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Submission Proposed legislative amendments for floodplain harvesting in NSW

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 supports the licencing and regulation of floodplain harvesting, however the impact of floodplain harvesting on the environment, First Nations communities and cultural values and downstream river communities must be assessed. HRD is pleased to have the opportunity to provide comment on the proposed legislative amendments for floodplain harvesting in NSW.

HRD objects to the four proposed amendments to the Water Management (General) Regulation 2018.

Floodplain harvesting (FPH) has had a significant impact on the resilience of the lower Darling-Bakka River, and of the tributary rivers that feed the Darling-Baaka where floodplain harvesting is concentrated – the Gwydir, Border Rivers, Barwon, Namoi and Macquarie.

Increasingly since 1994, FPH has denied significant volumes of water to floodplains, wetlands, aquifers, creeks and rivers. Denying these flows to the environment has resulted in landscapes being less resilient in dry times, and is a contributing factor to the Barwon and Darling Rivers ceasing to flow in November 2020.

Floodplain harvesting was mentioned as a contributing factor to the Menindee fish kills in the Independent assessment of the 2018-19 fish deaths in the lower Darling (Vertessy report)¹ and the SA Royal Commission into water management in the Murray Darling Basin. FPH was identified as a factor to the Barwon-Darling River being called an ecosystem in crisis in the Natural Resources Commission review of the Barwon Darling Water Sharing Plan in 2019.²

¹ <https://www.mdba.gov.au/publications/mdba-reports/independent-panel-assess-fish-deaths-lower-darling>

² Final report Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012 September 2019

The significant and increasing impact that FPH has had on downstream environments, First Nations communities and critical human need requirements must be assessed before the hand out of several billions of dollars of tradable, compensable, mortgageable property rights in the form of FPH licences. As the Environmental Defenders Office and the Wentworth Group of Concerned Scientists recently published *"...conferring permanent property rights to irrigators is a windfall transfer of public wealth that should be considered only once public good outcomes can be guaranteed."*³

The recent NSW ICAC investigation into water management⁴ recommended:

That the DPIE publicly records:

- *its water strategy, objectives and priorities for the use and management of NSW's water resources in a manner consistent with the mandatory duty in s 9 of the WMA*
- *the need to ensure the water management principles in s 5, and in particular those that relate to sharing, as set out in s 5(3) of the WMA, are all given effect. Section 9 of the WMA should also inform relevant key departmental records, including agency policies, guidelines and role descriptions, concerning the management of NSW water resources.*

The report highlighted what environmental stakeholders, graziers and communities along the Darling-Baaka have long understood – that the NSW DPIE Water (the department) make decisions that favour irrigation at the expense of First Nations cultural values, stock and domestic and critical human need requirements and the environment. ICAC found this bias comes from "a misguided effort to redress a perceived imbalance caused by the Basin Plan's prioritisation of the environment's needs".

Environmental stakeholders have not seen any shift in this mindset from the department in recent times. An accidentally released email chain recently brought to light that members of the department have 'regular catch-ups' with NSW Farmers Association, NSW Irrigators Council and the Murray Darling Association. This sounds like a working alliance. Healthy Rivers Dubbo has only been involved in one environmental stakeholder briefing by the floodplain harvesting team.

The bias towards irrigation that informs decisions made by the department, as detailed in the ICAC report, is still evident in the four proposed rule changes to the Water Management (General) Regulation 2018.

1. Water Management (General) Amendment (Floodplain Harvesting Exemption) Regulation 2020

This regulation seeks to exempt floodplain harvesting works from the requirement under the Water Management Act 2000 (WMA) to hold a water access licence and water supply work approvals.

HRD strongly objects to this amendment and the exemptions it would provide.

No FPH works should be granted approvals exemption before the implementation of metering, the granting of licences and the rules for FPH are set in the relevant Water Sharing Plans.

³<https://www.edo.org.au/2020/12/09/floodplain-harvesting-without-the-necessary-protections-legal-action-is-a-risk/>

⁴ Independent Commission Against Corruption INVESTIGATION INTO COMPLAINTS OF CORRUPTION IN THE MANAGEMENT OF WATER IN NSW AND SYSTEMIC NON-COMPLIANCE WITH THE WATER MANAGEMENT ACT 2000

Water that has been taken by FPH has been counted as environmental water for modelling purposes. All we know about the types of volumes that are taken is that they are significant, and that the environment has been denied these significant volumes for decades. HRD has serious concerns about the modelling and accounting of the long-term annual average flows to the environment in each NSW Northern Basin Valley. HRD believes the NSW Government has a responsibility to assess the volumes and impacts of decades of FPH on the rivers of the Northern NSW Murray Darling Basin.

2. Water Management (General) Amendment (Exemption for Rainfall Run-off Collection) Regulation 2020

HRD strongly opposes the granting of exemption to licence of rainfall runoff.

This exemption grants an unfair privilege to irrigation over other land holders, and again is an example of the misguided endeavours of the department to adjust their decision making to favour the irrigation over other stakeholders and the environment, as per the ICAC report.

The volume suggested as rainfall runoff exemption in the Border Rivers Water Sharing Plan rules was larger than the volume that was designated to be returned to the environment. This exemption makes a mockery of the FPH licencing process.

Currently rainfall runoff is accounted for as Planned Environmental Water and modelled as remaining in the rivers. Not licencing this water is an erosion of Planned Environmental Water, which is against the objectives of the Murray Darling Basin Plan.

Rainfall runoff from irrigation fields that is contaminated and kept and used on farm that is above the 10% harvestable right must be licenced.

3. Water Management (General) Amendment (Floodplain Harvesting Measurement) Regulation 2020

HRD is supportive of FPH works needing to be fitted with compliant metering, data logging and telemetry equipment and tamper-proof seals that needs to be fitted by a 'duly qualified person'.

We object to a transition period for storages less than 1,000 megalitres or with infrequent use until 1st July 2022. All equipment must be installed and compliant by 30 June 2021.

We strongly object to a clause that allows the Minister to exempt an approval holder or a class of approval holders from the application of mandatory metering. If diversions cannot be measured and recorded, they should not have approval.

If metering equipment is faulty, no floodplain harvesting take should be allowed.

4. Water Management (General) Amendment (Floodplain Harvesting) Regulation 2020

HRD is supportive of FPH take being licenced, however the debt owed to the environment from decades of unmeasured significant volumes of take must be assessed before licences are handed out.

HRD is concerned about the modelling data that is being used to calculate the Border Rivers draft Water Sharing Plan rules. We have no confidence in the 94 'cap' figures being presented, as there is no clear line of site to the accredited cap reports to the presented figures.

By their nature floods usually occur when the environment and downstream users are desperate for water. This will coincide with on farm storages being empty, and if the department has its way, account balances many times the face value of the entitlement. FPH licences should not be issued until adequate downstream targets and rules that protect first flush events are in place.

Conclusion

As of December 2020 the Barwon-Darling Rivers have ceased to flow at Brewarrina and Bourke. Substantive volumes taken by FPH in Feb and March 2020 played a part in the rivers having little resilience in warm dry times.

Overland flows in the Northern NSW Murray Darling Basin from December 2020 to 30 June 2021 must be allowed to pass for the sake of the Ramsar wetlands, aquifers, First Nations communities and cultural values, struggling native fish populations, stock and domestic needs and critical human need.

The NSW Government must manage water extraction under the core requirements of the Water Management Act 2000. This includes the water sharing principles and associated duties imposed on decision makers to uphold them (ss. 5 and 9 of the Act).

This exemption amendment has been disallowed twice already by the NSW Legislative Council. In the light of the findings of the recent ICAC report, it is time for the department to assess the decision making processes that continually shows an unreasonable level of privilege and advantage to irrigation over other stakeholders.

For more information contact

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