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### **Submission to proposed legislative amendments for Floodplain Harvesting**

The Inland Rivers Network (IRN) is a coalition of environment groups and individuals concerned about the degradation of the rivers, wetlands and ground waters of the Murray-Darling Basin. It has been advocating for the conservation of rivers, wetlands and groundwater in the Murray-Darling Basin since 1991.

Member groups include the Australian Conservation Foundation; the Nature Conservation Council of NSW; the National Parks Association of NSW; Friends of the Earth; Central West Environment Council; and Healthy Rivers Dubbo.

IRN welcomes the opportunity to provide comment on the four proposed amendments to the Water Management (General) Regulation 2018.

#### **Introduction**

IRN has major concerns with the NSW Government approach to managing floodplain harvesting in the NSW Northern Basin.

The implementation of the Healthy Floodplains Project has demonstrated a bias towards engagement with the irrigation industry as reflected in the recent findings of the Independent Commission Against Corruption (ICAC) in their investigation into the management of water in NSW that : *'the rights of productive water users were given priority over the rights of other stakeholders and that there was a clear alignment between the department's strategies and goals and those of the irrigation industry.'*<sup>1</sup>

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<sup>1</sup> ICAC, Nov 2020. *Investigation into complaints of corruption in the management of water in NSW and systematic non-compliance with the Water Management Act 2000* p 9

IRN has had limited opportunity for engagement with DPIE-Water in regard to the approach to managing floodplain harvesting and is deeply concerned that the cumulative environmental, social and economic impact on downstream water users have not been assessed.

Before new private property rights are granted in the form of floodplain harvesting licences, values which must be fully considered and sustained include - all floodplain wetlands in the northern valleys listed in the Directory of Important Wetlands; Aboriginal cultural values; groundwater recharge; other valued floodplain characteristics such as flood-dependent trees and grasses and essential connectivity flows to the Barwon-Darling, Menindee Lakes, Lower Darling and Lower Murray.

Wetlands and fish breeding habitats, such as billabongs along the Barwon-Darling and the Talywalka system, all require periods of flow connectivity or repeated connections to the river, not just infrequent brief wetting. The capacity for flows in the Barwon-Darling, Menindee Lakes and Lower Darling to be sustained and ecosystems to regenerate after a high flow is related in part to the opportunity for water to be absorbed – the duration as well as height of flows - and is therefore affected by how much floodwater is harvested upstream.

As identified by the Environmental Defenders Office and the Wentworth Group of Concerned Scientists: *'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.'*<sup>2</sup>

IRN considers that the Healthy Floodplains Project has failed to demonstrate the protection of public good outcomes, and has concentrated on maintaining industry reliance on flood flows rather than focussing on more efficient water use options.

While IRN supports the regulation of access to floodplain harvesting, the four proposed amendments to the Water Management (General) Regulation 2018 provide too much flexibility in favour of the irrigation industry at the expense of public good outcomes, particularly the values listed above.

## **Comments on proposed amendments**

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

IRN strongly opposes the proposed exemption for floodplain harvesting activities prior to the implementation of metering, the granting of licences and the setting of rules in Water Sharing Plans to protect downstream water users and the health of river ecosystems.

The object of this Regulation is to provide for exemptions from requirements under the *Water Management Act 2000* to hold a water access licence to take water from a water source for the purpose of floodplain harvesting and to hold a water supply work approval to use a work for that purpose.

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<sup>2</sup> EDO et al, Dec 2020. *Submission on NSW draft rules for floodplain harvesting licences to be included in water sharing plans within the Border Rivers Valley*

We note that this entrenches free access to flood waters that are currently accounted for as planned environmental water under NSW water sharing plans. This practice has developed over a 30 year period with no acknowledgement or measurement of the loss to, or impact on, the environment and downstream water users.

An exemption for floodplain harvesting has been disallowed twice in the NSW Legislative Council for good reason. There is significant concern across NSW about the impacts of floodplain harvesting and free access to water by an elite group of upstream irrigators.

There is also significant concern about the accounting process that has been used to calculate long-term annual average flows to the environment in each NSW Northern Basin valley. The impacts of permitting free access to floodplain flows has been ignored up until now.

IRN notes that the NSW Government is required to 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).

The government must ensure that the priority of use provisions are upheld, which will require embargoes to be imposed to protect downstream ecosystems and stock and domestic water needs.

Any overland flows in the NSW Northern Basin that occur between now and the proposed deadline for floodplain access licencing at 30 June 2021 must be allowed to pass through river valleys to provide necessary downstream drought recovery.

First priority must be given to the needs of the Darling River, recovering threatened fish populations, aquifers, Ramsar wetlands and critical human needs.

Other flood-dependent or high-flow dependent environmental and cultural values must also be identified and given priority in future ahead of the owners of floodplain harvesting works. It will take time to identify all of these assets and their water needs in consultation with the whole community.

The proposal to introduce an exemption for floodplain harvesting at a time when Parliament is not sitting is further demonstration that the NSW Government is favouring the irrigation industry above all other stakeholders in the state.

This will further erode community trust in DPIE-Water and demonstrates that the findings of ICAC in regard to agency bias are an ongoing failing.

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

IRN strongly opposes the proposed exemption to licence and account for rainfall run-off to tailwater drains, as an unwarranted gift to the irrigation industry across NSW.

No other industry is being offered free access to water above the harvestable rights policy.

The argument that it is too complex to estimate the volume of rainfall run-off from an irrigated area is not accepted.

IRN does not support the position that much of the run-off may be used irrigation water that has already been measured under an existing water access licence. Any water applied from existing surface or groundwater licences is used to fill the soil profile for crop use. Any runoff from this application can be reused. This is encouraged to prevent contaminated water being released into the environment.

However, runoff from the application of water to irrigated fields demonstrates inefficient use of water. This should not be an argument for a rainfall runoff exemption.

Rainfall runoff is additional water above that applied through licenced irrigation. This water must be accounted for because it is captured before it can reach the environment. Any rainfall runoff above the harvestable right is planned environmental water. Access to this water must be accounted for through the current licencing system.

Rainfall runoff must not be gifted to irrigators; it is currently accounted for as planned environmental water in the modelled calculation of long-term annual average water available to the environment. This proposal is therefore contrary to the New South Wales Government's agreement, as part of the Basin Plan, to protect for the environment the calculated long-term average volumes of planned environmental water in each of the Northern Basin's valleys.

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

IRN supports that under the proposed changes,

- storages used to collect water under a floodplain harvesting access licence must be fitted with compliant metering, data logging and telemetry equipment, and tamper-evident seals, and
- equipment will need to be installed and signed off by a 'duly qualified person'.

IRN does not support the proposed transition period in Clause 238O that allows for storages less than one gigalitre (GL) or with infrequent use to install measuring equipment by 1 July 2022. A 0.99 GL storage is very large so filling it will have a large impact downstream. Infrequently used structures should not be used until they are both compliant and licenced.

All compliant equipment must be installed for licences to be granted by 30 June 2021 – if any part of the necessary compliant equipment is not functioning, no licence should be granted, and no harvesting should be considered legal.

IRN strongly opposes the proposed Clause 238C that allows the Minister to exempt an approval holder or a class of approval holders from the application of the mandatory metering condition (CI 238B).

If works cannot be measured by point-of-intake metering equipment, or storage metering equipment, they should not be deemed eligible for a floodplain harvesting works approval.

If metering equipment is found to be faulty, then floodplain harvesting take should be suspended. Clause 238D must be amended to reflect this condition.

IRN is concerned that Clause 238J (6), (7) and (8) demonstrates a weakness in the assessment process developed to model individual and valley-wide extraction capability. If adopted storage curves, on which this modelling is based, are demonstrated to be inaccurate by more than 5% of the volume of the water supply work at a specified water level, this may significantly impact on the share of water licenced.

There is no explanation about the impact on shares should the Minister adopts a revised storage curve. There must be a high level of transparency and consistency around this process, if it is to be adopted.

This inclusion in the draft floodplain harvesting measurement amendment compounds IRN's concern about the accuracy of the model used to assess and grant new private property rights.

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

IRN supports that floodplain harvesting should be licenced through works approvals and water access licences.

However, the valley-wide shares to be licenced must consider downstream requirements so that the environmental, social and economic benefits of flood flows are met. Water access licences must have a strong set of conditions to regulate the timing of the extraction so that downstream requirements are met when needed.

Only works that can demonstrate an ability to be accurately measured should be eligible for a floodplain harvesting approval licence.

IRN has no confidence in the modelling used to assess final valley-wide volumes to be shared across individual property licences. These concerns were outlined in detail in the IRN submission lodged to the Border Rivers assessment and draft water sharing rules which were exhibited for public comment.

There must be a high level of transparency around the granting of individual water access licences for floodplain harvesting and the basis for making such decisions. This should be published.

These licences are a new, valuable private property right that is compensable and can be sold and mortgaged. These proposed licences should not be a windfall gain to an elite set of irrigators at the expense of the public good.

Licences must have conditions that recognise environmental and other user needs such as commence-to-pump and cease-to-pump rules. These must relate to downstream flow targets to meet stock and domestic water supply and ecosystem needs, as required under the *Water Management Act 2000*.

Adequate downstream flow targets must be met before floodplain harvesting take is permitted to commence.

The existing rules in NSW Northern Basin Water Sharing Plans relating to flow targets for the Barwon-Darling are far from adequate, being based in part on an Interim Unregulated Flow Management Plan released in 1992 that has never been updated in relation to either changes in scientific knowledge of the river's needs, experience in water management including in implementing that Plan, nor changed conditions, notably reduction of sustained tributary inflows and increased evaporation due to climate change. Licences must reserve flexibility to enable downstream flow targets to be revised to better reflect these changes and predicted climate change, without the public incurring compensation costs.

All licenses must include conditions that provide for Individual Daily Extraction Limits (IDELs) and Total Daily Extraction Limits (TDELs) to protect held environmental water and planned environmental water during overbank flow periods.

The amount of planned environmental water reaching natural destinations in the environment must not be allowed to decline over time in order to maintain average extraction or harvesting volumes when climate change reduces the water available to be shared. A decline in average harvested volumes should be planned.

## **Conclusion**

Whiles IRN fully supports the regulation and licencing of floodplain harvesting activities, this must not be undertaken at the expense of the environment, ecosystem needs, Aboriginal communities and their cultural values, and other water users downstream.

The significance of flood flows to recharge productive groundwater sources cannot be understated, particularly in the face of climate change. More critical human and industry needs are now turning to groundwater sources for improved water security, especially remote regional towns. Groundwater recharge is an essential ecosystem service provided by overland flows and rainfall runoff, and must be taken into account.

IRN strongly objects to the third proposal to exempt floodplain harvesting before all regulation in the form of licencing and measurement is in place.

The rules under the various proposed amendments to the Water Management (General) Regulation 2018 must be tightened, as outlined in this submission.

Full transparency in all aspects of the regulation of floodplain harvesting must be a key approach of the NSW Government if any community trust in water management processes in NSW is to be regained.

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