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DPE – Water

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Submission: Draft rules for floodplain harvesting access licences in the Barwon-Darling Water Sharing Plan

Healthy Rivers Dubbo 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 and present and acknowledge that this land was never ceded.

Healthy Rivers Dubbo (HRD) is pleased to have the opportunity to provide a written submission to the draft rules for floodplain harvesting access licences in the Barwon-Darling/Baaka River.

HRD considers that the volumes and rules proposed for licencing floodplain harvesting in the Barwon-Darling are not aligned with the water management principles in the Water Management Act 2000, nor the 2020 National Closing the Gap report.

Background

There should be no further issuing of floodplain harvesting licences until the cumulative environmental and cultural impacts of floodplain harvesting have been assessed.

In 2019 the Natural Resources Commission referred to the Barwon Darling/Baaka as an ecosystem in crisis¹. As the Darling/Baaka dried up into a string of disconnected green pools, millions of fish perished. The repercussions of the loss of an estimated 2.9 million fresh water mussels is still being grappled with².

The Darling Baaka River has never been an ephemeral system. While periods of very slow to no flow happened, the river never dried up the way it did in the 2017-2020 drought.

Decades of uncapped floodplain harvesting expansion have reduced the resilience of the river, so when severe droughts roll around, the ecosystem collapses.

¹ [NRC review B-D WSP 2019](#)

² https://theconversation.com/they-live-for-a-century-and-clean-our-rivers-but-freshwater-mussels-are-dying-in-droves-164567?fbclid=IwAR0JkBmlOIPTuRPYkVfSxJWk6yCRyTTYV19Rs9kSccto2EmJaB9SoJlq0_w

First Nations

The should be no floodplain harvesting entitlements issued in the Barwon Darling/Baaka River until adequate Cultural Flows have been secured to the satisfaction of the Echuca Declaration.

The Barwon Darling/Baaka River is dying, and the impact on First Nation communities is heart breaking. The average life expectancy for a male in Wilcannia is 37³. The Baaka is the blood of the Barkandji People, and without the river they are dying. What is happening on the Darling Baaka is cultural genocide.

The United Nations Declaration on the Rights of Indigenous Peoples defines First Nations' inherit right to access water. As First Nations allies, HRD supports the Echuca Declaration⁴, which states:

The Federal and State Government of Australia have used their laws to take away our lands without our permission and without compensation.

We have obligations under our Law/Lore and Custom to care for Country and to respect our neighbours both down and up stream.

Cultural Flows are water rights that we hold in our own name and are not held in trust by Government AND provide us with enough clean water to improve all parts of our lives.

The Federal and State Government must give us the money to buy water rights and give us water rights.

A target of the 2020 National Agreement on Closing the Gap is that:

Aboriginal and Torres Strait Islander people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters.

HRD considers that the issuing of large volumes of brand new water access entitlements to the industry that has long had the benefit of this water for free, before the cultural water requirements of the Barwon Darling/Baaka have been met, is an affront to the United Nations Declaration on the Rights of Indigenous Peoples.

Volume

No more than 16.5 GL of floodplain harvesting entitlements should be licenced in the Barwon-Darling.

16.5 GL is the estimated annual average floodplain harvesting diversion in the 2012 Barwon-Darling water sharing plan. It is the figure that was used in the development of the Murray Darling Basin Plan.

The proposed volume to licence of 51.32 GL (or unit shares) quoted in the Report to Assist Community Consultation is different to the figures referred to in the various modelling scenarios, therefore it's difficult for HRD to have confidence in the figures as presented.

The quote on page 13 of the Report to Assist Community Consultation "*in order to achieve the same level of historical diversions*" gives HRD reason to believe that the intention of the Department is to licence historic use, not an environmentally sustainable level of take.

All rainfall runoff should be licenced, there should be no exemption.

³ <https://en.wikipedia.org/wiki/Wilcannia>

⁴ <https://www.mldrin.org.au/echuca-declaration-final-pdf/>

Accounting Rules

There should be no carry over allowance for water extraction from any unregulated water source, including floodplain harvesting.

The 500% carryover rules proposed would lead to large account balances accruing, particularly as the time between floods increases due to climate change. HRD supports annual accounting with no carryover.

The initial allocation and the annual allocation should be no more than 1 ML per share (dependent on antecedent conditions).

HRD supports strong amendment provisions for all floodplain harvesting management rules to enable rule changes without triggering compensation.

Trading

HRD does not support the trading of floodplain harvesting entitlements.

Trading floodplain harvesting entitlements risks the concentration of works within catchments, as the large irrigators inevitably buy out the smaller irrigators. Such concentration would exacerbate the existing risks to environmental and cultural assets downstream.

Such trading activity would also add complexity and difficulty to the job of NRAR in policing that floodplain works that have sold the associated access licence have been flattened.

Protection of Environmental Water

All commonwealth tax payer owned environmental water released in Queensland for the purposes of creating environmental benefit should be protected from floodplain harvesting diversion when it crosses the border into NSW.

Floodplain Works

There should be no floodplain harvesting access licences issued for the Barwon-Darling water source until all unapproved floodplain works (in particular 'hot spot' works) have been flattened or modified.

There should be no floodplain harvesting occurring in Floodplain Management zones A and D.

Floodplain Management zones A and D cover environmentally and culturally important assets. Instead of the current proposal to simply cap any new floodplain harvesting works in these zones, there should be no allowable floodplain harvesting in these zones.

The Report to Assist Community Consultation on page 18 states that "*approximately 90% of properties that will receive a floodplain harvesting (unregulated river) access licence have a work located within management zones A or D*". HRD is concerned about the number of floodplain harvesting works in zones A and D, and proposes that should floodplain harvesting not be allowed in these two zones, that may go a long way towards reducing the proposed licencing volume from 51.32 GL to 16.5 GL.

Natural lagoons and drought refuge pools should never be used for floodplain harvesting.

'Hotspot' floodplain works that disrupt natural flows should not be considered for floodplain harvesting licences. Floodplain works that have not been assessed should not be considered for floodplain harvesting licences.

Access Rules

The flow targets in the Barwon Darling Water Sharing Plan used to trigger floodplain harvesting access must be based on the long term water requirements, and the Menindee Lakes target should be no less than 450 GL.

HRD supports the use of flow targets to trigger floodplain harvesting access. However the flow targets must be aligned with the principles of the Water Management Act 2000. The proposed figures in the Barwon Darling water sharing plan do not align with those principles.

ICACs' *Investigation into complaints of corruption in the management of water in NSW and systemic non-compliance with the Water Management Act 2000*⁵ found a culture with the Department of staff favouring industry when developing policy, and seeing First Nations and the environment as enemies. The email below was obtained through Parliament in late June 2022 via Standing Order 52 Order for Papers⁶

From: Dan Connor <daniel.connor@dpie.nsw.gov.au>
Sent: Friday, 11 February 2022 8:24 PM
To: Jim Bentley <Jim.Bentley@dpie.nsw.gov.au>
Cc: Kaia Hodge <kaia.hodge@dpie.nsw.gov.au>; Giselle Howard <giselle.howard@dpie.nsw.gov.au>; Mitchell Isaacs <mitchell.isaacs@dpie.nsw.gov.au>; Shalen Singh <shalen.singh@dpie.nsw.gov.au>; Shagofta Ali <shagofta.ali@dpie.nsw.gov.au>
Subject: Progressing FPH reforms - for discussion with Minister Anderson

Hi Jim,

As discussed, first up, I think that its important that the Minister understands that there is nothing in the new regulations which offends (or prevents us from addressing) the recommendations in the recent Select Committee report. However, in contrast there are many of the inquiry recommendations that simply cannot be achieved without these regulations. If faced with criticism about pushing ahead with regulations because they don't take on board the inquiry recommendations, he may wish to point this out. There are however some things that the Minister could possibly do through WSP rules, to better address some of the key concerns raised through the inquiry that relate to water sharing - should he wish to. I believe that there is a very small window where we could do this without delaying the proposed 1 July commencement of WSPs for Border/Gwydir and Macquarie Valleys. Essentially, I think that we would need to have clear instruction from the Minster by the end of Feb to pull this off (the earlier the better of course). I have summarised what I consider to be the most useful of these changes below, with some of the most prominent pros and cons I can think of for each (in blue).

1. Downstream flow targets - include rules that prevent floodplain harvesting access when there are downstream critical human and environmental needs (we would propose using the draft s.324 triggers now published on our website. FYI - Angus has developed alternate targets that do not have a strong technical basis and that we consider will not address stakeholder concerns or inquiry recommendations - accordingly, I recommend that they are not pursued).

Pros

⁵ [ICAC 2020 Investigation into complaints of corruption in the management of water in NSW and systemic non-compliance with the Water Management Act 2000](#)

⁶ <https://drive.google.com/drive/folders/1MEDfc91T7ROU1DlbKJqzNg5ljQ1TYoRY>

- It would directly address one of the inquiry recommendations (probably the key one for many stakeholders that are currently opposing the reform)
- It will improve the social licence of FPH (as FPH cannot occur when there are downstream critical human or environmental needs)
- It is unlikely to reduce FPH take overall - it will shift extraction into wetter periods but not decrease the volume taken over the long term
- It will likely generate within valley environmental and social benefits following dry periods, when water is most scarce (based on expert opinion)
- It will strengthen the case that the Minister is taking all reasonable steps to comply with the WMA 2000 (a legal challenge on these grounds is considered likely)

Cons

- Restricting FPH access during these conditions may prolong drought recovery for the industry and regional communities
 - It is unlikely that these rules would significantly improve critical human/environmental needs in the Barwon-Darling and beyond - any benefit will likely be at the margins
2. Initial allocations - include rules that limit 1st year allocations for FPH licences to 100% for all valleys.

This communication shows the Healthy Floodplains Project Delivery director suggesting that flow targets to trigger floodplain harvesting be included in the draft water sharing plans. Dan explains that using flow targets may give the appearance that the Minister is taking reasonable steps to comply with the Water Management Act 2000, while assuring the Minister that these particular flow targets are low enough that it's unlikely they would cause any significant improvement to critical human/environmental needs in the Barwon Darling and beyond. He also clarifies that these flow targets will likely not reduce floodplain harvesting take in the long run, presenting that fact in the 'Pro' list. Dan speaks of a likely legal challenge.

The following brief developed by NSW Environment and Heritage Group (also obtained through Parliament) states that the draft flow targets:

- are too low to protect key environmental assets outside of extreme dry periods
- do not adequately consider the long-term health of environmental assets
- do not support the water management principles of the Water Management Act

response to the Select Committee on Floodplain Harvesting. They prevent floodplain harvesting access when there is less than 195GL being stored in Menindee Lakes, until local in-catchment targets are forecast to be met. The proposed targets are based primarily on ensuring critical stock and domestic, and environmental needs are met during and following extreme dry periods.

- Once the flow targets are met (several hundred kilometres away from Menindee Lakes), the take of water from the floodplain is allowed regardless of the storage level in Menindee Lakes. There is also no temporal element to the flow triggers in their current form. Contrary to the intent, the current drafting means that they may only need to occur once in 10 years to be met.
- EHG considers the proposed in-catchment targets to be too low to protect key environmental assets outside of extreme dry periods, and do not:
 - adequately consider the long-term health of environmental assets.
 - consider environmental water requirements defined in the Border Rivers and Gwydir Long Term Water Plans.
 - support the priorities and actions in the NSW Water Strategy.
 - support the water management principles of the WM Act.
- To address this issue EHG has developed alternative interim flow targets for these plans based on the environmental water requirements in the Long Term Watering Plans.
- The objective in proposing these flow targets is to ensure environmental water requirements that can only be met by naturally occurring events (i.e., they cannot be met by held environmental water) are protected by the plans. This aligns with the priorities for water sharing in the WM Act.

Dan notes that a legal challenge is likely on the grounds that the principles of the Water Management Act are being seen to be compromised. And yet he recommends this course of action to the Minister. The NSW Environment and Heritage Group confirms that in their opinion the flow targets are not aligned with the principles of the Water Management Act.

HRD expects that public servants do not recommend Ministers take actions that could potentially offend against the law.

For further information about this submission contact Peter Duggan, Secretary of Healthy Rivers Dubbo on healthyriverdubbo@gmail.com.