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Submission to the NSW Government Independent Assessment of the Management of the Northern Basin First Flush Event

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INTRODUCTION

Border Rivers Food and Fibre (BRFF) represents the water users and entitlement-holders of the Border Rivers region of southern Queensland and northern New South Wales. These water-users responsibly utilise the water resources of the Macintyre Brook, the Dumaresq, Macintyre, Severn, Weir and Barwon River systems and the Eastern Recharge Zone of the Great Artesian Basin. Production from irrigated agriculture includes vegetables, nuts, dairy, citrus, wine-grapes, herbs, stone-fruit, hay, cereals, coarse grains and cotton. Irrigated agriculture contributes nearly $1 Billion (farm gate) to the local economy in good years.

This document represents the views of the members of BRFF, though individuals are entitled to their own views relating to their own circumstances.

BRFF is also a member of the NSW Irrigators Council and National Irrigators Council. Whilst generally endorsing their views, we maintain the right to hold independent positions when appropriate.

BRFF supports the role of NSW Government agencies to administer and regulate the use of water resources for the benefit of the state of NSW. This support is based on the understanding that the state will manage the resource for broad benefit and will comply with lawful agreements with other states and the Commonwealth in managing that resource. We are strongly of the view that the role of planning and management is one maintaining equity in the shared resource and that any reductions in access to those established shares in the water resource are to be achieved through Commonwealth funded recovery mechanisms. The NSW Water Sharing Plans, while not perfect, represent the best attempt of being established with broad community consultation.

2020 Event Analysis

The report does a good job of summarising the course of events of the 2020 flow in the northern tributaries. The volumes that have been put forward by DPIE as levels of extraction accord with local opinion, but there is an issue in classing them all as a single type of extraction as the volume was calculated on differentials in storage levels between two dates. There was obviously a mix of different types of water pumped into storages across the event and those types will differ from property to property and from catchment to catchment, depending on where and when the rain fell. These different types of water are all subject to different rules and so no blanket assumptions or judgements can be made until those gross volumes are separated and reconciled. This task will be made easier in future by the 'real-time' data acquisition through telemetered meters, a program which is already well underway. Interestingly, had the NSW Government chosen to use the existing privately-owned on-farm telemetry systems, instead of requiring an entirely new one to be built, then much of this information would have been readily available for this event.

A large portion of the 220GL quoted volume extracted would have been on-farm runoff, which will be licensed under the NSW Floodplain Harvesting Policy, some was Supplementary, some was Floodplain Harvesting, and some was Unregulated. In the Border Rivers, because the event was mostly past Mungindi when the S.324 restrictions were lifted, the small volume of extraction was mostly Supplementary.

Criticisms of the management of the 2020 event are easy to make due to its rushed nature and poor planning and communication as detailed in the Draft Report. Those criticisms are well deserved, but we acknowledge that they came about because Government tried to do something different from long-standing, established plans. The Draft Report seems to use the context from the start that 'something new' is required, but the case is not made to establish why that may be required. We submit that a major deficiency in the Draft Report is a lack of analysis about what the First Flush management actually achieved in comparison to what would have occurred had the existing Water Sharing Plan rules been allowed to play out. The bald statement that 100GL extra would have been extracted really does not justify the management changes, as it fails to take into account the timing, scale, intensity and antecedent conditions of events in each tributary and within tributaries. With perfect 20:20 hindsight it is evident that some alternative decisions could have been made and different, possibly better outcomes achieved. The automatic assumption that 'new rules' are needed highlights the risk of 'mission-creep' and that the Draft Report alludes to a decision already having

been made to fundamentally change water management in NSW, instead of a calm, even-handed analysis of the facts of the event and how future events might be improved, as we understand the Terms of Reference required.

Many of the shortcomings in the management of the First Flush event can be traced to the lack of long-term, knowledgeable, and experienced staff remaining within DPIE Water generally. This applies both to the core of the department in Sydney and the lack of senior decision-makers' in the regions, as was once the case. We submit that this event shows why such local knowledge is indispensable when held by someone in senior decision-making capacity within the department. The withdrawal of senior staff from the regional centres over many years and by both sides of politics when in government, has left a vacuum of knowledge within the department and has left the small, centralised bureaucracy dependent on second and third hand information with little context of the overall event. There is a strong case for the rebuilding of capacity of the department in regional centres, as used to be the case before they were stripped out. This move can only improve the overall management of natural resources and especially the dynamic subject of water in the northern basin, not just some decision-making in emergency events. It would rebuild the knowledgebase within the department and restore some confidence in the government's ability to manage water responsibly.

Event Outcomes

The outcomes of the First Flush event were inconsistent across the state. The unregulated Barwon-Darling and Lower Darling ended up benefitting considerably more than those upstream of them in the tributaries. We have no issue with other areas benefiting from the flow at all, only the artificially uneven outcomes. There seems to be an acceptance in the report that this is how priorities should be arranged all the time as there is no examination of this fact, rather than an effort to maintain a balance to achieve a level of equity between all stakeholders. We fully acknowledge that it is not possible to manage an unregulated, ephemeral river system with no storages, and little other management infrastructure, in a manner that can be fine-tuned as an event evolves, as could be expected in a regulated system with greater volume. Outcomes will never be perfect in the short term and every flow event will be different, but mechanisms should be used that balance out the differential over the long term and redress the artificial inequities.

In the Final Report we would like to see some thorough, detailed analysis of what would have occurred in this event had the established management system (WSP's) not been suspended. It would be a very useful comparison to see what the extra effort achieved over and above what the WSP rules would have achieved if left alone. Again, we expect those results to vary greatly between catchments but that is the nature of this region and we need to clearly understand what difference this intervention actually made compared to the status quo. It may well show that an acceptable outcome could have been achieved for everyone concerned has these rules stayed in place, it may show that the 'winners and losers' decisions would have had different outcomes about who 'won' and who 'lost' but we won't know until that analysis is done. There must be a very solid case made for the established WSP regime to be modified and well before any proposed set of rules can be proposed.

Cost / Benefit Analysis

Another key part of this analysis is trying to put a dollar amount on the value created and destroyed through these decisions of government. Governments recognise that there is always a 'cost' to be paid by someone and this should be acknowledged, and an attempt made to qualify it. I am referring here not to the high priority critical human needs or environmental requirements, these are already widely acknowledged, but to the redistribution of the 'available resource' as a result of these decisions. This needs to be understood by decision-makers to inform them of all aspects of their decisions.

Water Sharing Plans

The Draft Report seems to start from the premise that 'something new' is required, with the justification being that the 2020 event was poorly planned and executed and that long periods of no flow can be avoided in future by implementing some new rules. Suspension of the bedrock documents underpinning the value of many millions of dollars' worth of water assets, the NSW Water Sharing Plans, should be considered only as a last resort not simply because it hasn't rained. The situation where they are only perceived to apply above a certain level of resource availability is problematic, as every time there is a drought the public perception is that the rule-book is thrown out until it rains again. This may be acceptable in a regulatory sense, but it is anathema in a property right sense and exposes NSW Governments to claims for compensation under the NWI Risk Assignment framework to which they are a signatory.

Acknowledging the comments about embedding such rules in the WM Act, we feel it is more appropriate for water management rules to be included in WSP's. The problem with legislated requirements is that they lock-out the possibility for adaptive management as has been a key plank of the Basin Plan and for any other flexibility in management that may be required in certain circumstances. This flexibility may be required to improve the delivery of environmental flows of Commonwealth-owned water, for example, potentially creating a conflict between State and Federal agencies, so we urge extreme caution in thoughts of setting such rules in legislation.

There is currently no agreed definition of what constitutes a "First Flush event" and it is obvious that there is a popular interpretation of what such an event is and when it applies. Currently, those triggers happen when the DPIE consider they need to restrict licensed access to provide for emergency domestic requirements downstream and as such is open to interpretation. It is worth noting also that the NSW Government spent a great deal of money to improve the water supplies of the city of Broken Hill and other western towns in a long-overdue effort to allow residents of western towns to enjoy much better levels of domestic water security and for this they should be broadly congratulated. The flow triggers in the tributaries that have always applied to WSP's to protect those requirements, the Interim North-West Unregulated Flow Plan, now sits in the new WSP's as the Barwon Darling Flow Targets, so there has been no changes made to flow requirements as a result of the water security improvements. These protections have not been changed.

Because the existing Water Sharing Plan rules are written to cater for the variable levels of inflows in the ephemeral systems in the north of the basin, any change in inflows due to climate change, drought or flood will automatically be allowed-for in the WSP's as the principle is that there they work on the basis of a share of the available resource. The high priority uses still have the priority.

It must be acknowledged that these plans were thrashed out over many years of community consultation and government research, planning and regulation and any last-minute 'bolt-on' amendments would fundamentally shift the balance already achieved, where no parties are entirely happy with the outcomes but they already achieve the long term outcomes prescribed by governments.

If there are to be new First Flush rules then they must compliment WSP's and cannot overlap, they must only apply below an agreed point of exceptional circumstances and must have a clear point at which WSP's are reinstated. These triggers must be applied on a 'area by area' basis and not a blanket basis. They can only be targeted to address the unique needs of system management that occur only when emerging from the depths of Extreme Drought. The specific set of circumstances that constitute a "First Flush event" must be clearly defined and thoroughly communicated locally to all stakeholders to avoid any misunderstandings and unrealistic expectations. It cannot be used as a proxy to reduce legal long-term access to water-users licensed to access those shares of the resource detailed in their local Water Sharing Plans. It must also not allow the transfer of responsibility for management from the Water Sharing Plans to a subjective interpretation of facts by people not charged with that responsibility, not embedded in the local catchments and not accountable for their actions.

A great deal of the management of the upper tributaries of the Darling depends on forecasts and modelling rather than observations, due to the proximity of the tributaries to the source of the flows. These factors are considered in Water Sharing Plans but there is a risk that a 'knee-jerk' response will produce far worse and more uneven outcomes than the 2020 event did. It must also be acknowledged that any restrictions on licensed access in the upper tributaries apply to what are opportunities for access that are measured in hours rather than days. When S.324 restrictions are lifted then it has been the case that the opportunity has already passed as there is no opportunity to re-regulate these flows further down the system. This means that the same people bear the bulk of the pain inflicted by the blunt instrument of S.324 restrictions.

We strongly agree that the reliance on S.324 restrictions is fraught with risk and that future management of First Flush events be far better defined and understood. We would prefer that ALL water management rules and regulations be incorporated into Water Sharing Plans that are broadly understood and have been established with community consultation since their inception.

NSW Border Rivers Regulated and Unregulated Water Sharing Plans have always been based on access rules that provided downstream connectivity by utilising planning directives that specified minimum downstream pass-through contribution. The specifics in the 2008 IGA actually used an initialisation figure of 61%, acknowledging that this figure referred only to 'in-stream' flows and did not include out of bank, overland flood flows as they were, and still are, not accurately gauged.

Connectivity

There has been a great deal of attention paid to the concept of 'connectivity' in the context of this inquiry and more broadly about the northern basin water resources. Reading some of the submissions for this inquiry there is an apparent assumption in those comments that 'connectivity' means that all rivers should run and be permanently connected all of the time and that any 'cease-to-flow' occurrences are a result of over-extraction or illegal take of water. The assertions are factually wrong, and the expectations created are naïve and unrealistic when the historical hydrology of the Darling and its tributaries are considered objectively. The Border Rivers, and other northern tributaries, are no longer purely 'natural', but are now 'working rivers' with a mix of regulated public and private water storage capacity that has enabled the development and productive utilisation of a portion of the available resource for the benefit of the regional state and national economies. This prosperity was spectacularly successful, as it was in the southern connected system, creating thriving communities by increasing the productive capacity of the areas concerned and this cannot be dismissed as 'rape and pillage' as espoused by some. It would be remiss if the Final report did not acknowledge the significant 'disinformation campaign' which has poisoned the debate around water management in NSW during the drought. This has an influence on decision-makers and politicians, even if they know that the narrative is based on fundamental untruths, and that they need to 'be seen to be doing something'. The lack of information coming from DPIE for many years around water management in the northern basin has created a vacuum which was filled by political actors creating their own 'facts' and spreading them widely on social media. DPIE have failed to counter the misinformation campaign in any meaningful way and completely missed the opportunity post 4-Corners in July 2017.

At the time of the 2020 event the entire northern basin region was under stress from ongoing and still incomplete water reform, severe drought and a public narrative around water in the northern basin that had become toxic and highly politically charged. This created the "strong unmet demand for information about the event from the community." In normal circumstances they couldn't care less.

The First Flush rules being contemplated are, in some minds, about responding to drought by prioritising the downstream reaches of the river at the expense of the upstream tributaries as a knee-jerk political response to the worst drought on record and the circumstances that created. Again, there is no case made in the Draft Report to establish why any such reprioritisation might be necessary. It is convenient for some to demand to be drought-proofed but the term 'connectivity' is being used to mislead the broader public understanding of the subject to believe that there is no consideration of river connectivity in any state or Federal water management arrangements. We would like to see in the Final Report a detailed assessment of existing rules that address the subject. We submit that 'Connectivity in an Ephemeral System' is already addressed in WSP's with access thresholds and rules set to provide long-term flow-targets. We see a big risk that 'connectivity' is taken to mean **permanent** flows in an **ephemeral system**, which would be a perversion of the existing management processes and unrealistic without new water being introduced into the Darling system.

Long term averages are used in ephemeral systems precisely due to the oscillation and the large range of variability of flows in its natural state as well as with some of the tributaries being regulated. Connectivity is a criterion already embedded in existing rules and cannot be changed on political whim to become a condition that must be met before any access is allowed. That would be a major departure from established planning protocols and run counter to many long-standing interstate and Federal agreements.

Connectivity is arguably more secure with the existence of regulated systems in the tributaries allowing for the storage of water when it rains to be used for environmental flows in the depths of drought, as has occurred in this last severe drought. This is not acknowledged in the Draft Report.

We submit that it needs to be stated categorically that the extreme drought that has occurred in the northern basin since 2017-18, and is still present in many valleys now, has led to the exceptional circumstances witnessed in the last few years. It must be recognised that had the northern tributaries not had headwater storages built in the past and Water Sharing Plans in effect, then both the tributaries and the trunk-stream would have ceased to flow far sooner, and the consequences of the extended cease-to-flow periods would have been more severe than they ultimately were. The demands of some submissions appear to be that the headwater storages should be to secure the drought reserves for the entire length of the Darling River, but this isn't, and has never been, their purpose. The Final Report must consider that to provide such a change to the fundamental premise for dams being built, ignores the historical aims of state government and assaults the property rights of the people who responded to government regional development programs of the day. The investment of government and private capital into infrastructure, as well as the myriad businesses and regional communities that depend on that resource would be undermined should such a reframing of rules occur.

We strongly support any project proposal, such as the Coffey Scheme, that would provide new water into the Darling system that could then achieve such levels of permanent flows in the Darling and projects such as these should be considered in the contemplation of any First Flush rules.

Payback Mechanism

The broad concept of such a mechanism is to maintain the record of the access opportunities forgone by water-users in a S.324 or First Flush event and then to provide redress of the debit by allowing access to that equal volume in subsequent large flows. This principle acknowledges the inherent property rights of legal entitlements to water, to the extent that availability of the share of the available resource allows. It preserves the long term BDL's and SDL's, and WSP integrity, allows water to be prioritised for higher needs when required in emergency situations, and allows equity and property rights to be maintained in the long term for ALL stakeholders.

As part of the regulation system it will still provide water from low flows occurring in extreme drought events for priority requirements but balance the ledger by allowing the deficit to licensed water users to be made up in large flows and floods. It cannot constitute 'growth in use' as it is merely managing the way existing access is distributed temporally. Depending on flows, the deficit

may need to be made up over a number of subsequent events minimising the impact on those flows. Rules would be established to determine a suitable access threshold above which the deficit could be provided. Overall take is limited by the size of storage infrastructure, so in extreme flood events it is likely to be common that storages are filled before volumes are extracted.

A payback mechanism would also provide a real level of accountability for invoking S.324 restrictions or First Flush rules, making them less likely to be used casually or for political purposes.

There are already examples of similar mechanisms in place where productive water has been transferred from General Security to environmental user accounts to enable environmental flows or improved timing of such flows, on the basis that the same volume is recredited to General Security from subsequent inflows. This just allows flexibility in management of the water resource and makes common sense. An alternative would be for commercial transactions for the State to buy volumes of water from the licensed owners for downstream transfer as a way for the state to avoid the compensation provisions it may be liable for.

Response to Draft Report Recommendations

1. Ensure that water management provides for and promotes connectivity between water sources. Assess existing rules already addressing connectivity before contemplating new, overlapping requirement.
2. Make any temporary water restrictions required to manage first flush events on a proactive basis (that is, prior to specific forecasts of rain). Agreed
3. Until there are further statutory provisions for first flush event management, publish guidance materials which outline how the NSW Government will use temporary water restrictions to manage first flush events. No case for new rules yet established. High risk of 'mission-creep' and over-riding existing rules.
4. Incorporate learnings from the 2020 Northern Basin First Flush event into systems that will be used to manage any future first flush event that arise in the short term, including by undertaking consultation with communities, Aboriginal people and water users on the objectives, principles and targets. Learning should always occur. Pathways for consultation already exist but aren't always well used or engaged-with.
5. Take steps to ensure the evidence base and methodology for first flush management is quantified, science-based and made publicly available. Strongly agreed. This also requires thorough analysis of existing rules to achieve aims.
6. Review and update incident management systems for managing first flush events. Only where change is required. This is not a re-write of WSP's.
7. Embed the management of first flush events in the regulatory and policy framework for managing drought. An example of the types of matters that could be incorporated into the WM Act, Extreme Events Policy, water sharing plans and incident response guides is set out in the table below. However, any framework adopted should be developed in discussion with communities, Aboriginal peoples and water users. The principles already exist and the consultation has already been done for WSP's.
8. Improve flow forecasting modelling and real-time monitoring capability, including measurement of extractions and the hydrometric system for inflows and monitoring end of system flows. Strongly agree, this is already occurring in part.
9. Ensure that current (and future) reform programs are accompanied by clear implementation plans and regular communication of progress to the public. Strongly agree

10. Improve and resource communication coordination and capability. Strongly Agree

Principles for 1st Flush Management

1. Use existing WSP's first.
2. Outcomes must be evenly distributed and be redressed when one-sided outcomes occur.
3. Flexibility in management must be maintained and improved.
4. Establish a scientifically based set of criteria to determine when such measures should be implemented and when they should be lifted.
5. 1st Flush rules must be to address only extreme exceptional circumstances and not to artificially drought-proof an ephemeral system.