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FLOODPLAIN HARVESTING IN THE NAMOI VALLEY

Gunnedah Consultation Session – Unregulated River System
7 February 2023

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1 Introduction

Water taken through floodplain harvesting activities is the last major form of water take to be integrated into the water licensing and approval framework. Integration into this framework provides a mechanism to regulate the activity and ensure water take occurs within sustainable limits.

In 2013 the NSW Department of Planning and Environment (DPE) introduced the NSW Floodplain Harvesting Policy. The policy identifies floodplain harvesting eligibility criteria and the licensing process. Floodplain harvesting licences define the volume of water (overbank and rainfall runoff) that users can legally harvest from floodplains.

An important part of this framework is rules that enforce how water taken during a floodplain harvesting event is measured, recorded and reported. These rules are specified in the Water Management (General) Regulation 2018 (the Regulation) and ensure that all water taken is measured by accurate, auditable and tamper-proof meters.

The NSW Water Sharing Plans set out the long-term diversion limits at a water source scale. These limits were volumetrically estimated at the time that water sharing plans were being prepared. These volumetric estimates are now being updated based on improved modelling and updated information developed and collected as part of implementing the NSW Floodplain Harvesting Policy.

The Gunnedah consultation session was held in response to community feedback received in Wee Waa on 13 December 2022 on proposed rules for floodplain harvesting access licences to be included in Namoi Valley water sharing plans. At that session irrigators who were part of the unregulated river system in the Upper Namoi Valley expressed concerns that their issues were not being adequately considered in the consultation process.

In response to these concerns, it was determined to conduct an additional consultation session in the Upper Namoi that specifically focused on the issues related to unregulated licence holders. As a result of this consultation session taking place, the consultation period for unregulated water users in the Upper Namoi was extended until the end of February 2023.

2 Consultation Session Process

The Gunnedah consultation session involved a presentation by various DPE representatives. The presentation sequence was:

- Welcome and Acknowledgement of Country
- Floodplain Harvesting in the Northern Basin
 - Namoi timeframes and influencing factors
 - Current status
- Context Setting
 - Overland flow vs floodplain harvesting
 - Floodplain harvesting in unregulated rivers
- Draft Water Sharing Plan rules
 - Namoi unregulated rivers
- Measurement Requirements
 - Floodplain harvesting
 - Overland flow
- Review and wrap up
 - Key insights and actions
 - Recap on how to make a submission on draft WSP rules.

Each presentation or topic was interspersed with a period of questions and answers. Questions were also asked throughout each of the presentation sessions.

The presenters (DPE) were:

- Giselle Howard, Executive Director, Water Planning
- Dan Connor, Director, Healthy Floodplain Management
- Frances Guest, Manager, Floodplain Planning
- Alastair McKenzie-McHarg, Principal Project Officer, Metering and Measurement.

Participants were also provided a further opportunity to liaise with agency representatives and ask additional questions over lunch.

ATX Consulting facilitated the session and was responsible for recording and reporting.

3 Key Issues

Key issues identified in the consultation session are outlined under the headings below.

3.1 Equity and parity

A strong sentiment expressed by participants throughout the Gunnedah session was that unregulated water users were being treated differentially and unfairly in relation to Floodplain Harvesting. Participants were concerned about:

- The inability of unregulated users to obtain Floodplain Harvesting licences
- The impact of new Floodplain Harvesting licences on existing allocations for unregulated water licence holders.

Participants were concerned that the decision-making process and application of the Floodplain Harvesting and Non-Urban Water Metering rules failed to recognise the unique nature of unregulated water irrigation and the practicalities of the nature of water use on these properties.

The suggestion was made in the session that there should be greater consistency between the Floodplain Harvesting and Non-Urban Water Metering rules so that those irrigators who could not access a Floodplain Harvesting licence were not unduly disadvantaged.

3.2 Questioning the basis of the reforms

Some participants felt that the basis of the reforms were flawed and, in their view, illegal. This position took two main forms.

Firstly, there was a view that the 1912 Water Act in its original form did not refer to floodplain harvested water and therefore the current reforms lack the appropriate legislative basis. This view was addressed in the session with the explanation that overland flow was defined under Section 4A of the Water Management Act 2000 and that the regulations are now set and have been adopted as law.

The second form of questioning around the basis of the reforms related to the process of calculating volumetric conversion in 2000 when area-based licences were converted to volume-based licences. Participants' views were that this original volumetric conversion process did not include calculations for overland flow and now Government is including overland flow. The view expressed was that this is being done without any adjustment to the original baseline set in the volumetric conversion calculation when overland flow was specifically excluded.

Participants felt that as a result of now including overland flow (described by participants as 'retrofitting'), they were being disadvantaged because of what they see as a government oversight or omission. It was expressed that in this reform,

Government had a responsibility to mitigate negative impacts on unregulated water users, for something that should have been included in the original volumetric conversion process.

3.3 Lack of information from Government

Dissatisfaction was expressed regarding the information that water users were receiving from Government. These complaints can be grouped into three main categories:

- Responses to unsuccessful Floodplain Harvesting licence applications were said to not contain any rationale or reasoning for the unsuccessful application and provided water users with no understanding of whether there were things they could address or improve to become successful
- Participants felt that there was a lack of information available on the impact that Floodplain Harvesting licensing would have on unregulated water users' allocations
- Some concern was expressed about the availability of local catchment data (in this case for the Cox's and Mooki watercourses).

3.4 Continuing need for flexibility

Participants expressed the need for some flexibility in the application of the rules to account for certain common on-farm practices.

An example of this raised in the Gunnedah session was the impact of temporary trade restrictions on irrigators who may have a number of irrigated areas with different licences attached and need to transfer part of a licenced allocation from one area to another.

Participants also strongly expressed that the majority of irrigators agreed with the need for measurement and wanted to be compliant with the rules. It was also strongly expressed that they did not want to be disadvantaged by the rules, especially if the rules were not able to be reasonably applied to accommodate common farm irrigation practices, not viewed as detrimental to the key objectives of using water within allocation and measuring and reporting that usage.

3.5 Concerns about legal risk and vulnerability

Participants expressed concerns about whether they were exposed legally. The specific question was around if an unregulated licence holder (who did not also have a Floodplain Harvesting licence) was to currently take overland flow could they be considered to be in contravention of the rules and potentially subject to legal action. An additional dimension of this issue was that the nature of planning laws around levees in this specific unregulated system were unique and did not offer the same level of control and measurement as may be possible under the

regulated system. Participants felt they were not able to have the same level of control over how much water flows over their properties, and this may create a liability for them.

4 Question and Comments Summary

The following is a summary of the questions and answers discussed during the session. These are not necessarily verbatim. Best efforts have been made to capture both questions and answers accurately.

Question/Comment	Response
Floodplain Harvesting in the Northern Basin	
Why do submissions have a cap of 1,000 characters? Our issues are much more complex and require more space to write	The 1000-character limit only applies to the direct online feedback portal. Users can also attach a separate document to the submission and can also send an email with an attachment. There is no word limit on either of these forms of submission.
Is the timeline for completion in June realistic?	We are entering into an election period and that can create some uncertainty, but the Department's view is that the June timeline is realistic.
Is it possible to uncouple determinations for regulated and unregulated licences?	Yes. It is possible.
Can someone comment on the legality of the regulations. The 1912 Water Act did not refer to floodplain harvesting but only water taken from rivers.	Overland flow was defined under the Water Management Act 2000. The regulations are now set in law.
Context Setting	
What happens if you take water through your unregulated river access licence?	It should be possible to amend your works approval. It is not the intention of the rules to stop this. We encourage people in this situation to make a submission.
Do we need to link works to a Floodplain Harvesting licence?	Yes, DPE is working with Water NSW on this
What happens if you take overland flow when you have an unregulated licence?	It will be debited against your unregulated water entitlement if you don't have a Floodplain Harvesting licence.
If you were taking overland flow water between 1993 and 1999, should you be entitled to a Floodplain Harvesting licence?	To get a Floodplain Harvesting licence you need to meet the criteria
Is the price of unregulated water set at the same amount as Floodplain Harvested water? If not, isn't that a problem in terms of parity	DPE will check this information. Pricing is set by IPART. Information on charges below - The water take charge will generally go down for all water users in a water source following the implementation of FPH licences. This is further discussed in Chapter 10 of the IPART final report on water charges for 1 October 2021 to 30 June 2025. See page 125, last sentence above section 9.6, and section 10.4 page 144 of the final report . In brief once the floodplain harvesting regulation has been enacted in a water source, the unregulated water source fees will change

Question/Comment	Response
	<p>from the start of the new water year (1 July). Floodplain harvesting and other unregulated river licence fees will be charged at the same rate.</p> <p>Details of charges for Namoi and changes in charges with floodplain harvesting, are covered on Water NSWs website.</p>
<p>The volumetric conversion process undertaken in 2013 became the basis for the Long Term Annual Average Extraction Limit and the basis for the cap. However, this only covered water extracted at the river source. We were not asked for information on any water that was not from a river source. Now overland flow is being included retrospectively.</p>	<p>If you can demonstrate that you had eligible works at that time and for example had 100 hectares at that time, but now have 150 hectares of irrigated area, you could be eligible for a Floodplain Harvesting Licence for the additional 50 hectares.</p>
<p>Government is restricting our water use - why do we have to be limited by these licences? What happens during the flooding like we have had recently - are you saying we can't pump that water?</p>	<p>You are entitled to take water according to the licence/s you hold. Limits have been in place for 25 years. The expectation of the State is that you do not take water that you are not entitled to.</p>
<p>Can you give us an idea of what we are looking at in terms of limits. How much water is available in the Cox's River and Mooki catchments, so we know what we are dealing with? Will these allocations be diminished by Floodplain Harvesting?</p>	<p>We don't have data on individual catchments like Cox's and Mooki. LTAAEL is calculated on a whole of valley basis and it would be misleading to try and answer this question without further consideration of the data and input from relevant subject matter experts in the water group. We can look into whether that data is available.</p>
<p>How accurate is the remote sensing data? Many people have a lot of concern about this.</p>	<p>DPE is aware of those concerns, and we have listened to that feedback. We have undertaken a Quality Assurance process and are making improvements to that data. For any specific concerns, we would encourage people to include those in their submissions.</p>
<p>We feel like unregulated river people are "being shafted". It feels like an injustice. Because Government specifically excluded overland flow from the volumetric conversion process we are now being penalised for your oversight. Now you are trying to retrofit, and we are being penalised because you missed something that we told you should have been included. Government has some liability and responsibility here - it shouldn't just all fall to the landowners to bear the consequences of your mistake!</p>	<p>Noted</p>
<p>We don't want Government to pick winners and losers. That divides people and divides communities. We know some people will get more out of the rules than others, but we think there should be better mechanisms and options in place for those who are being disadvantaged.</p>	<p>Noted</p>

Question/Comment	Response
Draft Water Sharing Plan rules	
Are the accounting rules for unregulated licence holders going to be changed to reflect the rules for Floodplain Harvesting licence holders?	DPE can take that feedback, back for consideration.
What happens if you take Floodplain Harvested water with an unregulated licence?	It will come off your unregulated water licence allocation if you do not have a Floodplain Harvesting licence.
The Floodplain Harvesting rules appear to be more generous than the unregulated licence rules? The rules should be the same - they should mirror each other so that no one is overly disadvantaged.	The desire for parity among the rules is noted.
Floodplain Harvesting isn't subject to cease to pump etc. What is the capability of unregulated licence holders now who cannot get a Floodplain Harvesting licence?	There are some differences between floodplain harvesting and unregulated river access licences including the opportunities to take water. Floodplain harvesting is limited to water on the floodplain whereas unregulated river licences can take from rivers and creeks along with the floodplain. Overland flow can be taken under an unregulated river access licence if the works used are specified on the water supply work approval and the water taken is metered.
Can you modify or upgrade works that are in zones A-D?	No new works are allowed in zones A to D. You can however modify or upgrade works, as long as you don't increase capacity.
If you were to trade 100% of your Floodplain Harvesting licence to someone else what happens to existing works?	They become redundant. You could be asked to remove the works. If you could not stop taking water through those works, then the trade would not be approved.
It can be common to have to transfer water across different irrigated areas that may have different licences. That is a pretty common farm management practice that currently happens within the limits of the licences - if one area needs the water and we have a licence that has capacity then we transfer it. Will that be allowed to continue?	This form of transfer across different licences is not allowed under the rules.
As a follow up to the previous comment: Is there a way to build more flexibility into the rules to enable some practical common sense farm operations that are within the spirit of the rules to be allowed?	DPE is looking at ways to improve flexibility of the rules.
Measurement Requirements	
How may exemptions have been granted?	Approximately five under the non-urban metering framework. All these exemptions have had alternate measurement conditions applied as part of their approval. More information on 233 exemptions for the non-urban metering framework can be found

Question/Comment	Response
	on the department's webpage ' what water users need to know ', under the exemptions from the non-urban metering rules, as well as in the departments factsheet - Works that cannot physically comply with the metering equipment rules .
Can examples be provided of successful exemptions? What grounds have been considered appropriate for exemption.	DPE will follow up on the exemptions and provide examples of successful applications.
Are Property Measurement Plans available for unregulated water licence holders? Can we be included?	Property Measurement Plans are an optional resource for landholders and can be used to demonstrate how water take is being measured on your property. The department is developing further guidance on Property Measurement Plan development which will be available to all floodplain harvesting water users, with an initial trial in the Gwydir and Border Rivers. During this trial, consideration will be given to including unregulated water licence holders.
In response to an application for a Floodplain Harvesting licence you just get a 'no'. There is no other feedback or information provided. People want to comply, but we aren't getting enough information on how to	Noted
Can unregulated licence holders use the storage measurement method?	This is only available to Floodplain Harvesting licence holders.
How did this inconsistency between the policies come about? Why can't you fix it?	It is acknowledged that there is scope for improvement in how the two policies (Floodplain Harvesting and Non-Urban Water Metering) relate to each other. This is something that DPE is working on.
We all want to measure but it needs to be practical	Noted
What about the situation when: you have just irrigated, you have a high soil moisture content, then there is a rain event, the excess water runs off into your tailwater drain - do you have to account for that water or is it exempt?	If the only work collecting rainfall runoff is the tailwater drain, then the water collected in the tailwater drain is exempt and does not need to be measured or accounted for.
None of this seems to recognise that on the unregulated river system we don't have mechanical levees to control when and how much water flows onto our irrigated areas - we can't control or measure that, like irrigators in the regulated system can.	Noted
We are concerned about how overland flow in the unregulated system is considered under the rules and whether we may be legally exposed for something we can't really control. With the recent flooding, could we be found to be acting illegally when water is flowing into our properties?	Overland flow in the unregulated system is a known issue. DPE has had discussions with NRAR about it. You can lodge a s233 exemption.

Question/Comment	Response
<p>The timelines for compliance are unrealistic. We know of instances where some of the approved equipment has failed in the field as it hasn't stood up to high temperatures for example. There is a risk to us in having to purchase equipment to comply and then discovering that the equipment is not suitable, so we must purchase something else to be compliant with the regulations. Can there be an extended period so that better testing of equipment can be done? Some of us have multiple sites where we need to install equipment at our cost.</p>	<p>Comments are noted. Testing is continuing and more equipment will be coming onto the market. The timelines are set currently, what is important is that landowners are able to show they have genuinely commenced the process of compliance through arranging a DQP, ordering equipment etc. You will need to show you have made genuine efforts to comply in a timely manner.</p>
<p>We are having problems with recognition of AS4747 meters in IWAS</p>	<p>WaterNSW has advised that: If a water user is using a Modbus LID they should be able to see their data in iWAS. If not, they should expect to see it very soon. If a water user is using a Pulse LID, they should be able to view their data in the DAS. For more information, water users can contact a Customer Service Metering Specialist at WaterNSW by making an appointment at this website.</p>
<p>Can the Minister acknowledge the risk we are facing and the concerns we have about our legal vulnerability. We agree with metering and measurement - the problem is in the detail. We are currently at high risk, and we are fearful of the legal ramifications. Can the Minister help to alleviate that risk?</p>	<p>The discussion today will be passed on to the Minister's Office through a briefing by the Executive Director.</p>