

## Re: FPH regulation disallowed

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**From:** Dan Connor  
**To:** Jim Bentley, Mitchell Isaacs  
**Cc:** Emma Solomon, Kaia Hodge, Jacyleen Ong, Madeleine Thomas, Beth Overton, Allan Raine, Vanessa O'Keefe, Libby Bright  
**Date:** Tue, 22 Sep 2020 22:49:56 +0000

The only way to achieve the same intent of this regulation is if NRAR exercise their discretion. There are plenty of good reasons why they would do this, but there are considerable risks regardless of what decision they make. We (DPIE-W/NRAR) will need to have a clear position on this ASAP as all stakeholders will want to know.

**Dan Connor**  
Director, Healthy Floodplains Project Delivery  
Water | Department of Planning, Industry and Environment

Level 3 | 26 Honeysuckle Drive | Newcastle | NSW 2300 | PO Box 2213 Dangar NSW  
[www.dpie.nsw.gov.au](http://www.dpie.nsw.gov.au)



*The Department of Planning, Industry and Environment acknowledges that it stands on Aboriginal land. We acknowledge the traditional custodians of the land and we show our respect for elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.*

**From:** Jim Bentley  
**Sent:** Wednesday, 23 September 2020 8:23 AM  
**To:** Mitchell Isaacs  
**Cc:** Emma Solomon, Dan Connor, Kaia Hodge, Jacyleen Ong, Madeleine Thomas, Beth Overton, Allan Raine, Vanessa O'Keefe, Libby Bright

**Subject:** Re: FPH regulation disallowed

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Let's discuss at water leadership team meeting this morning

Sent from my iPhone

On 23 Sep 2020, at 8:08 am, Mitchell Isaacs <mitchell.isaacs@dpi.nsw.gov.au> wrote:

And the Minister's media release is attached.

Would short term works approvals be possible and achieve the same outcome?

Regards  
Mitchell

**From:** Emma Solomon  
**Sent:** Wednesday, 23 September 2020 7:55 AM  
**To:** Jim Bentley ; Dan Connor  
Kaia Hodae  
**Cc:** Jacyleen Ong ; Madeleine Thomas  
Beth Overton  
Allan Raine ; Vanessa  
O'Keefe ; Mitchell Isaacs  
Libby Bright  
**Subject:** FPH regulation disallowed

Hi all. I assume you have all seen this  
<https://www.smh.com.au/environment/sustainability/nsw-flood-plain-harvesting-curbed-setting-irrigators-up-for-lighter-rules-20200922-p55y7k.html>

Kaia/Dan - are you working on a plan B and do you want us to assist? Subject to legal advice, we could consider whether it is possible to use a s324 order to achieve same outcome.

Regards  
Emma

<230920 Melinda Pavey med rel - SHOOTERS TAKE AIM AT FLOODPLAIN HARVESTING COMPLIANCE IN NSW.pdf>

## Re: NSW flood-plain harvesting curbed, setting irrigators up for tighter rules

**From:** Andy Mannall  
**To:** Kirsty Ruddock  
**Date:** Tue, 22 Sep 2020 21:31:26 +0000

You beat me to it, mass implications as we already have 2 cases where this has occurred

**Andrew Mannall**  
 Lead Investigator, Water Enforcement Taskforce

Natural Resources Access Regulator | Department of Planning, Industry and Environment

2198 Irrigation Way East, Yanco NSW 2705  
[www.dpie.nsw.gov.au](http://www.dpie.nsw.gov.au)



Natural Resources  
 Access Regulator

**To make a confidential report, please contact NRAR on 1800 633 362 or send an email to [nrar.enquiries@nrar.nsw.gov.au](mailto:nrar.enquiries@nrar.nsw.gov.au).**

**From:** Kirsty Ruddock  
**Sent:** Wednesday, 23 September 2020 6:45 AM  
**To:** #Water Enforcement Taskforce  
**Subject:** FW: NSW flood-plain harvesting curbed, setting irrigators up for tighter rules

No doubt we will discuss what this means today at exec meeting, but no exemption

Kirsty

**From:** Grant Barnes  
**Sent:** Wednesday, 23 September 2020 6:39 AM  
**To:** Gregory Abood  
 Kirsty Ruddock  
 Russell Johnston  
 Tim Gilbert  
 Graeme White  
 Margaret  
 Sharon  
 Ryan  
**Subject:** NSW flood-plain harvesting curbed, setting irrigators up for tighter rules

<https://www.smh.com.au/environment/sustainability/nsw-flood-plain-harvesting-curbed-setting-irrigators-up-for-tighter-rules-20200922-p55v7k.html>

Grant Barnes | Chief Regulatory Officer  
 Natural Resources Access Regulator

Level 30 | 12 Darcy St | Parramatta NSW 2150

## Draft Flood Plain Harvesting paper

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**From:** Grant Barnes  
**To:** Craig Knowles  
Craig Knowles  
**Cc:** Graeme White  
**Date:** Fri, 25 Sep 2020 01:49:46 +0000  
**Attachments:** FPHCompliance.docx (33.16 kB)  
:

Good afternoon Craig,  
Attached is an early draft of the Board paper which the Exec will discuss on Monday.  
Cheers

Grant Barnes | Chief Regulatory Officer  
Natural Resources Access Regulator

Level 30 | 4 Parramatta Square, 12 Darcy Street | Parramatta NSW 2150  
Locked bag 5022 Parramatta 2150

Executive Officer - Russell Johnston

Executive Assistant- Sharon Ryan

*The Natural Resources Access Regulator acknowledges that it stands on Country which always was and always will be Aboriginal land. We acknowledge the Traditional Custodians of the land and waters, and we show our respect for elders past, present and emerging. We are committed to providing places in which Aboriginal people are included socially, culturally and economically through thoughtful and collaborative approaches to our work.*



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Access Regulator

**From:** Graeme White  
**Sent:** Friday, 25 September 2020 9:28 AM  
**To:** Sharon Ryan  
**Cc:** Grant Barnes  
**Subject:** FPH paper

Hi Sharon

Paper as promised.

---

Cheers  
Graeme

—  
Graeme White | Director Water Regulation (East) |  
Natural Resources Access Regulator  
11 Farrer Place Queanbeyan | PO Box 189 Queanbeyan NSW 2620 |

W: <https://www.industry.nsw.gov.au/natural-resources-access-regulator>





## Natural Resources Access Regulator

To contact the NRAR Hotline and make a report call: 1800 633 362

### **Floodplain Harvesting – NRAR’s Response to Disallowance**

**Problem statement:**

The Department, Minister’s Office, water users and broader community are calling for NRAR to make its position clear in response to the disallowance of temporary exemption for floodplain harvesting.

**Recommendation:**

The NRAR Board be presented three options as described below and the attached document (Attachment 1) form the basis of the Board paper presented to the Board on Wednesday 30 September 2020.

**Attachment 1: Options for the Board consideration.****Floodplain Harvesting – NRAR’s Options to Respond to Disallowance****Issue:**

On 22 September 2020 the upper house of NSW Parliament moved a disallowance motion on the temporary exemption for floodplain harvesting established on 7 January.

These temporary exemptions were foreshadowed in the NSW Floodplain Harvesting Policy as transitional arrangements to provide legal clarity, prior to licences and approvals being established.

NRAR will deal with all suspicious activity reports of alleged breaches in line with their published regulatory policy.

**Suggested approaches available to NRAR:****Option 1:**

NRAR could indicate that as floodplain harvesting is now not exempt, and licenses and approvals are not issued that taking water in this manner is potentially a breach of the *Water Management Act 2000*.

NRAR would respond to suspicious activity reports received by NRAR using its current risk based processes, and where a breach is confirmed, take proportionate compliance action in accordance with NRAR’s published Regulatory Policy (ie. take seriousness, culpability, community interest and willingness to cooperate into account). NRAR may also undertake proactive compliance in response to intelligence.

**Option 2:**

As a temporary measure NRAR requests that those that are taking floodwater consistent with the floodplain harvesting policy identify their intent to do so at the start of an event and then take all reasonable steps to estimate the volume of water they have taken onto their farms.

Those water users that:

1. Advise of the intent to take water at the start of an event before active take (in the case of passive take as soon as reasonable possible)
2. Take all reasonable steps to estimate the volume and provide to NRAR within 48 hours, and
3. Have eligible works and have taken all reasonable steps to obtain a license in line with the floodplain harvesting policy

NRAR would consider these water users on a pathway to compliance.

In line with regulatory policy those water users would be provided guidance, education and information.

Those water users that chose not to be on a pathway to compliance will be subject to enforcement actions consistent with our Regulatory Policy up to and including prosecution.

**Option 3:**

Allow the take of water for floodplain harvesting by water users with a registration of interest lodged with the Department and in line with the Floodplain Harvesting Policy without any further constraints or conditions. Those undertaking the activity that are not involved may be subject to a compliance response as a result of any a suspicious activity reports received by NRAR. NRAR would rely on regulatory policy to determine what response is appropriate.

**Summarised analysis of options:**

Option	Pros	Cons
1	NRAR seen as a strong and independent regulator.  Strongly supported by some stakeholders.	Inconsistent with Government policy.  Create much angst with the regulated community.  Create WHS risks for staff particularly in the Northwest of NSW.
2	Strongly aligned with Government policy.  Encouraging water user to be actively involved in compliance and changes that are coming.  Deals with some of the concerns of stakeholders that have been raise during the enquiry.	May get criticised for lack of direct action in relation to activity that is a breach of current Water Management Act.  Water users will see as reporting as onerous without the benefit of licence.  Without the implementation of the measurement policy, reasonable efforts to estimate volume may be seen an ineffective.
3	Less resistance from water users	Be inconsistent with the will of the Parliament and ignoring concerns  Criticised for allowing this activity to go on unconstrained, unmeasured and unlicensed activity to continue unabated

## Attachment 2:

## PROBLEM STATEMENT:

The Flood Plain Harvesting disallowance motion has meant current FPH water take previously exempt can no longer rely on this exemption.

This means that from 23 September 2020 up to the time they hold a FPH licence (estimated as July 2021) there is no exemption in place as was envisaged under the Floodplain Harvesting Policy. This means if water users take FPH water between now and when they get issued and hold a licence and works approvals, that take would be deemed as a breach of the *Water Management Act 2000*.

## Problem analysis:

<p>Context (so what? Why does it matter, risk, size/scale, public interest, effect on transparency, accountability, efficiency &amp; effectiveness, integrity of law...)</p>	<p>Approximately 500 water users in the north valleys are captured by this problem</p> <p>Each have differing levels of risk to other water users</p> <p>Some of these farms may be unviable due to the disallowance motion – with the potential to impact farm productivity significantly.</p> <p>NRAR is known to enforces the law</p> <p>Perceptions of lack of regulation or the integrity of the regulatory framework exist by the general public, dry land water users, other water users in the Nth valleys that are complying with the law and water users in the southern basin.</p> <p>High political interest and media interest</p> <p>DPIE roles is to make the policy and the laws</p> <p>WNSW role is to implement the rules in FPH licences</p> <p>NRAR role is all the compliance and enforcement of FPH</p> <p>Public and industry don't necessarily understand roles and responsibilities in govt.</p> <p>Non urban metering reforms are happening in parallel where a pathway to compliance model has been adopted for those who will find themselves non compliant because of factors that are completely out of their control.</p>	
<p>List causes &amp; owners of the problem</p> <p>Who owns the problem?</p>	<p><u>Causes</u></p> <ol style="list-style-type: none"> <li>1. Disallowance motion</li> <li>2. Need for water to operate</li> </ol>	<p><u>Owners</u></p> <ol style="list-style-type: none"> <li>1. NSW govt</li> <li>2. Water users</li> </ol>
<p>List impacts &amp; owners</p> <p>What is the impact and who does it affect?</p>	<p><u>Impacts</u></p> <ol style="list-style-type: none"> <li>1. Water access</li> <li>2. Integrity of regulatory framework</li> <li>3. Reputation</li> <li>4. Economy</li> </ol>	<p><u>Owners</u></p> <ol style="list-style-type: none"> <li>1. Water users</li> <li>2. DPIE, NRAR, govt</li> <li>3. NRAR, DPIE, WNSW, Govt</li> <li>4. Water users, public, industry, NSW</li> </ol>



	5. Sense of fair 6. Less water to access	5. Other water users 6. Other water users
Benefits to NRAR How does it benefit us by addressing specific causes and impacts?	<p>Build public confidence in how NRAR regulates water in NSW</p> <p>Regulate a legacy issue with confidence and fairness</p> <p>Use as a promotional piece to NRAR's independence</p> <p>Set up regulatory position for the future</p> <p>Build NRAR's reputation as a fair and independent regulator</p>	
Our solution specifications (solution priority, timing, quality, communication & sys., staff, process & capabilities)	<p>Provide regulatory certainty to water users and the public</p> <p>Uphold fair use of water</p> <p>Uphold NRAR regulatory policy to inform reg response – willingness, culpability and extent of impact</p> <p>Consistent with previous approaches that involve pathway to compliance</p> <p>Interim – short term fix – a long term fix is not required</p> <p>Establish a regulatory approach to become aware of compliance, guidance on regulatory discretion when determining responses to non compliance</p> <p>Clear stakeholder engagement and communication plan</p> <p>Regulatory scope is limited to future harvesting activities and take.</p>	
Recommendations / solution pathway (Who owns the solution? – ie the one who owns the cause & how do we get them there?)	<p>Three options</p> <ol style="list-style-type: none"> <li>1. NRAR could indicate that as floodplain harvesting is now not exempt, and licenses and approvals are not issued that taking water in this manner is a breach of the <i>Water Management Act 2000</i>.</li> <li>2. NRAR could describe a pathway to compliance for water users. In line with regulatory policy those water users would be provided guidance, education and information. Those water users that chose not to be on a pathway to compliance will be subject to enforcement actions consistent with our regulatory policy.</li> <li>3. NRAR could indicate that it would consider the take of water for floodplain harvesting by water users in line with the Floodplain Harvesting Policy as a low risk activity. Those undertaking the activity that are not involved may be subject to a range of compliance responses as a result of any a suspicious activity reports received by NRAR.</li> </ol>	
	<p>Harvesting Policy as a low risk activity. Those undertaking the activity that are not involved may be subject to a range of compliance responses as a result of any a suspicious activity reports received by NRAR.</p>	

**Attachment 3:**

Further background reading:

Floodplain harvesting policy

[http://www.water.nsw.gov.au/\\_data/assets/pdf\\_file/0012/548499/floodplain\\_harvesting\\_policy.pdf#:~:text=The%20purpose%20of%20the%20NSW%20Floodplain%20Harvesting%20Policy,meet%20the%20objectives%20of%20the%20National%20Water%20Initiative.](http://www.water.nsw.gov.au/_data/assets/pdf_file/0012/548499/floodplain_harvesting_policy.pdf#:~:text=The%20purpose%20of%20the%20NSW%20Floodplain%20Harvesting%20Policy,meet%20the%20objectives%20of%20the%20National%20Water%20Initiative.)

Floodplain Management Program

<https://www.industry.nsw.gov.au/water/plans-programs/healthy-floodplains-project/harvesting>

Floodplain Harvesting Action Plan

[https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0015/272301/floodplain-harvesting-action-plan.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0015/272301/floodplain-harvesting-action-plan.pdf)

Floodplain Harvesting Measurement Policy

[https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0005/317093/floodplain-harvesting-measurement-policy.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0005/317093/floodplain-harvesting-measurement-policy.pdf)

Natural Resources Access Regulator  
Department of Planning, Industry & Environment  
Level 3 | 26 Honeysuckle Drive | Newcastle | NSW 2300

W: [www.industry.nsw.gov.au](http://www.industry.nsw.gov.au)

**From:** Gregory Abood  
**Sent:** Tuesday, 29 September 2020 5:10 PM  
**To:** Sheree Jones  
Alison Collaros  
Vickie Chatfield  
**Cc:** Ryan Shepherd  
Rachel Daly  
**Subject:** Fw: Letter from SRI

Hi Sheree, Alison and Vicki

FYI. Grant took a call from Tim Horne about this matter this morning and discussed the matter. Shortly after Grant's conversation with Mr Horne, Mr Horne contacted the enquires line and spoke to a duty officer who (correctly) took the inquiry on notice.

To uphold clarity and consistent messaging to Tim Horne, can you instruct SST staff and duty officers to

1. If they receive a call from Tim Horne or any call inquiring about the FPH and Water Act, that they take the call on notice; and
2. Inform Graeme, Grant and I immediately of the contact, the name of the person who initiated it and our response to that contact.

Happy to discuss

Thanks

Greg A

**Gregory Abood** | Director Water Regulation West

**Natural Resources Access Regulator**

Department of Planning, Industry & Environment | Water

Level 30 | 11 Darcy St | Parramatta NSW 2150

W: <https://www.industry.nsw.gov.au/natural-resources-access-regulator>

*I acknowledge Aboriginal people, the nations first peoples and their culture, the oldest living and continually practiced culture on earth - ngali winanga-l guwaa-l begaay - we listen and talk to the river.*

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# NRAR's position on enforcing water laws remains clear after disallowance

Grant Barnes

COMMENT 16 Oct 2020, 4 p.m.

News





 The Natural Resources Access Regulator's chief regulatory officer Grant Barnes.



Aa

The Natural Resources Access Regulator (NRAR) was established in 2018 as an independent, transparent and effective regulator responsible for the enforcement of water management legislation in NSW.

## News

Following the disallowance of the Water Management (General) Amendment

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understand water users and landholders across the state are facing uncertainty regarding floodplain harvesting.

Water management laws are complex.

This is why NRAR approaches all investigations on a case by case basis, including assessing each individual landholder's circumstances.

We will continue our hard work to investigate alleged breaches of water law. We use sophisticated technologies - including satellite imagery, drone surveillance and remote sensors for water monitoring to support this essential work.

While the NSW Government is actively undertaking the licensing of floodplain harvesting works, NRAR's regulatory priorities remain focused on unlawful water take rather than eligible structures which may be licenced within months.

As the independent water regulator in NSW, we are responsible for enforcing water laws in NSW and remain independent from the policy decisions made within the NSW Government.

NRAR doesn't make the law, we enforce it. As it currently stands, the law will be enforced in the event of serious, substantiated and wilful non-compliance.



Clearing muddied waters

9 months, 2 weeks ago



Exceptional bulls on offer in Devon Court's...

BRANDED CONTENT

The ambiguous environment the disallowance has created will be considered through our investigations, alongside key regulatory principles of severity, culpability and attitude to non-compliance.

Until floodplain harvesting licences are issued in July 2021, our team will continue to enforce the law.

In our experience, most water users want to do the right thing. We will continue to work with those who may need our assistance to get into compliance. It's only a small minority of water users that commit acts of wilful non-compliance and they remain the focus of our enforcement efforts.

A fair go for all has underpinned the hard work NRAR has undertaken across NSW since our inception in April 2018.

We wholeheartedly agree with this community expectation, which is reflected in the 1367 investigations, 496 enforcement actions including the commencement of 15 prosecutions in the 2019-20 financial year. This demonstrates NRAR's position as a firm, yet fair regulator.

From the licensing of water allocations, to publicising water trading activity and enforcing limits on licensed water take, we have always acted to ensure that the rules are fairly applied and rigorously enforced - floodplain harvesting will be no exception.

- Grant Barnes is NRAR's chief regulatory officer and is responsible for the day-to-day operations of the regulator which is charged with adding transparency and building community confidence in water compliance and enforcement in NSW.

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## Re: SRI response

**From:** Grant Barnes  
**To:** Russell Johnston  
**Date:** Thu, 22 Oct 2020 04:35:45 +0000  
**Attachments:** RESPONSE Southern Riverina Irrigators (SRI) regarding enforcement of Floodplain Harvesting breaches.GRANTBdocx.docx (233.86 kB)

here you go. Please carefully review. Edits in tracked changes.  
 Grant Barnes | Chief Regulatory Officer  
 Natural Resources Access Regulator

Level 30 | 4 Parramatta Square, 12 Darcy Street | Parramatta NSW 2150  
 Locked bag 5022 Parramatta 2150

Executive Officer - Russell Johnston

Executive Assistant- Sharon Ryan

To contact the NRAR Hotline and make a report call: 1800 633 362  
[Read the NRAR Progress Report 2019-20](#)

*The Natural Resources Access Regulator acknowledges that it stands on Country which always was and always will be Aboriginal land. We acknowledge the Traditional Custodians of the land and waters, and we show our respect for elders past, present and emerging. We are committed to providing places in which Aboriginal people are included socially, culturally and economically through thoughtful and collaborative approaches to our work.*



Natural Resources  
 Access Regulator

**From:** Russell Johnston  
**Sent:** Thursday, 22 October 2020 10:59 AM  
**To:** Grant Barnes  
**Subject:** Re: SRI response

OK, see attached for my draft response and the incoming PDF.  
 RUSS

**From:** Grant Barnes  
**Sent:** Thursday, 22 October 2020 9:47 AM  
**To:** Russell Johnston  
**Subject:** Re: SRI response

### Dam numbers

560 storages >1000ML Northern Floodplain Harvesting - July 2021 monitoring deadline

840 storages <1000ML Northern Floodplain Harvesting - July 2022 monitoring deadline

Grant Barnes | Chief Regulatory Officer  
 Natural Resources Access Regulator

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Executive Officer - Russell Johnston

Executive Assistant- Sharon Rvan

*The Natural Resources Access Regulator acknowledges that it stands on Country which always was and always will be Aboriginal land. We acknowledge the Traditional Custodians of the land and waters, and we show our respect for elders past, present and emerging. We are committed to providing places in which Aboriginal people are included socially, culturally and economically through thoughtful and collaborative approaches to our work.*



Natural Resources  
Access Regulator

**From:** Russell Johnston  
**Sent:** Thursday, 22 October 2020 8:36 AM  
**To:** Grant Barnes  
**Subject:** SRI response

Morning,

See below for my initial thoughts on the response to SRI (incoming attached). Happy to keep writing, but theres been so many words created to date, I thought brevity might be a better option. It takes mainly from the OpEd. The third sentence id Graemes utterance the other day - could be too definitive??

*Thank you for your letter of 24 September 2020 seeking clarification of the position of NRAR on the legality of flood plain harvesting pursuant to the Water Act 1912.*

*Following the disallowance of the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020 last month, we understand water users and landholders across the state are facing uncertainty regarding floodplain harvesting.*

*What remains unchanged is that all water take in NSW must be undertaken in accordance with the conditions of an access licence, works/use approval, exemption or basic landholder right.*

*The ambiguous environment the disallowance has created will be considered through our investigations, alongside key regulatory principles of severity, culpability and attitude to non-compliance. Until floodplain harvesting licenses are issued in July 2021, our team will continue to enforce the law.*

*For clarity, its important that I place NRAR in the appropriate context regarding this matter. NRAR doesn't make the law, we enforce it. As the independent water regulator, we are solely responsible for enforcing water laws in NSW and remain independent from the policy decisions made within the NSW Government.*

*The Minister for Water is considering options to provide certainty and enforceability of floodplain harvesting provisions – we await the outcome of these efforts and the clarity they will provide.*

**Russell Johnston | Executive Officer**  
Natural Resources Access Regulator  
NSW Department Planning, Industry and Environment  
4 Parramatta Square, 12 Darcy St. Parramatta NSW 2150



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## Natural Resources Access Regulator

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MF19/3237

Ms Sophie Baldwin  
Executive Officer  
Southern Riverina Irrigators

By email:

Dear Ms Baldwin

### **Enforcement of water law in NSW with regards to Floodplain Harvesting**

Thank you for your letter of 24 September 2020. You have queried my agencies approach to the enforcement of water law in NSW as it applies to Floodplain Harvesting (FPH).

Following the disallowance of the *Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020* last month, we understand water users and landholders across the state are facing uncertainty regarding floodplain harvesting.

Water management laws are complex. Water actively taken in NSW must be done so in accordance with the conditions of an access licence, works/use approval, exemption or basic landholder right.

We will continue our hard work to investigate alleged breaches of water law as we have always done. On a case by case basis; in accordance with our regulatory principles, policy and priorities, consistent with our enforcement guidelines, and upon assessment of individual circumstances.

While the NSW Government is actively undertaking the licensing of floodplain harvesting works, NRAR's regulatory priorities remain focused on unlawful water take rather than eligible structures which may be licenced within months.

We apply a risk-based approach to decisions about which matters we pursue. With the aim of delivering the best outcomes for the people of NSW, the environment and water users. Water is a precious, community owned resource and we take our role as NSWs independent regulator very seriously.

In regard to your specific questions, I can confirm that there are:

- 373 storages greater than 1000ML currently being assessed for water supply work approvals under the Healthy Floodplains programme and which will need measuring and monitoring from July 2021.
- 693 storages less than 1000ML currently being assessed for water supply work approvals under the Healthy Floodplains programme and which will need measuring and monitoring from July 2022.



## Natural Resources Access Regulator

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Please not  
these figures are preliminary and subject to change  
as the assessment process progresses through to July 2021.

NRAR will enforce the measurement and monitoring requirements specified in the NSW Floodplain Harvesting Policy and Floodplain Harvesting Implementation Guide, as published on the Department of Planning, Industry and Environment website.

Yours sincerely

**Grant Barnes**  
**Chief Regulatory Officer**  
Date

## Floodplain harvesting

### Frequently asked questions



October 2020

## Update on the status of the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020

*This document provides up to date information that address questions about floodplain harvesting following the disallowance of the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020.*

### What has happened to the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020?

The regulation was disallowed by the Upper House on 22 September 2020.

### Why did we have the regulation?

We had the regulation to provide a clear and legally enforceable transitional arrangement for floodplain harvesting under the *Water Management Act 2000*. The regulation provided legal certainty that some (but not all) forms of floodplain harvesting could be carried out in reliance on the exemption, until the long-term solution of issuing licences is put into place.

### What is the impact of the disallowance?

The disallowance reinstates the confusion that existed prior to the regulation about the legality of floodplain harvesting until it is licensed under the *Water Management Act 2000*. The fact that the NSW Floodplain Harvesting Policy has not been fully implemented creates inconsistency between the offence provisions in the Act and the historically legitimate take of water through floodplain harvesting.

It has not yet been possible for any landholder to obtain the licences and approvals required for floodplain harvesting. Although there is a process underway to grant these licences and approvals in the Northern Basin by 1 July 2021, there is no similar process underway for the Southern Basin. In effect, if we do nothing, historically legitimate floodplain harvesting in the Southern Basin will still be uncertain post 1 July 2021.

### What is being done to clarify the rules prior to licensing?

The NSW Government intends to make another exemption regulation that addresses the concerns expressed through the recent parliamentary inquiry.

### Why is the legality of floodplain harvesting now 'unclear'?

The regulation provided a clear legal basis for certain types of floodplain harvesting, so when the regulation was in place, it meant that floodplain harvesting of that nature was clearly a legal activity. Now that the regulation has been disallowed, the lawfulness of floodplain harvesting is once again unclear.



## Floodplain harvesting

### Frequently asked questions



### How much water can legally be taken by floodplain harvesting?

Limits on the total amount of water that can be taken from a water source, including by floodplain harvesting, are set by both NSW Water Sharing Plans and the Basin Plan.

Issuing floodplain harvesting licences will set specific limits for floodplain harvesting within those total limits. Since 2013, the NSW Government has had a clear plan to do this - by implementing the NSW Floodplain Harvesting Policy.

### What happens if floodplain harvesting licences are not in place on 1 July 2021?

Any unmanaged growth in floodplain harvesting will have to be offset by reducing the volume of water that can be taken under supplementary licences in the same water source – as per current Water Sharing Plan rules. This ensures that downstream water users will not be adversely affected by unmanaged growth in floodplain harvesting.

### What happens long-term if floodplain harvesting is never licensed or exempt?

If floodplain harvesting is never licensed or exempt, then the volume of water historically taken from floodplains could potentially be taken from rivers and creeks instead. This would come at a very significant cost to all water users in the Basin as it would significantly diminish river flows. It is in the best interest of all stakeholders that historically legitimate floodplain harvesting be licensed, measured and managed within legal limits.

### Re-affirming our commitment

The NSW Government remains fully committed to licensing floodplain harvesting in the Northern Basin by 1 July 2021 in accordance with the NSW Floodplain Harvesting Policy. The process and timeframes are outlined in the Floodplain Harvesting Action Plan. Implementing the floodplain harvesting policy will;

- Reduce floodplain harvesting to legal limits, improving environmental and connectivity outcomes
- Provide clarity for all waters and the regulator
- Allow for robust near real-time measurement
- Provide a foundation for adaptive management

As evidence of this commitment, a range of documents supporting public consultation on the draft water sharing rules for the Border River Valley were published on 6 October 2020.

© State of New South Wales through Department of Planning, Industry and Environment !!<insert year>!!. The information contained in this publication is based on knowledge and understanding at the time of writing (!!<Month YYYY>!!). However, because of advances in knowledge, users are reminded of the need to ensure that the information upon which they rely is up to date and to check the currency of the information with the appropriate officer of the Department of Planning, Industry and Environment or the user's independent adviser.

## Re: Irrigators presentation

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**From** Keeley Reynolds

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**To:** Russell Johnston

Stuart Ronan

**Date:** Fri, 06 Nov 2020 02:55:48 +0000

Hi all,

Sorry for the delay in coming back to you with these notes. Please let me know if you have any Qs.

The energy in the room was quite positive and amicable, there was only one question from Jon-Maree Baker (I believe from Namoi Water) which I would classify as hard-line (I've included the questions below). For the most part, they directed most of their questions toward Grant (rather than Dan), which was perhaps a result of him being in the room.

### Key questions:

**Jim Cush:** Grant, (referring to the compliance triangle) after you have offered assistance, have there been cases of reoffending? I would be disheartened to see that.

**Michael (unsure of surname):** Does NRAR have a proactive arm people can approach and seek advice?

**Tom:** Feedback from our members is that it is difficult to get feedback/support from NRAR on licencing matters.

**Jenny:** I would like further clarity on how NRAR and the department will deal with the issue of harvestable rights.

**Joe:** apart from the uncertainty, we have a real issue with making law before we implement rules. i.e. Barwon-Darling and IDECS (unsure of correct spelling?). Is there a pathway forward that avoids legislation for FPH?

**Mary from the Lachlan:** we have 3 floodplain management plans, even if the consultation planned happened there is still a risk that there won't be clarity. Is there a way to provide more communications about what the position is and what will be enforced?

**Name unknown:** if it rains tonight and floods tomorrow, my guys will go back to living with the regulation before the new regulation came in. What is NRAR's approach going to be in a practical sense?

**Claire Miller:** For Dan, you talked about the need to start a conversation and make the case for transitional arrangements in the South? If you don't have a transitional pathway in the South, where does that leave everyone down there?

**Claire Miller:** For Grant, you're not going to be focused on works that will be licenced in a few months, what will you focus on?

**Shane:** stated that he recalled NRAR's manner on farm had been very harsh in the past. He asked if that had changed now.

**Jon-Maree:** Jon-Maree accused the government of creating uncertainty around the interpretation of the law. She argued her understanding of the law was quite clear and asked Dan to point out "exactly where in the 2014 amendment overrides the need to have a licence?"

**Jon-Maree:** "Grant, I recently sat in a legal seminar where NRAR stated they don't make the law but are actually involved in "tweaking" the law to make it easier to prosecute. How can you say you are independent if you are involved in "tweaking" the law?"

**Unknown woman:** Is capturing water on farm taking water? Do we need to go and look at the definitions in the act? What happens to growers who have been pumping water from rainfall into storages? Is it legal or is it illegal? When it comes to those storages what are the consequences for storages that aren't on designated floodplains?

**Unknown man:** If the MDBA is in the process of setting up a compliance arm what will your interactions with them be like?

**Keeley Reynolds**

**Senior Communications Officer**

Natural Resources Access Regulator | Department of Planning, Industry and Environment



**From:** [DPIE Water Relations Mailbox](#)  
**Subject:** FLOOD EVENT IN GWYDIR VALLEY  
**Date:** Thursday, 17 December 2020 6:28:36 PM  
**Importance:** High

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## FLOOD EVENT IN GWYDIR VALLEY

There are reports of heavy rain in the Gwydir region which could lead to overland flows.

Due to the disallowance of the government's regulation amendment, which temporarily exempted certain floodplain works from licencing requirements, any landholder considering floodplain harvesting during this event may wish to seek their own legal counsel.

For information on the status of the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020 visit <https://www.industry.nsw.gov.au/water/plans-programs/healthy-floodplains-project/nsw-floodplain-harvesting-policy/faqs>

For information on the Floodplain Harvesting Policy visit <https://www.industry.nsw.gov.au/water/plans-programs/healthy-floodplains-project/nsw-floodplain-harvesting-policy>

**From:** DPIE Water Relations Mailbox  
**Subject:** Update on information supplied regarding the Gwydir flood event  
**Date:** Friday, 18 December 2020 5:21:58 PM

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## Update on information supplied regarding the Gwydir flood event

The department has received a number of enquiries about the possibility of an embargo related to the current flood event. We confirm that the department will not be issuing an embargo (also known as a temporary water restriction) for the Gwydir Valley. An embargo is not currently required to meet critical human or environmental water needs within or downstream of the Gwydir Valley. The rules of relevant water sharing plans and water users' licence conditions continue to apply.

Due to the disallowance of the government's regulation amendment, which temporarily exempted certain floodplain works from licencing requirements, the lawfulness of floodplain harvesting once again became unclear. Any landholder considering floodplain harvesting during this event may wish to seek their own legal counsel.

For clarity, this is advice, it is not a directive. The context of this advice is that the legality of floodplain harvesting prior to licences and approvals being established is uncertain. This has been communicated since the disallowance of the Government's temporary exemption for floodplain harvesting by the NSW Upper House on 22 September 2020. The NSW Government remains fully committed to licensing floodplain harvesting in the northern Basin by 1 July 2021.

For information on the status of the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020 visit <https://www.industry.nsw.gov.au/water/plans-programs/healthy-floodplains-project/nsw-floodplain-harvesting-policy/faqs>

In response to questions about NRAR's processes, we have permission to share the NRAR's statement from 18 December below:

*Water taken in NSW must be done so in accordance with the conditions of an access licence, works/use approval, exemption, or basic landholder right.*

*NRAR expect water users to understand their obligations and to comply with the law. Any landholder considering floodplain harvesting during this event may wish to seek their own legal counsel.*

*NRAR will continue to investigate alleged breaches of water law as we have always done. On a case-by-case basis in accordance with our regulatory principles, enforcement guidelines, and upon assessment of individual circumstances.*

*In circumstances where non-compliance is encountered, we will exercise our discretion. As we have demonstrated in the 1,400 cases investigated in the last year, resulting in NRAR taking 500 compliance actions, including prosecutions.*