



Carolyn Littlefair
Committee Manager
Legislative Assembly
Standing Committee on Natural Resource Management
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Littlefair

Re: Response to questions raised by the Committee on water sharing planning and management of critical water shortages

Further to the attendance by Mr David Harriss, Commissioner, NSW Office of Water before the Committee on the 10 May 2010, please find the following response to the questions raised by the Committee.

1. Can you briefly describe the process for developing a Water Sharing Plan (WSP) community consultation process occurs? What information is used to inform Plans?

The current process for developing water sharing plans includes several key steps:

- Classification of water sources: This is the first step in developing water sharing rules for each water source. The classification assists in determining the optimal balance between extraction and protection of water for each water source and guides the indicative rules developed by the interagency regional panels for inclusion in the plans.
- The classification is based on a range of information needed to assess socio-economic risk and values such as the magnitude of extractions, and another range of information needed to assess environmental risk and values such as asset identification, watering needs, priority areas and water dependent ecosystems with a focus on threatened species.
- Review of draft rules by the agency panels to recommend rules for each water source.
- Targeted consultation on the draft rules (refer below for further detail).
- Review of comments received during targeted consultation by the interagency regional panels. This informs the development of the draft plan rules that are placed on public exhibition.

- Public exhibition of the draft rules (refer below for further detail).
- Review of comments from public exhibition by the agency panels. This informs the development of the draft plan submitted for approval for making.
- Submission of draft plan for Ministerial approval to be made and commenced.
- Minister for Water seeks the Minister for Climate Change and the Environment's concurrence to make the plan and, if concurrence is provided, the plan is gazetted and commenced.

Community consultation occurs through two processes within the planning process. The first is targeted consultation which focuses on seeking comment from key stakeholders such as water user associations, environment groups, local utilities etc. This consultation is undertaken:

- to provide background as to why the water sharing plans were being developed, how they were developed, what rules were proposed in the various areas and how key stakeholders could provide feedback and advice on preliminary rules, and
- to provide a 'first opportunity' to consult with key stakeholders to test the suitability of the proposed water sources and management zones, and water access and trading rules.

The second formal consultation period is the public exhibition period where the Minister endorses the draft Plan and support material for exhibition over a period (minimum 40 days). This period aims:

- to provide background to stakeholders as to why the water sharing plan is being developed, how it has been developed to date, what rules are proposed in the various areas and how all stakeholders can provide feedback
- to formally consult with a broad range of stakeholders to explain the proposed water sharing rules and how they will be implemented, and
- to seek feedback from stakeholders and the general community about the proposed water sharing rules.

During the public exhibition period, NOW also convenes public meetings to explain the draft water sharing and trading arrangements and seek verbal feedback on the rules.

A large range of reference material is considered in the planning process along with the expert knowledge of the members of the Panels and technical support staff of relevant agencies (mainly DECCW and Industry & Investment, with CMA's as observers).

2. The whole of government submission states that a number of Water Sharing Plans have been suspended for the last 4 – 6 years. Under what circumstances are a plan suspended? Who makes the determination?

A total of five water sharing plans are currently suspended. An additional two plans have had their suspension revoked during this period (Hunter regulated and Ourimbah unregulated WSPs).

Regulated WSPs have been suspended primarily because the allocation rules in the plan cannot be adhered to due to critical human needs and complex socio-economic and community factors that arise during periods of severe water shortage. For example, the suspended plans were commenced in July 2004 and at the time, these plans contained rules that require full allocation to local water utilities and domestic and stock before any water is provided to high security irrigation and so on down the list of priority water users. In cases where plans have been suspended, there has not been sufficient water available to follow these rules. Also, as many local councils and regional communities have advised us during the current drought, there is no point giving 100% allocation to towns if there is no one living around them due to no water. In these unprecedented periods of severe water shortage, the plans were suspended to allow real-time operational improvements, including making bulk releases to minimise transmission losses, manage water in carry over accounts for critical human needs (with appropriate payback strategies) and utilising the other limited available water to share between various consumptive uses in complex ways that cannot be envisaged by nor prescribed in WSPs.

In unregulated WSPs suspension is generally related to the underestimated impact of the prescribed access rules on users during periods of severe water shortage. During suspension periods, the access rules are adhered to as best as possible, with survival watering opportunities made available.

For regulated systems the NSW Office of Water makes the decision on the sharing of available water during suspension periods, but does so after consulting with affected communities by way of Critical Water Advisory Groups. These groups do not make allocation decisions but are asked to comment on the implications of various operational and allocation options being considered. Furthermore, the Office endeavours to operate the system as close as possible to the provisions of the plans.

Determination of plan suspension was historically made by the Minister for Water and amendments to the *Water Management Act 2000* in Spring 2009, now require the concurrence with the Minister for Climate Change and the Environment.

3. Has there been any moves to develop Water Sharing Plans so that they can be flexible enough to still be applied during water shortages?

Yes NOW is considering how WSPs may be developed to better deal with periods of severe water shortage.

The most recent plan where such rules are being considered is the draft Greater Metropolitan Region where rules prescribing limited access during water shortage periods for surface water users are being proposed. Further discussion and consultation during the public exhibition period is required on the practicality and implementability of such rules.

Consideration is also being given to the appropriateness of such rules in other plans under development across NSW and this will be informed by the process under way in the Metropolitan Region.

In addition, the Peel WSP has included provisions where local water utility, domestic and stock and high security licences can have water allocations less than 100% at the same time other licence categories can have allocations greater than zero. This reflects the allocations that have been made during recent drought conditions with very low flows levels in Chaffey Dam and is more consistent with how the suspended plans are operating in other parts of NSW.

It should be noted that the planning process has also evolved since the early plans were developed. For example the classification process provides a more tailored rule development process, whereby the risk of needing to turn plan provisions off during periods of water shortage is minimised.

As part of the audit of implementation of the first round of WSPs (which is currently being finalised for the Minister's consideration) this issue has also been raised, and further recommendations for improvement maybe made and considered.

Modified sharing arrangements for existing water sharing plans, that incorporate the lessons learned during the current drought, can either be incorporated during the life of the plan as amendments or upon revision and remake of the plan at the end of its 10 year life-cycle.

4. How are different water users prioritised? What factors are taken into consideration when prioritising water users?

Water uses are still prioritised in accordance with the provisions of the *Water Management Act 2000*. This does not mean that a higher priority licence category is given a full allocation before the rest. Rather it means that consideration is given firstly to the needs of the higher priority licence category, then to the next and so on.

Under the *WMA2000*, water sharing must protect the water source and its dependent ecosystems and basic landholder rights. The next priority is to share water under other licensed categories, with prioritisation in the following sequence: major utilities, local water utilities/town water supply and domestic and stock users, then high security irrigation, then general security irrigation and then supplementary water licences.

Whilst not specifically defined in the *WMA2000*, the Commonwealth *Water Act 2007* has a definition of critical human needs which includes not only water for direct human consumption but also for those uses which if not supported in some way would have significant consequences of local, state or national interest.

5. This Committee has heard concerns from stakeholders that Water Sharing Plans are overly generous to irrigators. How are the needs of irrigators balanced with needs of other water users?

There are numerous user groups and interests that all depend on access to water. These groups include the environment, recreational users, power generation, potable water supply, irrigated agriculture, mining and other industries.

Irrigators are not singled out as a particular consumptive user group.

Whilst each of these user groups may have seemingly mutually exclusive demands, ultimately there is a generally agreed common goal and that is to ensure an ecologically sustainable catchment that supports viable economic productivity.

In developing water sharing rules the Interagency Regional Panels undertake an initial classification of the water sources which considers the environment and socio-economic values of the water and the risks of extraction to these values. This classification guides the initial rules considered by the Panel e.g if a water source has low environmental values and a high socio-economic dependence on the water extracted the rules would be less stringent (and therefore have less impact on users). In developing appropriate rules consultation can highlight impacts that may not have been identified by the Panel. This information is used to inform any appropriate amendment to the draft water access rules.

There are also more complex and customised sharing and trading rules that may be required to suit unique issues in a catchment. These typically do not fit the simple water source classification model outlined above. In these cases the development of rules that balance protection of the environment whilst minimising socio-economic impacts is particularly challenging. It involves compilation of appropriate data, identification of each user groups' requirements, objective impact analysis of any proposed rules, feedback from the various user groups and ultimately development of a balanced outcome for all users. This balancing act is mindful of the relative priorities between the user groups (as outlined in Q. 4).

Furthermore, under all WSPs in the Murray-Darling Basin, the irrigation extractions have been limited to the levels that occurred under 1993/94 development levels. This is ratified in the 1995 Cap Agreement that NSW has signed. In simple terms, this means that extractions from water sources now covered by a water sharing plan in the MDB have not grown over the last 15 years.

Finally, under drought management where WSPs have been suspended, access to general security irrigation has been zero in many cases with even access to carryover water has been suspended. In some valleys allocations were made to individuals for just that amount of water needed to sustain trees – not any production.

6. Could you further explain the role of Critical Water Advisory Committees (CWAG). Who appoints the Committees? Who is generally represented on the Committees?

As mentioned above the role of the CWAGs is to provide comments and advice to the NSW Office of Water on allocation and operational options, based on local stakeholders' knowledge, experience and circumstances. The Office invites stakeholders to participate in the CWAGs and they consist of a range of water users (eg irrigation, domestic and stock), local government and significant industries in a valley. For example the southern CWAGs have representatives of the rice industry and horticulture and the Lachlan CWAG has a representative from the mining industry. There are also representatives from government agencies representing urban water, environment, and fisheries, as well as State Water. The groups are convened and chaired by NOW.

7. This Committee has heard concerns from a number of stakeholders about the lack of transparency of decision making on Critical Water Advisory Committee's, particularly the Lachlan Critical Water Advisory Committee. What efforts are made to ensure that decisions and advice are transparent?

The discussions of the CWAGs' meetings are minuted and a communiqué is prepared following meetings and posted on the publicly available NOW web page.

NOW believes there is a perception in the Lachlan community that because some of the members of the Lachlan CWAG live in the upper reaches of the river and operational decisions were made to restrict flows to the lower parts of the river that the CWAG somehow influenced or biased the decision. This was not the case. NOW in consultation with State Water made the decision to restrict flows downstream of Condobolin because there was insufficient water in Wyangala Dam to continue to run the regulated river for its full length for a full year. To continue to do so risked the dam being empty by April 2010, with significant implications for the towns supplied by regulated water in the Lachlan Valley (including Cowra, Forbes and Condobolin).

This was simply an important and necessary decision made by NOW to ensure critical human water needs were met during the worst drought on record in the Lachlan Valley.

To address future concerns about perceived upstream bias on the Lachlan CWAG, NOW has called for expressions of interest to represent the domestic and stock users downstream of Condobolin – this is in addition to a person from Booligal also already representing similar interests.

8. What are the governance arrangements for the Advisory Committees? For example, can members note if they might benefit materially from advice given to the Minister?

The water using interests of the various group members is known but is not really relevant as the groups do not make decisions for the valley, they have an advisory role only. If all interests are represented equitably, then the ultimate effect of the advice is that it covers all issues and can be carefully and comprehensively considered by the Minister or NOW in making its decisions.

9. How are the principles of prioritisation and allocation different between Water Sharing Plans and Advisory Committees?

The principles of the prioritisation are set by the *Water Management Act 2000* (see Q.4). The difference between WSP management and drought contingency management is about how available water is shared between different licence categories. Note, again, it is not the role of the CWAG to allocate water – only to advise on the possible implications of the different allocation options.

Water sharing decisions are therefore guided by the advice provided by the CWAG whose members invariably all believe that they are the highest priority. However the water sharing decisions must be consistent with the priorities set out in the legislation, with consideration of the best interests of the environment and dependent users on a whole of catchment scale. Therefore NOW's role is to balance the

individual needs of the members of the CWAG, within the constraints of the legislative framework and the requirements of the whole catchment.

10. What is the process for determining the proportion of planned environmental water in a Water Sharing Plan?

Planned environmental water must be reserved in at least 2 of the following ways (whether by 2 separate ways or a combination of 2 ways):

- (a) by reference to the commitment of the physical presence of water in the water source,
- (b) by reference to the long-term average annual commitment of water as planned environmental water, or
- (c) by reference to the water that is not committed after the commitments to basic landholder rights and for sharing and extraction under any other rights have been met.

Planned environmental water is expressed in different ways for different plans. For example the physical presence of water may be expressed in a regulated plan through an environmental contingency allowance, or in an unregulated plan through the specification of cease to pump rules. The long term average annual commitment to the environment is a function of the long-term average annual extraction limit, which in turn is the outcome of the sharing rules in the plan. Water that is not committed may be represented through accounting rules or available water determinations which limit the take of water.

The final component of water dedicated to the environment as planned environmental water is the outcome of the development of the appropriate water sharing arrangements prescribed in the plan. These arrangements are developed as described in our responses to the questions above.

Should you have any further enquiries about this matter, I have arranged for Lyndal Betteridge, A/Manager Water Planning to assist you. Lyndal may be contacted at the NSW Office of Water's Newcastle Office on telephone number (02) 4904 2535.

Yours sincerely



23.6.2010

David Harriss
Commissioner, NSW Office of Water