

**Response by SunWater to QFF and Customer Council
Comments on Standard Supply Contract.**

(Version – Final: 20th December, 2001)

This document is provided to the QFF, customer councils and irrigator representative document submissions and responses as part of the review of the standard supply contracts approved by the Minister.

SunWater has inserted a response to the issues raised by the QFF, customer councils and irrigator representative groups below.

INITIAL RESPONSE FOR DISCUSSION WITH CUSTOMER COUNCILS, OTHER IRRIGATOR REPRESENTATIVES AND THE QUEENSLAND FARMERS FEDERATION.

Consultation and comments received.

Below are the written responses to SunWater's letter of 4th/18th May, 2001 to customer councils or local irrigator representative groups in the absence of an interim or final Customer Council for that scheme.

Customer council / irrigator group	Date comments received
1. Peter Faust Dam Water Users	12 th June, 2001 (comments to arrive through QFF)
2. Mareeba Dimbulah Irrigation Area Interim Local Management Committee	13 th June, 2001 (comments to arrive through QFF)
3. Mackay Customer Council	6 th July, 2001
4. Condamine / MacIntyre Brook Customer Council	7 th August, 2001
5. Queensland Farmers Federation	9 th August, 2001
6. Interim Customer Council Meeting (Emerald)	Minutes from the meeting of 14 th August, 2001.
7. Bundaberg Customer Council	19 th September (comments arrived through QFF)
8. Inland Burnett Customer Council	15 th October, 2001
9. St George Customer Council (meeting of 22 October)	22 nd October, 2001

COMMENTS RECEIVED ON STANDARD CONTRACT – RESOURCE OPERATING LICENCE

(based on river model primarily)

Except where otherwise indicated, the comments below are those provided by the Queensland Farmers Federation. Some comments relate to specific issues raised by individual groups listed on the first page. These have been included and highlighted separately.

The submission from the QFF stated:

“The following issues have been canvassed briefly with irrigator representatives from some schemes. These issues will be submitted to QFF Water Task Force for consideration re further action.”

SunWater understands that irrigator groups in Mackay, Bundaberg, Emerald, Proserpine, Burdekin and Mareeba provided input into the QFF submission.

Clause 1 – Release and Acceptance of Water

- SunWater obligation is to release water to customers ‘as SunWater reasonably estimates will satisfy the likely demand of the Customer from time to time’. It is unreasonable that the Customer should be obliged to accept SunWater’s estimation of the release quantities. Also it is inappropriate to require the customer to accept such issues as the ROL, the customer’s water allocation and the capacity of the Distribution network where these factors have not yet been defined for each scheme.
- Mackay Customer Council – It is impossible for a customer to commit to compliance with WAMP, ROP, ROL etc. when, in many areas, these processes are well into the future and specific details unknown. Similarly, will SunWater engage customers in the development of Strategic Asset Management Plans.

SunWater Comment:

This is an obligation on SunWater to estimate the demand for water, and make releases to meet this estimated demand, and is one of the important commitments that SunWater makes in the contract. There is no obligation on the Customer under this clause.

There is currently an interim ROL (IROL) for each water supply scheme. This specifies the issues associated with water sharing and definition of entitlements. Customers also hold interim water allocations. The conditions contained in the IROL and IWA are statutory obligations. SunWater or the customer cannot contract out of these obligations, or agree to things that may cause them to be in breach of the law (eg compliance with their licenses).

Where there is scope within the rules set out in the IROL or ROL, SunWater would consult with Customer Councils on the application of these rules. Similarly, a SunWater would consult with Customer Councils on submissions to DNRM on changes to the IROL, or the ROL application itself. Consultation on Strategic Asset Management Plans in relation to service targets would also occur. However, it should be recognised that SunWater is responsible for complying with its license conditions under its IROL/ROL and faces significant penalties and legal exposure if it does not meet these requirements.

Storage capacities are defined in each IROL for each scheme.

The capacity of channels/pipelines is known as in their current state. SunWater is unsure as to what the issue is in connection to recognising that services are limited by the capacity of infrastructure.

- **Inland Burnett CC - Water Services-** Add (h) Consultation with Customer Councils.

SunWater's comment:

SunWater agrees that consultation with Customer Councils is very important. The requirement to consult with Customer Councils is embodied in specific parts of the agreement. This addition to the contract would work in favour of SunWater, as it would be recognised as a further constraint on providing services.

Clause 2 – Overall Statutory Framework for Services

- **Inland Burnett CC - Overall Statutory Framework-**Add (f) Trading Rules

SunWater's comment:

Agreed. The need to recognise the Trading Rules established by the Department of Natural Resources and Mines for the scheme should be recognised.

Clause 3 – SunWater's Obligations

- There is a need to link these obligations with the proposed Charter particularly 'Service Targets'. A subclause should recognise the charter and SunWater's obligations under the Charter.

SunWater's Comments.

SunWater agrees that the link between the contract and the Charter needs to be clear. The targets are already linked into the contract. It is suggested that discussions are held as to how to appropriately link the charter and the contract.

- **Inland Burnett CC - Sunwater Obligations-**Amend (a) Necessary repairs to be at the cost of Sunwater

SunWater's comment:

Agreed. The contract will be re-drafted to clarify that SunWater pays for necessary repairs (unless the damage is caused by 10.1 or 11.2 in contract)

- **Mackay CC** – SunWater’s obligations are only to use “reasonable endeavours” which are very much open to interpretation in comparison to the very prescriptive requirements of the customer.

SunWater is happy to address this issue on a clause-by-clause basis, as the extent of the obligation for both SunWater and the customer will be different depending on the situation.

Clause 4 – Customer’s Obligations

- The obligations of customers need to be more clearly defined in terms of what their water entitlements will be and what opportunities they will have to vary their use in accordance with best farming practice and the need to allow flexibility in the management and use of water supplies. In particular:
 - b (i) ability to take above maximum diversion rate
 - d ability to take above Maximum Delivery Volume
 - e (i) & (ii) allow variations to orders, rates and volumes
 - e (iii) allow to take less than ordered

SunWater’s comments.

b (i) Agreed. Changes to the diversion rate can be made if approved by SunWater. Perhaps this needs to be clarified in the document. SunWater is obliged to act reasonably in making the original approval, and in making any changes. However, SunWater still requires the right to approve any changes so it can manage the impact on supplies to other customers, and its compliance with the law (eg the IROL) and its obligations to other customers.

On channel systems, SunWater is required to publish access conditions (9.1 & 4 (f) of the channel contract) in consultation with customers (eg Customer Councils). These access conditions contain the arrangements for sharing channel capacity in both peak and off-peak times. This would include different maximum diversion rates for peak and off peak times. However, SunWater needs to retain the right to approve an overall maximum size of works in some instances to manage the taking of water from channels and the impacts on other customers.

d – maximum delivery volume – SunWater agrees that customers need flexibility in managing their water needs, and SunWater will continue to offer flexible services to enable customers to manage achieve this (eg temporary transfers).

However customers (and SunWater) have legal obligations under the Water Act 2000 to only use the water made available to them, for example, from their announced allocation. Furthermore, one customer using in excess of entitlement may have detrimental impacts on other customers. SunWater would be concerned if the contract could require it to supply water to a customer that would place SunWater (or the customer) in breach of the law, or disadvantage other customers.

The customer’s water entitlement itself is defined in the IWA, not by the contract. Customers can trade their water (temporary or permanent) in accordance with the Water Act 2000 and the associated rules set by the Department of Natural Resources.

The contract provides for amendments to the contract where such a trade occurs (see clause 15).

e (i) and (ii) – Agreed. The intent is to provide for orders to be able to be varied (provided certain timeframes are met) in the Rules (that are subject to consultation). This is consistent with current ordering arrangements that normally provide a timeframe within which orders can be varied, and a cut-off time for varying orders. . Perhaps this needs to be clarified under Clause 4 and also in the Rules.

- Inland Burnett CC - Customer Obligations - (e)iii Add ;except where the inability of the customer to take the water is due to factors beyond the control of the customer.

SunWater's comments:

Agreed. The customer is only obliged to take reasonable measures to take all the water. Furthermore, the impacts of this clause are subject the force majeure provisions (eg flood, loss of power). This provision can be extended to the River contract.

The only time there is a concern regarding not taking ordered water is where the cumulative effect of this across the river/channel system means that SunWater is at risk of breaking the law. For example, SunWater is limited to the total volume it can divert from the river to the total of all customers' allocations, and SunWater's allocation for distribution losses in the channel system. In some circumstances where customers order and do not take the water, there is a risk that SunWater will not be allowed, by law, to pump any additional water, yet some customers on the channel system will not have used all their allocation. This provision is there to help protect customers who comply with the ordering system from this scenario. It also protects SunWater to be in a position where its contractual obligations would be inconsistent with staying within the law.

- **Central Condamine Irrigators Association - Clause 4(g)(i) – Customer bears risk of water supply losses**

The Central Condamine Irrigators Association in a letter to SunWater raised this issue.

“As customers of SunWater we are concerned about the possible consequences of the Customer's Obligations section. Item 4(g)(i), which states that the Customer bears the risk of Supply Water Losses. We would seek to have much greater clarification of the meaning of this obligation.

“Our members feel that it is the responsibility of SunWater to deliver to the customers' Nominated Works any water that they are entitled to. We think that SunWater should be required to pursue any instances of illegal taking of pre-ordered releases. We also feel that normal transmission losses should be balanced throughout the whole scheme (as is currently the case), and not be debited against individual irrigators.”

- **St George Customer Council** – More responsibility to supply water should be placed on SunWater – finding water from neighbours is not on.

SunWater's comments regarding both these issues:

In relation to transmission losses in rivers, SunWater must treat transmission losses in accordance with its Resource Operations Licence (or Interim ROL) when determining the announced allocation. The Department of Natural Resources and Mines determines SunWater's IROL conditions, which are a legal obligation on SunWater.

SunWater also has an obligation to release water that it reasonably estimates will satisfy the demand of customers. In making such an estimate, SunWater would have to make a reasonable estimate of evaporation, seepage or other river losses.

However, there are things that may occur that are outside the control of SunWater. Supply Water Losses are meant to be these things. For example, there may be an event that increased the transmission losses in the river that was unforeseeable by SunWater when it estimated its release. It is this event that SunWater is not responsible for, provided that SunWater was reasonable in its estimate for the release (including its estimate for losses).

SunWater cannot control the actions of individuals. For example, SunWater cannot stop an individual taking water illegally, or take water without ordering if they choose to do so. However, individuals may be in breach of the law or their contract with SunWater if they take water in such a fashion.

Perhaps the way to address this particular aspect is for SunWater to work with Customer Councils to consult on what actions to take against customers who do take water without ordering, or do not comply with a roster system.

- Inland Burnett CC - (g)iii Explain Statutory right

SunWater's comments:

Agreed. Examples to be provided in this clause and in the definition of Statutory Right.

Clause 5 - Separate agreements

- The provision to link separate agreements is unreasonable. For example if a customer owns two properties, each with a separate water agreement, and the first property is subject to liability owed to SunWater under one of the agreements, that will affect the value of the second property. This would affect the customers ability to say raise finance using the second property as security or to sell the second property at its market value
- Inland Burnett CC - Separate Agreements- The Agreements should remain discrete. Ie Default on one agreement should only apply in regard to that agreement.

SunWater's comments.

The contract with SunWater is personal, and not linked to any land. This is despite the customer's IWA being linked to land. As such, the debt attaches to the person on the contract, not the land. This should not affect property values or the ability of a customer to raise financing over a second property or sell the property at a market value.

Nevertheless, SunWater is of the view that if a customer is in breach of a contract in one area, then this clause will provide additional incentive for the customer to remedy that breach.

If the property was sold, SunWater would enter into a new contract with the new owner. Once water allocations are established, the sale of land is irrelevant in terms of the contract, as water entitlements will not be tied to land sales.

Clause 6 - Other services

- Provision of other services (connection/disconnection services, extra meter readings and testing) should be at the request of the customer only especially where the customer needs the services to be carried out and cannot obtain them from another provider.

SunWater's comments.

Agreed - this clause was not intended to "force" customers to take a particular service. Suggest that the contract be changed to reflect this.

- Inland Burnett CC - Other Services-Amend to read: Sunwater must provide if requested by the customer:

SunWater's comments:

Agreed, provided issues such as pricing and other conditions are agreed between SunWater and the customer.

Clause 7 - Charges

- Mackay CC – It is not understood how the price paths set by the Water Reform Unit fit into this clause.

SunWater's comments:

The price paths are contemplated in the definitions for the various charges (see page 20 – 25 of the River Contract). The price paths are set by law, and hence SunWater must comply with them.

- Inland Burnett CC – 7.1 Delete the final paragraph. Add : The charges for the services referred to in 6(a) to (e) are to be set in consultation with Customer Councils and included in the Service Charter.

SunWater's comments:

SunWater normally discusses any changes to prices with Customer Councils prior to their implementation as a standard practice. However, requiring such consultation as a contractual item would be inconsistent with SunWater's corporate charter.

- 7.1 (b) - charges for other services should be predetermined and set out in the agreement. SunWater should not have the discretion to fix these charges.

SunWater's comments.

SunWater currently publishes these charges at least annually. There is a need to be able to change these charges over time given the long-term nature of the contract.

- 7.4 (a) - the definition of 'take or pay' charges (p24) needs clarification. The only component of water charges which are payable in advance is the connection and allocation component

SunWater's comments.

Agreed. Take or Pay has the same meaning as "Part A" or "allocation" charges in the current tariff system. It appears that we are in agreement on the intent of the tariff system – i.e. that Part A (fixed) charges are invoiced in advance. In Mareeba, the connection charge is also invoiced in advance.

The definition of take or pay is meant to reflect the current tariff arrangements and should not represent any change. However, the name of the take or pay tariff has been changed to Fixed charge in order to make the contract easier to understand.

- 7.5 – SunWater should be responsible for payment of interest at the 'Overdue Rate' for any reimbursements by SunWater to customers for charging errors.

SunWater's comments:

The current clause works the same for both parties. SunWater does not pay the customer any interest on any overcharged amounts, and similarly the customer does not pay SunWater any interest on any undercharged amounts. (eg from meter error).

- Inland Burnett CC - 7.5. The same should apply in regard to an error in favour of the customer.

SunWater's comments

SunWater agrees that this clause should operate equally for both parties. To achieve this it is suggested that the contract be changed so that if an error means a customer must pay money to SunWater, that this back-payment be added to the customer's next invoice. This is consistent with SunWater's rights if the customer has been overcharged in error.

- 7.6 – provision should be made for dispute i.e. 30 days from resolution of dispute

SunWater's comments:

Agreed. The dispute resolution process in 21 applies.

- Inland Burnett CC - 7.7 Interest on Arrears-Interest should only be charged from the due date and not from the date of the invoice.

SunWater's comments:

In regards to 7.7, charging interest on overdue accounts from the due date is no different to the long-standing arrangements that have been in place. While SunWater wants to retain this right in the contract, it is happy to discuss this as a future issue with Customer Councils.

- 7.8 - it is unreasonable for SunWater to exercise a right to require a customer to pay for water not taken. Other arrangements should be put in place eg customer advising of intention not to take full order in time for SunWater to adjust releases. If this clause remains there should be some independent check on SunWater's right to exercise this requirement. Possibly this should be a role of the Customer Council and be included in the charter.
- 7.9 - it is unreasonable to hold that a customer is in breach of the agreement if water taken is in excess of the customer's maximum distribution volume. See comments 7.8

SunWater's comments on 7.8 & 7.9:

Same issue as 4 (e) (iii).

Arrangements and timeframes for changing or cancelling orders would be in the Rules.

The only time a customer would be charged for ordered water would be:

1. *they did not take reasonable steps to take it, and they were not prevented to take it from an event of force majeure (eg flood or storm or power failure)*
2. *the cumulative effect of customers ordering and not taking water meant that either the announced allocation is going to be affected (river contract) or SunWater was about to enter a situation where it could not supply customers on the channel system without breaking the law (channel/pipeline contract).*

SunWater would have to justify forming the opinion that the announced allocation was going to be effected, or it would not be allowed to continue to pump water to supply all channel customers with their announced allocation. The onus is on SunWater to justify the decision, but Customer Councils would certainly be involved in this issue prior to a decision was made. This can be incorporated into the Customer Charter.

- 7.10 – needs clarification but comments provided for 7.8 & 7.9 also apply.

SunWater's comments:

The intent of this clause is to cover off the scenario where somebody else diverts water on behalf of the customer (eg agent, or intervening landholder). The same comments apply as above.

- This clause must make special provision for disputation re the payment of charges

SunWater's Comment:

See comments re 7.6 above.

Clause 9 – SunWater Rules and Charges

- 9.1/2 - SunWater should not be able to unilaterally make rules to define additional rights and obligations of the customer under the agreement or make or amend charges. There should be provision for consultation (included in the charter) and for customer appeal rights.
- Mackay CC – The rules should require some form of agreement and not be simply the subject of consultation.
- St George CC – Supply rules are part of the contract and as such should be finalised before new contracts are signed.

SunWater's Comments

The obligation to consult on operational rules is contained in the contract. SunWater must consult before setting or changing the rules. This consultation would normally occur with customer councils.

The rules are limited in that they must relate to the services provided under the contract, and must be consistent with any laws (eg IROL or Strategic Asset Management Plan).

In relation to the comment from the St George CC, SunWater agrees that the Rules are an important document within the framework that the contract sets up. SunWater aims to provide a draft set of SunWater Rules and Service Targets to Customer Councils early in 2002, for consultation with these Councils .

In relation to the comment from the Mackay CC, SunWater does not see the role of the Council including making decisions on behalf of all customers.

- Inland Burnett Customer Council – 9.2. SunWater Charges – Add; Such charges are to be set and reviewed in consultation with Customer Councils

SunWater's Comments

SunWater normally discusses any changes to prices with Customer Councils prior to their implementation as a standard practice. However, requiring consultation as a contractual item would be inconsistent with SunWater's commercial charter.

Clause 10 – Customer Obligations to Works

- 10.1 – provision must be made to exclude damage caused for reasons beyond the control of the customer such as damage caused by the customer in reliance on

instructions given as to the use of SunWater works by SunWater. There needs to be a clear definition of ‘omission’.

SunWater’s Comments:

Agreed. The intent was not to include damage that the customer could not control (eg force majeure), or from operating the works in accordance with SunWater’s instructions (10.3). The contract wording should be clarified to better reflect this.

Perhaps examples of what “omissions” might include would provide greater clarity. SunWater will provide examples in a new draft contract.

- 10.2 – there should be specification of SunWater’s responsibility to act/remedy damage and or malfunctions within a defined timeframe.

SunWater’s comments:

The current contract wording places the onus on SunWater to remedy damage within a reasonable timeframe. The customer can dispute this through the dispute resolution provisions under the contract. Where a dispute occurs, the onus is on SunWater to prove that the time taken was reasonable.

SunWater proposes to add this to the Service Targets under the contract.

Clause 11 - Meters

- 11.1 – it is unreasonable for the customer to be responsible for acquiring and installing a meter acceptable to SunWater and for that meter to become the property of SunWater. SunWater should bear the cost of the meter and installation. The customer may want a nominee to install the meter.

SunWater’s Comments

The current arrangements allow customers to nominate a person to install the meter (provided the installation is approved by SunWater). The contract can be amended to better reflect this.

The common practice for some time has been for new meters/installations to be paid for by the customer. Is the suggestion to change from this? This will increase the overall costs of the scheme for all customers, as new customers will not pay for new meter costs.

- 11.2 – again customers actions or omissions that affect a meter needs to be defined

SunWater’s comments:

An example of omissions may be of assistance.

- 11.4 - the customers and SunWater’s responsibilities for the reading of meters needs to be more clearly defined. If customers are to read meters this is an efficiency gain which should be reflected in local water prices. This could be addressed in the charter.

- Inland Burnett CC – 11.4 – Should read “as Requested by SunWater”.

SunWater’s Comments:

It is assumed that the current requirements for customers to read meters to take waterharvesting water, channel harvesting, or other water products is OK and is not an issue.

Consultation with Customer Councils would occur if changes to meter reading responsibilities occurred.

- St George Customer Council – 11.6 (a) – Water use and availability figures should be available on the intranet in a way that does not breach privacy provisions. A password should be provided for individuals.

SunWater’s comments:

SunWater agrees that this would be a great service improvement, and is working on new systems to improve customer’s access to their water use information. However, internet-based access is very expensive and this needs to be taken into consideration.

- 11.7 - SunWater should be responsible for repair of meter damage and malfunction within a defined timeframe. How will meter accuracy be addressed, particularly for older meters that may not have the required accuracy.

SunWater’s comments

SunWater agrees that meter accuracy is an important factor for both the customer and SunWater. There is not currently a set of standards for the accuracy of water meters in legislation. The current “standard” that SunWater adopts is for the meter to be operating within the manufacturers’ specifications. This is common across the industry.

The contract provides customers with the right to request a meter test if they believe the meter not registering appropriately. If the meter is not measuring to specifications, then SunWater pays for the cost of the test as well as other associated costs with repairing or replacing the meter. Charges and volumes used are also adjusted accordingly.

SunWater also replaces meters where problems have been identified, but does not undertake a routine testing program for all meters.

SunWater suggests further discussions are held on this issue to clarify Customer Councils’ requirements and discuss impacts such as costs.

SunWater suggests the timeframe for repairing meters is best dealt with as a service target. These targets will be available for consultation with Councils in the new year.

- 11.9 – While SunWater is obliged to take certain records into account and consult with the customer in estimating volume of water taken during a period when a

meter is not measuring accurately, there is no provision for disputation or for the appointment of a disinterested third party to make the estimate. The term 'reasonable grounds' needs to be defined.

SunWater's comments

Agreed. The intent is for the dispute resolution procedure to apply. The contract can be changed to clarify this.

Examples of what "reasonable grounds" have been included for clarity. The onus is on SunWater to prove that it has reasonable grounds to justify their view that the meter is not measuring accurately.

- 11.11 - SunWater should be responsible for repair of meter damage and malfunction within a defined timeframe
- At the Interim Emerald Customer Council Meeting on the 14th August, 2001, the minutes recorded a comment that an independent person should be able to check the meter, not necessarily SunWater. Furthermore definitions needed to be specific as to costs and procedures.

SunWater's comments

Agreed. The timeframe can be included in the Service Targets.

The onus is on SunWater to prove that it has repaired the meter within a reasonable timeframe. The customer has the right to claim that SunWater has not repaired in a reasonable time, and SunWater must prove otherwise.

In relation to the comments from the Emerald Customer Council, SunWater agrees that the customer should have the right to nominate an independent person to calibrate and test the meter. It is suggested the contract be changed so that SunWater must obtain the agreement of the customer as to who will perform the test/calibration. Furthermore, the contract can be changed to require SunWater to provide a quote to the customer for the test, prior to proceeding. This currently occurs through SunWater publishing its charges for meter testing. The customer can then decide whether or not to proceed with their request for the test.

- At their meeting on 27 September, 2001, the Upper Mary River Customer Council raised the issue of customers' access to the meter in channel systems, where the meter was located on SunWater's land. The concern was that the contract does not provide for customers to access SunWater's land to read their meter.

SunWater's Comments:

SunWater agrees that the channel/pipeline contract should grant access for customers to walk on to SunWater's land to read their meters, where these meters are located on SunWater's land, provided such access is not at SunWater's risk. The specific arrangements for gaining access, for example where the meter was within a fenced area, would need to be worked out locally.

- Inland Burnett CC – 11.12 (new) – Except in the case of a breach under 11.2 SunWater will repair meters at the cost of SunWater

SunWater's comments:

Agreed, provided this is also subject to clause 10.1 (customer not to damage) as well as 11.2.

Clause 12 – Non-release Authorisations

- 12.1 - there is no requirement on SunWater to give notice of suspensions or restrictions or to compensate for any loss or damage incurred by the customer as a result.
- Mackay CC – It appears that SunWater is not required to advise customers of supply outages where a customer may incur considerable losses from such outages.

SunWater's Comments

The contract does not excuse SunWater where it has been negligent. As such, the non-release authorisations do not apply where the supply interruption was caused by SunWater's negligence. SunWater may also be negligent if it did not provide reasonable notice about the interruption. Customers have the right of compensation through their common law rights in this instance (eg sue for damages).

It is intended that notification and interruption periods are covered in Service Targets.

- 12.2 - there is no requirement on Sunwater to first notify a customer of breach of the agreement and may be directed not take water unless the breach is remedied.

SunWater's comments:

Agreed. SunWater is happy to include a notification process in the contract that provides customers with the opportunity to remedy the situation within a given timeframe. This is the current business practice.

- 12.3 – last paragraph is open ended and unacceptable.

SunWater's comments:

This can be reworded for clarify the intent of the clause: that if SunWater does not take action under 12.3 then it can still take action under other clauses.

- Mackay CC – Deduction from future year's allocation of water ordered but not taken is very heavy handed. The ordered water will no doubt be charged under Clause 7.8. There must be some consideration for the customer's position for not taking the water.

SunWater's comments:

SunWater agrees that there needs to be changes to contract to provide more flexibility in relation to the ordering and not taking issue. Please refer to SunWater's comment for 7.8, 7.9 and clause 4 (e). Deducting customer's allocation from future years is as much about dealing with the interests of customers who have complied with ordering systems as it is about SunWater's risks.

Clause 13 - Water quality

- 13.1 – it is unreasonable and unfair that SunWater has no responsibilities re the quality of water supplied but customers are required to indemnify SunWater against claims in connection with water quality. SunWater should be required to indemnify the customer for claims arising in connection with the quality of water it supplies.

SunWater's comments:

SunWater does not treat water or manage it to provide any particular quality. To begin doing this would come at very significant cost, and in many cases it is not possible as SunWater cannot control all the things that affect water quality.

However, SunWater is responsible for water quality to the extent that it cannot be negligent. As such, customers (or other affected people) have common law rights against SunWater if water quality caused them a loss due to SunWater's negligence.

The customer is only indemnifying SunWater where:

- The **customer has on-supplied** to a third party, in which case SunWater cannot control what happens to the water prior to it reaching that third party; or
- Where the **customer has affected the quality of the water** in some way

In terms of weeds and other matter in the channels (raised in Emerald) the same comments regarding negligence apply.

- **Inland Burnett CC** – Where it becomes apparent that water quality has deteriorated to the extent that it is no longer suitable for its intended use then Section 4(iii) (e) no longer applies.

SunWater's comment:

Agreed. SunWater will draft changes to 4(iii) to this effect.

Clause 14 – Assignment/Subcontracting by SunWater

- 14.1/2 – It is not clear whether customers can assign rights and obligations under the agreement. This may restrict their ability to sell their businesses. The Inland Burnett CC also mirrored this comment.

SunWater's Comments:

SunWater agrees that the contract should not limit a customer's ability to sell their business, and this clause is not intended to limit the customer in this way.

However, it is not unusual for service contracts to not be assignable. Where a customer sells their businesses to another person, SunWater will enter into a new contract with the new customer. It is in SunWater's interests to enter into a contract with the buyer so it can continue to provide services and receive revenue.

Clause 15 – Amendment, Transfer, Seasonal Water Assignment, Lease of or Addition to Customer’s Allocation

- 15.2 – there is a need to have arrangements for these amendments clearly defined rather than relying on the ‘absolute discretion’ of SunWater. These arrangements could be provided for under the charter with the Customer Councils.
- The Inland Burnett CC also had comments that acceptable terms of transfer should be negotiated with customer councils.

SunWater’s comments

The arrangements for such amendments are contained in the various application forms from time to time. As suggested, the development of these can be included for consultation with Customer Councils.

In response to the Inland Burnett CC’s comment regarding the transfer rules themselves, SunWater will be limited by its IROL and other legal obligations under the Act. Hence there is not a lot of scope to consult on this issue, as SunWater does not have a great deal of control over it. However, there is scope for Customer Councils to work with SunWater to present proposals to the Department of Natural Resources.

Clause 16 – Power of Sale

- 16.1 – see comments re water charges
- Inland Burnett CC – decipher the first sentence.

SunWater’s comments.

In relation to the Inland Burnett CC’s comment: In order to have an effective power of sale, there must be a connection between the debt and the water allocation. This first sentence serves to provide this link.

- 16.2 – the exercise of this power should only follow SunWater giving the customer due notice of a breach and remedy. There may be a role for Customer Councils in such occasions.

SunWater’s comments

Agreed. Furthermore, the customer could nominate the Customer Council to act on their behalf where a dispute occurs.

SunWater agrees to include a notification period for breach and remedy.

- 16.3 – again there must be due process – see comments for 16.2

SunWater’s comments

Agreed. A notification process should be provided.

- The Inland Burnett Customer Council (*meeting of 5 September, 2001*) also raised the need for a due process and notification in selling the allocation. They raised a further point that allocation should only be sold to the extent that it recovers the money/costs owed to SunWater. (16.3)
- Mackay CC – It would be hoped that due process was observed before the drastic move of selling a customer's allocation. The views of financial institutions as to their priority under this clause would be interesting.

SunWater's comments:

Agreed. The amount of allocation sold should only be that reasonably estimated that will recover SunWater's costs/money owed. The contract can be changed to reflect this, provided that this can be done under the relevant laws that govern this process.

- 16.5 – is (d) a legitimate role for SunWater.

SunWater's comments

This is a legal requirement that other people with a registered charge over the allocation are given priority in the proceeds of sale.

- 16.6 – the customer should have the right to appoint an attorney to represent his interests. Clause (d) (i) should be deleted as there are avenues under common law for redress for situations of professional negligence.

SunWater's comments:

The current contract does not prevent the customer appointing an attorney. This should be clarified in the contract.

SunWater is happy to change this clause so that liability applies for negligence, provided the contract recognises that offering the allocation through an open market process (eg auction or tender) does not constitute negligence.

Clause 17 – Substantial Destruction or Damage to SunWater Works

- Charter between SunWater and Customer Councils should also address this situation

SunWater's Comments

We understand QFF has undertaken to provide further information/clarification.

Clause 18 - Limitation of liability and Release

- This limitation of liability is unreasonably broad. There are no corresponding provisions limiting and releasing the customer's liability to SunWater in similar circumstances.

- Mackay CC – Again this is an autocratic attempt by SunWater to place itself above liability. This would be an interesting legal test.

SunWater's comments

We understand QFF has undertaken to provide further information/clarification.

Clause 19 - Default and Termination

- Only Sunwater can terminate the agreement. This is unreasonable. There is no specification of a reasonable period of notice where the customer has alleged to have breached the agreement. The termination charge payable by customers is also excessive. The amount is basically the net present value of the charges that would have been payable under the agreement for 10 years after the date of termination on the assumption that in each year the customer took the whole of the allocation.

SunWater's comments:

We understand QFF has undertaken to provide further information/clarification.

- Inland Burnett CC – 19.1 (c) – Definition of a reasonable period is required.

SunWater's comments:

Inclusion of a reasonable period may work against customers, as the onus is on SunWater to prove that a reasonable period has elapsed.

Clause 20 - Security

- The requirement for a customer to provide security for compliance with the agreement is questioned. Clarification is sought regarding 'promptly' and 'prospective' money owing – surely this can only relate to allocation and connection charges.
- Mackay CC – This is totally unwarranted. There are avenues, as for all agencies and businesses, to recover debts and monies owing.

SunWater's comments:

The current wording places the onus on SunWater to prove that the customer has not acted promptly. Inclusion of a specified time will remove this, and provide absolute rights to SunWater.

As such, specifying a timeframe may not be in the customer's interests though if QFF/Customer Councils require a timeframe, this can be established.

The amount of the security can be made more specific, and SunWater's proposal is for it to be one quarter of the previous year's water charges for that customer. If this clause were deleted, there would be no cap on SunWater in the contract as to what it can require to remedy the breach of the contract.

Clause 21 - Dispute resolution

- Customer Councils should be at least advised of disputation cases and be kept informed of progress and outcomes.
- Inland Burnett CC – Customer Councils have a role in reviewing the overall process rather than direct intervention unless requested by the Customer.

SunWater's comment:

SunWater agrees with the Inland Burnett CC, and proposes that Customer Councils can become involved in disputes through either acting as mediators or representing the customer, provided the individual customer who has the dispute wants to proceed in this fashion. However, some customers may not want the Customer Council to be involved in resolving the dispute, or to have knowledge of the dispute or its outcomes.

SunWater suggests further discussion is needed to flesh out this issue through the development of a dispute resolution process as a separate exercise to this contract review.

Clause 24 - Miscellaneous

- 24.1 – It is unreasonable that this clause only refer to the impact of a customer breach on third parties. SunWater must have a similar obligation.

SunWater's comments:

This clause is limited to other customers of SunWater only, not all third parties. SunWater has a contract with each customer, and therefore has obligations to each customer.

- 24.4 - any amendment to the agreement to account for changes in the law should be by agreement of the parties.

SunWater's comments:

This will be difficult given the large number of customers. SunWater is concerned that unless there is an easy mechanism to change the contract where a change in law has occurred, it may be forced to do things under its contract that are inconsistent with laws.

Any amendment must be subject to consultation in the current draft contract. Such consultation would occur through Customer Councils, and SunWater must act reasonably.

- 24.8 – 'Register' is not defined. 'Customer's Schedule' also needs clarification i.e. bring together all matters to be covered in the schedule in the definition eg customer identification, customer allocation etc.

SunWater's comments:

This is the Water Allocation Register administered by DNR.

- 24.10 – SunWater should notify a customer of proposed allocation of payments.

SunWater's comment:

Agreed. This can be published in the Rules.

Definitions

- 'Meter' should accuracy and other requirements be defined

SunWater's comments:

See comments in 11.7.

- 'Statutory Right' – needs clarification

SunWater's comments:

Agreed. This refers to rights to take water other than an IWA/WA. Eg a waterharvesting licence. These examples should be put into the contract.

- 'State Direction' – need for adequate notification of such 'directions' from SunWater if there are implications for customers.

SunWater's comment:

These Directions are made publicly. SunWater would communicate any changes that effected its supply relationship with its customers.

Other issues

- St George Customer Council – An account of asset refurbishment moneys should be kept separately for each scheme and reported annually to customer councils.

SunWater's comments:

SunWater will provide Customer Councils with overall details of the 1 year and 5 year renewals programs as they are implemented and refined for each Scheme. It will also provide information on the actual renewals spend compared to renewal annuity revenue collected.

- St George Customer Council – Tenders should be advertised locally

SunWater's comments:

SunWater general approach is to advertise locally when there is a pool of local suppliers for these goods and services. In some instances tenders are advertised in other places as well as locally in order to obtain a reasonable pool of tenderers. In other instances, SunWater would not advertise locally where, for example, that good or service is not available locally.

SunWater seeks to obtain the best value for money in purchasing goods and services.

SunWater does not see this as a contractual issue between SunWater and its customers.

- St George Customer Council – All scheme end of year financials should be made available to allocation holders on a scheme-by-scheme basis

SunWater's comments:

SunWater is proposing to provide the following information to customers for each Scheme:

- *Total costs as a percentage of WRU Target;*
- *Total revenue as a percentage of WRU Target;*
- *Benchmark proportion of cost between cost categories;*
- *Actual proportion of costs between cost categories;*
- *Proportion of revenue between sectors;*
- *Actual renewals spend compared to renewal annuity revenue collected.*

SunWater will also provide Customer Councils with quarterly/annual reports of performance against service targets agreed with each Customer Council for each Scheme.

The provision of the above information sets will provide SunWater's customers with significant information about the details of the service being provided.

This information exceeds the transparency arrangements currently in place with other monopoly providers such as Ergon or Telstra.

- St George Customer Council – The pump station to be built at Beardmore Dam should be in the contract. Money has been set aside by the Government to SunWater to construct.

SunWater's comments:

The contract deals with water supply services to customers. It is not considered appropriate to use the contract review process to bind customers, SunWater and any other party into any potential enhancements to schemes and associated funding arrangements. These potential enhancements or developments should be progressed through a separate process.

CHANGES MADE BY SUNWATER

Term of the contract:

The issue of Term must be addressed, as the contract must have greater certainty in relation to its end date. This was not required for the contract approved under the Water Act 2000 as it was a statutory instrument.

Customers presumably require long-term certainty for their supply arrangements and would seek this through a long-term contract. At the same time, circumstances change over time and it may be beneficial to have a process whereby the contract can be changed if need be.

The suggested term arrangement is provided in Clause 8. This provides for the contract to be reviewed in five yearly intervals, if needed, in consultation with Customer Councils. A revised contract can then offered to individual customers, but they are not bound to take it. If they choose not to take the revised contract, SunWater has the right to terminate the old contract and enter into fresh negotiations with the individual customer for a new contract.

Separate customer schedule

For those customers wishing to take up the reviewed contract, they will be asked to complete a schedule detailing their particulars such as address, water allocation, etc.

Providing a process if there ceases to be a price path

The contract needs to contemplate a process for dealing with prices in case there ever ceases to be a price path (that is, there is no longer a price set by Law that SunWater must charge).

The original contract simply provided for SunWater to set the charge if this were the case. There would be some form of prices oversight of SunWater's prices by, for example, the Queensland Competition Authority.

SunWater believes this can be improved for customers by putting in some criteria for the new price if there is no price path to provide greater certainty to customers. This has been provided in Clause 9. This does not negate any statutory prices oversight by, for example, the QCA, that would apply to SunWater.