the Panel given his previous extensive involvement in Jersey on behalf of the Water Diviners and Drillers.

2. Fees paid to British Geological Survey (BGS)

My Committee maintains its view that consideration of the value for money provided by BGS over the period of their engagement by successive Committees is a matter more appropriate for the Public Accounts Committee. However, I am quite willing to provide you with the figures for BGS's costs that you ask for.

In addition to the cost of £171,161 incurred from 1989 to 1993 as set out in the answer to Senator Rothwell that you reproduce in your letter there have been further costs of £86,296 between 1994 and 2003 i.e. at the rate of around £8,600 per annum. There was no planned expenditure on BGS services in 2004 until this was necessitated by the Scrutiny Panel enquiry itself and, as yet, the sum relating to Scrutiny preparation and evidence has not been invoiced to us.

I am happy that an average sum of £8,600 per year over the last ten years represents very good value for money, being about a quarter of the cost of the States employing a dedicated professional, and representing the highest quality technical advice we can achieve.

BGS have been employed on a series of annual contracts to provide expert advice on hydrogeology, groundwater chemistry and groundwater pollution. Latterly their advice has been important in respect of expert witness statements for water pollution cases.

The Vice President of Public Services was correct with his 1993 assessment - that the services of BGS would be required for '*not less than two more years*'. In fact we have found an ongoing need for their advice on matters of hydrogeology, groundwater chemistry and groundwater pollution. This would of course diminish should we recruit as proposed, our own hydro geologist to assist in administrating the Water Resources Law.

There is ongoing work to do in further quantifying the deeper geology and groundwater resources so that we can better determine licence conditions under the proposed law. I anticipate that this will require the continued involvement of BGS along with the Jersey geologists, Jersey Water and the well drillers and water diviners. As the provisions of the Law to register boreholes and share information take effect our knowledge base will again improve – this is an ongoing and continuous process.

Fundamentally our case now rests. Freshwater in Jersey is a valuable and finite community resource, replenished only by rainfall. The draft law seeks to ensure that the water resource in both streams and groundwater is properly managed on behalf of the whole community; that the needs of people and those of the environment are balanced; and, that the rights of existing users are protected. Important exemptions have been agreed for the vast majority of domestic users and the overall burden on charge payers is minimal. I hope that your Panel will be able to support the need for the draft law and assist my Committee in taking to a conclusion the task first established by the States in 1992, of bringing forward a comprehensive Water Resources law.

Yours sincerely,

Senator P.F.C. Ozouf
President Environment and Public Services Committee