

**REGULATORY ACTIVITIES UNDERTAKEN UNDER
THE WATER RESOURCES (JERSEY) LAW 2007.**

ANNUAL REPORT FOR 2009



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Regulatory activities undertaken under the Water Resources (Jersey) Law 2007: Annual Report for 2009

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1. Introduction

This report is the first in a series of annual reports required under Article 7 of the Water Resources (Jersey) Law 2007 (the Law). The purpose of these reports is to disseminate information regarding activities undertaken by the regulator under the Law during the previous year. The Law came into force on 1 January 2009 and this report therefore covers the period from that date to 31 December 2009.

2. Background

2.1 The Water Resources (Jersey) Law 2007

The Water Resources (Jersey) Law 2007 was debated and adopted by the States on the 5 June 2007. The Law was subsequently sanctioned by the Privy Council on 10 October 2007 and registered in the Royal Court on 26 October 2007.

The Law provides for the protection, management and regulation of water resources in Jersey. It also promotes the conservation of the fauna and flora that are dependant on inland waters and the habitats of those fauna and flora, to the extent that those habitats are themselves dependant on inland waters.

Prior to the introduction of the Law, it was known that there were thousands of sources of supply across the Island that were in use to abstract water supplies but there was little or no information about the locations or quantities being abstracted. The Law, as part of the process of licensing and registration of water abstractions, provides a mechanism for the collection of basic water resources information that has not previously been available, including the locations and types of sources of supply (wells, boreholes, streams, reservoirs etc.), as well as the quantity and the use of water being abstracted from any particular source of supply.

2.2 The Appointed Day Order

The Water Resources (Jersey) Law 2007 (Appointed Day) Act 2008 was made by the States on 9 September 2008. The Act enabled the Water Resources (Jersey) Law 2007 to commence on 1 January 2009, with the exception of Article 11 and paragraph 3 of Schedule 4, which commenced on 1 January 2010. These exceptions related to water resources licences to abstract water and the registration of abstractions, applications for which were submitted during 2009 and which came into force on 1 January 2010.

Under Article 11 of the Law, a person shall not cause or knowingly permit the abstraction of water from a source of supply or the impounding of water in a source of supply, unless he or she is acting in accordance with a water resources licence. Similarly, under Paragraph 3 of Schedule 4, the regulator, acting as an operator, shall not cause or knowingly permit the abstraction of water from a source of supply or the impounding of water in a source of supply, unless acting in accordance with a water resources certificate that is issued under that schedule.

2.3 Registration Order

The Water Resources (Registration) (Jersey) Order 2008 was made by the Minister for Planning and Environment on 5 December 2008 and came into force on 1 January 2009, to coincide with the commencement of the principal Law. The Order prescribed how a person may register an abstraction or impoundment in specific cases where there is exemption from licensing defined under the Law. The Order defined the information that must be provided when applying for a registration.

2.4 Licence Charges Order

The Water Resources (Charges) (Jersey) Order 2009 was made by the Minister for Planning and Environment on 14 September 2009 and came into force on 21 September 2009. The Order provided for an annual charge to be levied in respect of Water Resources licences to abstract water as required under Article 25 of the Water Resources (Jersey) Law 2007.

Under Article 25(2) of the Law, total licence charges should meet the regulator's expenditure in carrying out functions under this Law. The overall cost to the regulator expenditure of was estimated to total £110.044. It had previously been agreed that because the large water quantities to be licensed for public supply, Jersey Water would contribute 90% of the total, with the other 10% being divided between the other licensees.

The annual licence charge payable for 2010 was therefore determined by the maximum licensed quantity specified on each licence and charges specified to recover to overall cost. The maximum water volume range and licence charges are detailed on the table below.

Licensed abstraction volume range (m ³ per 24 hour period)	Licence charge
Jersey Water	£99,040
between than 15 and 100	£40.00
between 101 to 250	£80.00
More than 250	£120.00

3. Licensing and registration requirements

3.1 General considerations

Article 11 of the Water Resources (Jersey) Law 2007 (The Law) states that a person shall not cause or knowingly permit the abstracting of water from a source of supply or the impounding of water in a source of supply, unless he or she is acting in accordance with a water resources licence. Article 12(1) details exemptions for which that restriction does not apply but in most cases there is a requirement to register the abstraction (see Section 3.3).

3.2 Licences

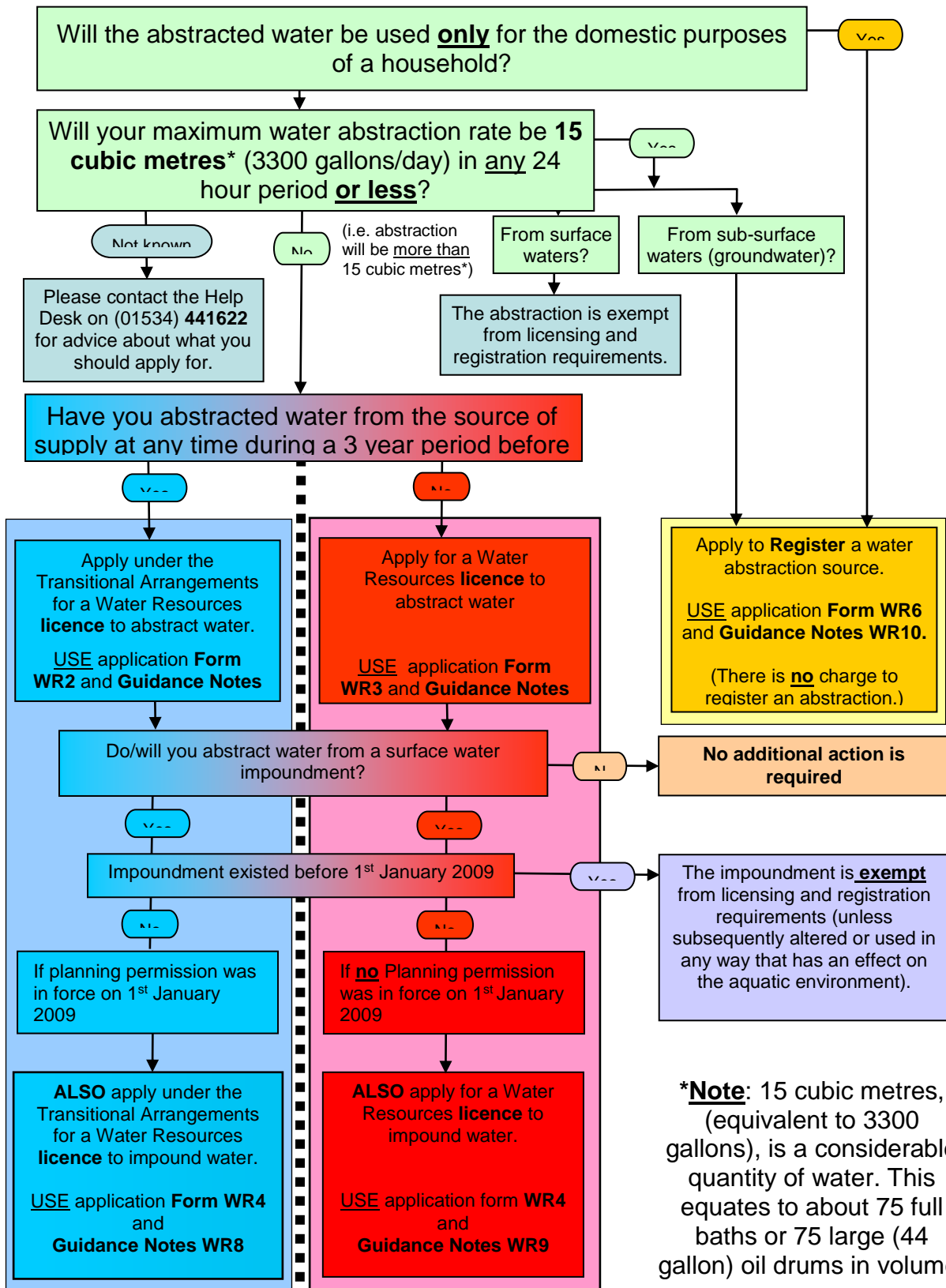
Under the provisions contained in Articles 11 and 12 of the Law, virtually all non-domestic water abstractions that exceed a quantity of 15 cubic metres in any 24 hour period, from surface (streams, reservoirs etc.) or sub-surface sources (wells and boreholes) of supply, must be licensed. Abstractions that are exempt from licensing and registration are detailed in Article 12 of the Law.

Schedule 3 of the Law, 'Transitional Arrangements for Water Resources Licenses' provided for the issue of licences to applicants who had lawfully abstracted water from a source of supply at any time within a period of three years immediately preceding the appointed day (i.e. 1 January 2009). In effect, this provision allowed applicants to apply for a licence that would permit them to continue to abstract the same quantity of water as they had before the Law came into effect. The quantity to be licensed is that which it would

have been reasonable for the applicant (or their predecessors) to have abstracted from the source of supply during the three year period prior to 1 January 2009.

A flow diagram (reproduced below) was issued to all applicants to allow them to determine the correct option for which to apply.

**Which type of Water Resources application forms do you need to complete?
Which Guidance Notes will help you to complete the application forms?**



***Note:** 15 cubic metres, (equivalent to 3300 gallons), is a considerable quantity of water. This equates to about 75 full baths or 75 large (44 gallon) oil drums in volume.

As specified in Schedule 3, applications for licences under the 'Transitional Arrangements' had to be submitted by 31 March 2009. Licences granted under the 'Transitional Arrangements' have a duration of 5 years commencing on 1 January 2010.

Licences for abstractions that exceed a volume of 15 cubic metres in any 24 hour period and commence after 1 January 2010, must be applied for under the 'standard' procedures. This involved completing a somewhat more detailed application form than was the case for an application under the 'Transition Arrangements'. Under most circumstances, the application must be gazetted in the Jersey Evening Post and a total period of 28 days allowed for representations to be made in respect of the application. The applicant has the right to reply to representations but they must be taken into account when assessing an application and granting (or refusing) a Water Resources abstraction licence. Licences would normally be granted for a duration of up to 10 years from the commencement date, which may occur at any time during a calendar year.

3.3 Registrations

The sub-paragraphs of Article 12(1) of the Law detail exemptions for which restrictions under Article 11 do not apply. However, Article 12(2) states that the exemption detailed in sub-paragraphs (b), (c) and (d) only apply if the abstracting or impounding is registered in the prescribed manner. The abstracting and impounding activities that are subject to registration as specified in the relevant sub-paragraphs of Article 12(1) are as follows;

- 12(1)(b) the abstracting of groundwater not exceeding in the aggregate 15 cubic metres in any period of 24 hours
- 12(1)(c) the abstracting of water for the domestic purposes of a household
- 12(1)(d) the abstracting or impounding of water, as far as is reasonably necessary to prevent interference with or damage to any civil engineering works or construction works.

Strictly speaking, registration only applies to abstractions from the sub-surface (from boreholes and wells). However, a small number of applications were received for abstractions from springs and streams for domestic use. As it is no less important to record the existence of such sources, particularly since they are likely to be equally (if not more) vulnerable to pollution, applications to register abstractions from surface sources of supply were processed in the same manner as other valid applications. There are however likely to be a small number of additional domestic supplies obtained from surface waters that have not been registered, as such abstractions are exempt from both the licensing and registration provisions.

3.4 Application forms

The application forms to register and licence water abstractions and impoundments of water were formulated during the spring and summer of 2008 by the Hydrogeologist. Guidance notes to accompany each type of form to assist applicants when completing application forms were also drawn up during that period. Apart from basic information about the applicant and details of which properties obtain a water supply from a source of supply, information was also requested about the source (in the case of a borehole or well its depth, diameter, water level, who drilled it and when and information about the pump type and model). It was recognised that much of the more detailed information would not be known by many applicants but that at least some of the information would be forthcoming in many cases. It was considered important that the application forms sought this basic information, as in most cases, this would in all probability be the only opportunity to do so.

As several thousand copies of the registration application forms and guidance notes were required, these were professionally printed, each form carrying a unique reference number. This permitted that a record could be maintained of the name and address of each potential applicant that requested an application form, allowing people to be contacted at a later date if the form was not returned.

In contrast, less than 200 licence application forms were required and these were printed in house as required and sent to applicants. This allowed potential applicants to discuss their proposed application with the Hydrogeologist at an early stage, thereby ensuring that a licence rather than a registration was in fact appropriate and for assistance to be provided if required (particularly with regard the determination of the maximum water abstraction quantity to be licensed). Again, each form was marked with a unique number allowing each to be tracked.

In order to encourage groundwater users to licence or register abstraction from their sources of supply, a series of press releases were issued between January and April 2009, resulting in articles in the Jersey Evening Post and interviews on radio and television. The message was reinforced by items in most Parish magazines and by adverts placed in the Jersey Evening Post.

Jersey Census figures suggested that about 3000 groundwater sources would need to be registered during the first quarter of 2009 to meet the deadline for the registration of existing sources specified in the Law. In addition, it was estimated that there were likely to be about 120 licence applications. It was therefore recognised from the outset that it would be necessary to handle large numbers of enquiries for further information and calls from potential applicants requesting application documentation. The documentation consisted of an application form, guidance notes and a location maps (on which the source locations could be marked). It was anticipated that at least tens of calls per day would be received and that this number could rise to 100s of calls during peak periods during January (during the initial period of publicity) and late April (just before the submission deadline). This number of incoming calls, combined with the work involved of printing maps, labelling and posting documentation was completely outside the staffing capacity of Environmental Protection.

In November 2008, arrangements were made for the Customer Services Centre (CSC) based at Cyril Le Marquand House in St Helier to operate a telephone 'Help Desk' where potential applicants could obtain advice and information about the licensing and registration system. CSC staff also provided registration application documentation on request, whilst maintaining a database record of who the forms were sent to and their addresses, to allow follow up on un-returned forms in the future. The following provisions were put in place;

- Basic training on the legislation and registration/licensing system was provided to CSC staff by the Environmental Protection Hydrogeologist during December 2008 and January 2009 to allow them to provide a well informed service to potential applicants.
- Registration application documentation was pre-printed and assembled into application packs to which location maps could be added, to minimise the time required to post out forms to applicants.
- A dedicated 'Help Desk' telephone line was established for applicants to use to contact CSC.
- IT links between the CSC database and Environmental Protection staff were put in place to provide rapid communication of customer needs.

Calls to CSC exceeded 100 per day in mid-January, peaking at 153 on 16 January 2009. CSC staff also handled 'walk in' enquiries at Cyril Le Marquand House. More complex calls, 'difficult' customers and enquiries regarding abstraction licences were forwarded to Environment Protection Section at Howard Davis Farm. Answering such calls proved to be a virtually full-time task for the Hydrogeologist and about half of the time of a temporary assistant for much of January 2009.

In addition to general water resources enquiry calls, CCS received details for and posted out in excess of 2100 application packs between 1 January and 30 June 2009. One third of this total were issued in January alone (an average of 35 per day), peaking at over 150 application packs on 16 January 2009. During the same period almost 400 registration application forms were posted out by EP, as well as over 180 packs of licence application documents.

At the end of June 2009, the dedicated Help Desk telephone line was returned to Environment Protection and thereafter all calls and requests for application documentation were dealt with by Environment Protection.

3.5. Application submission deadlines

Schedule 3 of the Law specifies that applications for abstraction licences under the 'Transitional Arrangements' had to be submitted at least 9 months before Article 11 came into force. As Article 11 came into force on 1 January 2010, the deadline for licence applications under the 'Transitional Arrangements' had to be submitted by 31 March 2009. In some cases however, the application documentation was not completely finalised until some months after that date.

Water Resources licence applications to abstract water, other than under the 'Transitional Arrangements', can be submitted at any time.

The Water Resources (Registration) (Jersey) Order 2008 required that applications to register abstractions that were eligible under Article 12 of the Law and from which water was being abstracted prior to 1 January 2009, should be submitted before 30 April 2009. Whilst the majority of applications were submitted before that deadline, many applicants were (despite widespread publicity) not aware of the deadline and submitted applications after that date. These were however accepted as valid applications. In the case of new abstractions, (for example from a recently drilled borehole), an application to register the abstraction can be submitted at any time prior to commencing the abstraction of water. In September 2009, circular letters and questionnaires were sent to householders of properties that did not appear to be supplied by Jersey Water and who had not registered a source of supply, to ensure that all potential applicants were aware of the requirement to register. This resulted in a significant number of additional registrations being submitted. In consequence registration applications continued to be received throughout the year.

4. The Water Resources Database

A bespoke database was developed during the summer of 2008 by a States of Jersey Internship Student. The database was designed to be populated with all of the data that was likely to be provided by applicants in their registration and licence applications, as well as selected additional data that may be available for some boreholes (for example aquifer test results or geological logs). It was also designed to be capable of recording information likely to be available for other boreholes that were not drilled to provide a water supply. Such data is currently only available in the form of numerous hardcopy reports or in widely scattered Departmental files. The database was viewed as an opportunity to bring together

and permanently record in a durable form, surface and sub-surface data from wide range of sources, as well as providing a record of all licensed and registered sources of supply.

The database was also designed to link to other Departmental databases (for example the water quality database) and to allow a link to a GIS system, which will allow the source locations and relevant data to be viewed spatially.

Data from the application forms was processed and entered into the database throughout 2009, predominantly by temporary staff employed specifically to undertake this task.

5. Licences and Registrations

5.1 Impoundment Licences

A dam, weir or other impounding works that was in existence in a source of supply before the appointed day of the Law (1 January 2009) is, under Article 12(h) of the Law, exempt from licensing requirements. No impounding structures have been constructed since that date and, in consequence, all existing impoundments are exempt and no applications for licences to impound water were received during 2009.

Any impounding structure constructed in the future will, in addition to Planning Permission, require a licence to impound a source of supply (stream or brook), as will any alteration to an impoundment that has any effect on the flow, level or character of a source of supply or any effect on fauna or flora dependant on any source of supply.

5.2 Transitional Arrangements licences

The principal effect of licences issued under the 'Transitional Arrangements' is to permit abstractions that were in use prior to the Law coming into force (on 1 January 2009), to continue to be operated in the same manner for an initial licence period of five years. It will be necessary for the applicants to re-apply for their licences towards the end of this period to ensure continuity thereafter. There will however be a presumption that licences will be granted on re-application. However, it is anticipated that the abstraction quantities that are specified under the licences will be more accurate reflection of actual abstraction during the 5 year period, rather than the initial, often approximate, estimates.

A total of 180 application forms for licences under the 'Transition Arrangements' were provided to potential applicants. Of these eight application forms were later converted to registration applications, after further investigation showed that the maximum quantity being abstracted was below the volume threshold (15 cubic metres in any 24 hour period) that would require a licence. Seven application forms were not returned, most commonly because both the owner and tenant had requested forms but only one submitted an application or because an application to register was submitted instead. One form was returned un-used.

The applications were assessed to ensure that the maximum quantity being requested for abstraction under the licence was reasonable for the use to which it was being put and was likely to be a reasonable reflection of past abstraction from the source of supply. In many cases applicants, (particularly those using the abstracted water for the irrigation of crops), could not provide a realistic estimate of quantities of water abstracted in the past, on which to base their application. It was necessary for the Hydrogeologist to provide assistance to many of the applicants to determine a reasonable estimate of the maximum volume of water to be abstracted in any 24 hour period.

In three cases, it was necessary to retrospectively reassess registration applications where the quantity abstracted was under-estimated or not provided, but on further examination was shown to exceed the licence threshold quantity. Under such circumstances it was

necessary for the applicants to submit an application for a licence under the 'Transition Arrangements'.

A total of 164 licences were granted under the 'Transitional Arrangements' and issued to come into force on 1 January 2010.

5.3 'Standard' licences

A total of eighteen application forms were issued for submission under 'standard' licensing procedures. Of these, 17 were submitted by Jersey Water in respect of their abstractions for public supply and one by Albert Bartlett & Sons (Jersey) Ltd for a new borehole to supply their packing plant, which only drilled and subsequently came into use during 2009.

Article 8 of the Law (Public Notice of proposals) requires that a notice be published in the Jersey Gazette for each licence applications (other than under the 'Transition Arrangements'). The notice must ;

- state that a copy of the proposal (application) will be available for inspection free of charge at a place specified in the notice
- specify the period from which the proposal will be available for inspection, this not being for a period of less than 21 days beginning after the date of publication
- specify times and reasonable office hours when it may be inspected and
- explain that anyone may make representations in writing to the regulator in respect of the proposal at any time up to 7 days following expiry of the period for inspection.

However, if the regulator is satisfied on reasonable grounds that the proposed abstraction is not likely to have any appreciable adverse effect on a source of supply or on fauna or flora that are dependant on a source of supply, the regulator need not comply with the requirement to publish a notice in the Jersey Gazette. All of the Jersey Water licence applications were for abstractions that have been in existence for decades. It was considered that there would be no appreciable adverse effect on the sources of supply inherent in the granting of the licenses and that, in consequence, it would not be necessary to publish a notice in the Jersey Gazette.

Jersey Water could have submitted valid licence applications under the 'Transitional Arrangements' but instead opted to apply under the 'standard' licensing procedures. This has the benefit of providing a longer standard licence period of 10 years, but in the case of Jersey Water Article 17(3)(a) allows for a longer licence period. In this case, Jersey Water applied for (and were granted) a licence period of 25 years for each of their licences, this period being in keeping with the company's Water Resources Management Plan, which itself has a duration of 25 years.

In the case of the licence application submitted by Albert Bartlett & Sons (Jersey) Ltd, this was for a new borehole which was unlikely (but could conceivably) had some effect of sources of supply in the general vicinity. Notice of this application was therefore published in the Jersey Gazette on 17 October 2009. No representations were received. The application was then assessed, granted and issued to come into force on 1 January 2009.

5.4 Licence charge invoicing

The annual licence charges for 2010 was specified in the Water Resources (Charges) (Jersey) Order 2009 (Section 2.4 above). Procedures for processing invoices in respect of each licence application were put in place with the Treasury Department during early October, with invoices being posted to licensees at the end of October 2009. A single invoice was provided to each licensee for all of the licences for which applications had

been submitted and approved, together with a breakdown providing relevant details for each licence (including location, quantity licensed and licence charge).

Licence charge payments were due by 31 November 2009 to permit the issue of licences before the end of December 2009, to come into force on 1 January 2010 as required by the Law. The majority of licence charges were paid before 31 November or during December, allowing the issue of licence documents. In cases where the charge remained unpaid at the end of 2009, the licences were only issued after cleared funds were received by Treasury Department, the commencement date of such licences being backdated to 1 January 2010. Payments were received in respect of all licences that had been approved, although in a few cases several reminders were required.

5.5 Licence statistics

Before the Law came into force, it had been estimated that approximately 120 abstraction licence applications would be submitted. However, a total of 182 Water Resources abstraction licences were approved in 2009 and issued to come into force on 1 January 2010. Of this total, 164 licences were granted under the 'Transitional Arrangements'.

A significant number of licences are for the abstraction of water from multiple sources, for example from more than one location along the course of a stream or from more than one borehole or well that are located in close proximity. 113 licences are for the abstraction of groundwater (134 sources, predominantly boreholes and wells) and 69 for abstraction from surface waters (91 sources; streams, reservoirs and ponds).

Many of the licences were for a single water supply use but a significant number also included other, often related, lesser uses, (for example where the primary water use is agricultural crop irrigation, lesser quantities of water may commonly be used for crop spraying and vehicle wash-down purposes). Eight of the licences included the provision of a domestic supply, in several cases for staff accommodation. A breakdown of the primary purpose to which water abstracted under the 182 licences will be put is provided below.

Primary use	Number of licences
Agriculture	112
Horticulture	7
Amenity	27
Public supply	17
Business	16
Public Service	3
Total	182

Of the 96 licences used for agricultural purposes, 96 are used to provide water for crop irrigation (predominantly spray irrigation of potatoes), 6 for flood irrigation of crops in greenhouses and poly-tunnels (again predominantly potatoes) and 10 for other general agricultural purposes (produce washing, dairy farming etc.).

The 'Amenity' category includes water use for parks, playing fields and golf courses.

The Business category includes eight licences to provide hotel supplies.

Public Service covers licences held by States of Jersey Departments for purposes other than amenity, namely to supply the hospital laundry and water supplies for the sewerage works.

5.6 Registrations

Almost 2900 groundwater sources of supply were registered in 2009. These sources provide water supplies to 2967 properties, of which around 2500 are domestic household supplies (as opposed to business, garden watering or car washing etc.). Only 10 registered abstractions are used solely for agricultural purposes, mainly livestock watering, whilst 14 registrations provide water for amenity purposes. A further 97 registered abstractions are used for business purposes. A further 110 registered abstractions provide supplies for both domestic and business use (many of which are agriculturally oriented businesses).

Census figures suggest that there are still several hundred properties that are likely to use boreholes or wells to obtain their household water supplies that as at the end of 2009 had not, as yet, registered their abstractions. Despite the widespread publicity during 2009, advertisements in the media and extended deadlines for applications, there would appear to be a number of people who, as yet, still remain unaware of the requirement to register.

There is also thought to be a sizeable group of people who believe the misinformation that charges will be imposed on registrations at some time in the future and are therefore reluctant to register their water sources. There would also appear to be a smaller group of people that fundamentally disagree with the Law and regard registration as an intrusion into their private affairs. This group are likely to strongly resist the requirement to register their water sources.

During the latter half of 2009, households that did not appear to have a mains water supply and for which no source of supply had been identified were contacted and asked to complete a questionnaire to provide information regarding their supply. All of the households that used a well or borehole to obtain their supply were then asked to complete an application form to register the abstraction from their source of supply. This incentive secured almost 100 additional registrations. About 50 registration application forms have yet to be returned and will be followed up in 2010, as will those households that did not respond to the letter and questionnaire.

Un-registered sources cannot be taken into account when assessing the probable impact of any proposed large abstraction boreholes in the future and may be overlooked during pollution incidents or when the protection of sources of supply from potential pollution is being assessed.

6. Unused boreholes & wells

Information about unused boreholes and wells was requested in both the licence and registration application forms. Many applicants did provide information on un-used and disused sources, although there was no legal requirement to do so (as was made clear in the guidance notes). About 360 additional boreholes and wells were identified by this means and whatever information was provided also added to the Water Resources database.

Knowledge of the location and basic information about un-used wells and boreholes is likely to prove to be of great importance in the future, as these could (with the owners permission) be used to monitor water levels or water quality in areas where currently no available monitoring point is available. Un-used boreholes and wells are also likely to be beneficial when carrying out groundwater investigations (for example as temporary monitoring points when assessing the effect of a large new abstraction or the effects of a pollution incident in the future).

7. Regulatory activities

The year 2009 has been a year during which the initial implementation of the Law has been undertaken. As the Law did not come fully into force until 1 January 2010, there has

been no requirement to carry out any enforcement activities under the Law. In consequence, there have been no Drought Orders issued, no notices issued by the regulator under Article 34 (for access to documents and records) and no civil or criminal proceedings under the Law.

A single Certificate of Confidentiality was approved in respect of Water Resources abstraction licence (Licence No.31) issued to Ronez Limited.

8. Conclusions

The first year operation of the Water Resources (Jersey) Law 2007 has been highly successful. All of the documentation, procedures and recording systems required for the efficient and effective implementation of the Law were put in place during 2008, in good time for the deadline for the implementation of the Law on 1 January 2009. When brought into use in 2009, these measures proved to be fully effective and entirely fit for purpose, as was the Water Resources database which was designed and constructed during 2008.

All of the required subsidiary legislation was prepared and approved in a timely manner. All licence and registration applications were processed, approved and issued to come into force on 1 January 2010 as required by the Law, even though the number of applications and amount of assistance required by applicants considerable exceeded that which had been anticipated prior to implementation of the Law.

CS Cheney

Hydrogeologist

29 April 2010