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Department Planning Industry and Environment – Water
Healthy Floodplains Project

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Submission

Draft Rules for Border Rivers Floodplain Harvesting management

Healthy Rivers Dubbo (HRD) is a grass roots community network dedicated to providing a strong voice for our local rivers, aquifers and wetlands in the Murray-Darling Basin for the benefit of wildlife, plants and people. We pay our respects to Elders past, present and future, and acknowledge that this land was never ceded.

HRD is pleased to be able to provide comment on the Border Rivers floodplain harvesting (FPH) management draft rules for the water sharing plan (WSP).

We consider the rules that will manage floodplain harvesting take in NSW to be pivotal to the future of the 250 million year old Darling-Baaka River.

HRD is concerned that if the rules for the other valleys being assessed for FPH licences are in the same vein as these presented for the Border Rivers, the future of the Darling-Baaka is at risk.

Comment on the draft rules and some elements for the FPH policy

Accounting Rules

HRD strongly objects to the initial issue of 5 ML per unit share for FPH. HRD strongly objects to the issue of 5 ML per unit share at any time. There should be an account limit of no more than 1 ML per unit share.

The initial Available Water Determination (AWD) should be less than 1 ML per unit share. The cumulative environmental impact of FPH has never been assessed, but has been pointed to by many reports as one of the key factors to the decline of the Lower Baaka. FPH must be managed conservatively to help the resilience of the river system, aquifers and wetlands downstream.

HRD supports the flexibility in the setting of AWD to ensure compliance with the extraction limit.

HRD would support 1 year accounting, not 5 year as proposed.

So called "Carryover"

Carryover is when a water access licence holder has water available in their account and leaves it in a public dam or the aquifer for access in following water years. What is being proposed by these rules as "carryover" is actually the crediting of water to accounts that doesn't yet exist.

In effect, the attempt by the Government to allow credit accounting of FPH take to the value of 100% of the entitlement to accrue every year means the river will be in debt to FPH irrigators, and potentially not able to pay its 'debts' when an increasingly rare flood event does come around.

Similar credit accounting conditions of 300% "carryover" were applied to the Barwon-Darling water sharing plan (referred to as Plan below) after the public exhibition period, and were highlighted in the recent ICAC report on water management in NSW.

In its report ICAC pointed to the Natural Resource Commission's (NRC) September 2019 report that the Water Management Act (WMA): *"...makes it clear that water sharing is not about balancing uses and values, it is about firstly providing for the environment and secondly recognising basic landholder rights above other uses. Plan provisions are exacerbating the negative impacts of water shortages on both environmental and social outcomes. As a result, the Plan does not provide adequate protection for the river and its dependent ecosystems or basic landholder rights."*

ICAC went on to support the recommendation of the NRC, that DPIE-Water should ensure that the amended and re-made plan rules, objectives and outcomes fully recognise, and are consistent with, the prioritisation specified in the WMA. ¹

Perhaps the Department could pre-empt future scathing report findings, and completely remove all reference to 'carryover' in NSW FPH policy.

HRD strongly objects to credit accounting of water in any form, in particular to the credit allocation of FPH entitlement being referred to as "carryover".

Modelling

HRD considers that there are data deficiencies due to a lack of reliable records of historic FPH diversions, rainfall runoff parameters, the accuracy of measurement of river diversions and other key parameters.

Only a summary of the independent review on the NSW Border Rivers Model Build, Scenarios and Environmental Outcomes was provided, not the full report.

The Alluvium 2019 *INDEPENDENT REVIEW OF NSW FLOODPLAIN HARVESTING POLICY IMPLEMENTATION* reported of previous draft FPH policy that:

"Reference is made in documentation that the modelling complies with good modelling practice (e.g. Black et al 2011), however no formal assessment of compliance with that has been sighted by the reviewers. In addition, the results of calibrations of the models are stated to be within acceptable limits, however those acceptable limits are not explicitly stated within the documents reviewed."

¹ <https://www.icac.nsw.gov.au/media-centre/media-releases/2020-media-releases/icac-recommends-changes-to-government-water-management-in-nsw-after-years-of-focus-on-irrigation-industry-interests>

Given the strength of previous constructive comments, it would be prudent for the Department to provide stronger support for the models they have presented.

Plan Limit and Cap

HRD can find no direct line of sight from the modelling that produced the accredited 1994 Cap to the figures being presented in these rules.

Without that clear line of sight, HRD sees that there is absolutely no foundation for accepting the modelled interpretation of Cap presented in these draft rules, particularly given the issues found in the modelling as discussed above.

The explanations presented by the Department on how the Cap limit and Plan limits have been determined appear to be justifying the licencing of the current unsustainable level of take by FPH.

This approach is supported by ICAC's recent findings that *"evidence established that certain decisions and approaches taken by the NSW Government department with responsibility for water management over the last decade were inconsistent with the object, principles and duties of the Water Management Act 2000 (WMA) and failed to give effect to legislated priorities for water sharing."*²

Protection of Environmental Water

HRD strongly objects to no rules in the Border Rivers WSP that protect environmental water.

The public expect that tax payer funded water for the environment is protected from diversion and extraction. There must be rules to protect environmental water.

The Basin Plan Sustainable Diversion Limit for the Border Rivers is still short by 5.1 GL³. The Commonwealth held environmental water that does exist in the catchment needs to be protected through cease-to-pump rules or return flows to the river from gravity capture.

HRD finds the assertion that *'neither environmental flow rules nor licenced entitlements aim to create overbank flow'* made by the department⁴ to be surprising, and unfounded. Overbank flows are often the desired target of environmental water events. When flows break over banks, the carbon that is collected and returned to the river initiates the food web by feeding algae and slime that go on to feed invertebrates and small bodied fish. These actions send chemical signals in the form of delicious smells downstream for Native Fish and other aquatic life, whose breeding instincts are triggered.

In 2018 the Northern Basin Amendments to the MDBP reduced the water recovery target in the Northern Basin by 70 GL. When this deal was made, so were promises for 'toolkit' measures that were supposed to offset the reduction in environmental water recovery.

The Commonwealth and NSW have ignored most of the toolkit measures to date, increasing mistrust in the community. NSW have addressed the protection of environmental water in some valleys with Active Management rules.

² Ibid

³ <https://www.mdba.gov.au/progress-water-recovery>

⁴ DPIE-Water, October 2020. Report to assist community consultation

Without a rule to protect environmental water from FPH in the initial changes to the Border Rivers WSP, the public will struggle to have confidence that water reform in NSW considers the environment to be a stakeholder in the process.

Predicted Environmental Outcomes

The 2009 estimate for FPH diversion in the Border Rivers Regulated WSP was 3 GL, and the new modelling (that HRD questions as unverifiable) suggests FPH take is 43.6 GL per annum. That means 40.6 GL that has been assumed as Planned Environmental Water is being added to the allowable level of extraction.

The return of 5.5 GL of water to the environment would not reverse the cumulative impact that floodplain harvesting take has had in the Border rivers and the Barwon Darling-Baaka over the past decades. Natural flows are critical for achieving lateral and longitudinal connectivity.

HRD believes far more than 5.5GL of water should be returned to the environment.

Rainfall runoff exemption

HRD is very surprised to see the unexplained, unexpected inclusion in the FPH policy of rainfall runoff exemption. All take over the 10% harvestable right must be licenced.

This surprise inclusion to the policy creates inequity among landholders across NSW. It does however align with ICAC's recent findings the NSW water management favours irrigation at the expense of the principles of the Water Management Act. Perhaps now the Department is also favouring irrigation to the rights of other landholders as well.

To anyone looking on, the late edition of a rainfall runoff exemption that happens to increase allowable take by 5.8 GL in the Border Rivers, while draft rules have determined that 5.5 GL be returned to the environment, is a neat way for the NSW Government to ensure that no net provision for the environment is made through the licencing of FPH diversions.

HRD finds it outrageous that the Department is proposing a rainfall runoff exemption of 5.8 GL, effectively negating ANY return of water to the environment.

Trade

HRD does not support the trade of FPH licences at all. These draft rules do not offer enough information about proposed trading zone restrictions and protection of ecological values.

Conclusion

The draft rules for FPH that allow a 5 times the face value of entitlement as an initial gift, allow 100% credit allocations every year termed as "carryover" are outrageously generous, and give the public the false impression that the NSW Government has any intention of reducing FPH take to a cap. HRD has no access to the accredited cap reports used to establish the 1994 level of development. There is no evidence in these rules to support the cap figure the Department has presented.

For the Department to come up with a rainfall runoff exemption that is a slightly larger than the volume marked to be returned to the environment presents as a surprisingly blatant and outrageous step to ensure there would be zero benefit to the environment out of the licencing of FPH.

There needs to be an assessment of the cumulative environmental impact of 30 years of growth of floodplain harvesting diversions before the hand out of brand new tradeable, mortgageable, compensable property rights.

HRD finds the generous provisions that support the current high level of FPH take to be in line with ICAC's recent findings that NSW DPIE Water has an inherit bias against the environment due to "...a misguided effort to redress a perceived imbalance caused by the Basin Plan's prioritisation of the environment's needs".

For comments please contact

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