

**Submission  
No 2**

**INQUIRY INTO IMPACT AND IMPLEMENTATION OF  
THE WATER MANAGEMENT (GENERAL) AMENDMENT  
(EXEMPTIONS FOR FLOODPLAIN HARVESTING)  
REGULATION 2020**

**Name:** The Hon. Melinda Pavey MP, Minister for Water

**Date Received:** 29 May 2020

---

# **NSW Legislative Council's Regulation Committee inquiry on the impact and implementation of the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020.**

## **DPIE-Water Submission**

### **Healthy Floodplains Project**

The Healthy Floodplains Project is reforming the management of water on floodplains through development and implementation of the floodplain management program and floodplain harvesting program.

This project is being implemented over a six-year period across the five northern valleys in NSW's Murray–Darling Basin: the Barwon–Darling, Border Rivers, Gwydir, Macquarie and Namoi valleys. Up to \$50 million has been allocated for this project.

### **NSW Floodplain Harvesting Policy**

Floodplain harvesting is the capture and use of water flowing across a floodplain. This is an important source of water for industry, particularly in the Northern Murray–Darling Basin areas of NSW.

Floodplain harvesting is the last substantial capture of water to be licensed in the Basin. Bringing floodplain harvesting into the licensing system will improve accounting and compliance of water use in NSW. The NSW Floodplain Harvesting Policy (the Policy) provides the framework for licensing floodplain harvesting within designated floodplains in NSW. It was introduced in 2013 to stop unconstrained floodplain harvesting by bringing it into a licensing framework. The Policy is currently being implemented in the designated floodplains of the five northern NSW valleys.

There has been growth in floodplain harvesting across many parts of the NSW northern Basin that has caused an increase in water diversions above legal limits set under NSW Water Sharing Plans and the Commonwealth Basin Plan. This growth will need to be offset in order to comply with Water Sharing Plans and take it back to Basin Plan limits.

Floodplain harvesting licences and approvals for all five northern basin valleys are scheduled to be in place by July 2021.

### **Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020**

#### Background

The Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020 (the Regulation) is made under *Water Management Act 2000*, including section 400 (the general regulation-making power). Specifically, section 400(2) allows for the regulations to be made that exempt a person or thing from complying with the *Water Management Act 2000*.

The Regulation establishes a limited temporary exemption from requirements under the *Water Management Act 2000* to hold a water access licence to take water from a water

source for the purpose of floodplain harvesting and to hold a water supply work approval to use a work for that purpose.

In effect, the temporary exemption permits floodplain water to be harvested without a water supply work approval or an access licence if the works used to harvest the water:

- are located on a floodplain, and
- were constructed on or before 3 July 2008, or were constructed after 3 July 2008 in accordance with an approval under the Act or a licence or approval under Part 2 or Part 8 of the Water Act 1912 for which an application was pending at 3 July 2008.

The Regulation will cease to apply to a floodplain when floodplain harvesting licences and associated water supply work approvals are issued for that floodplain via implementation of the NSW Floodplain Harvesting Policy.

### Impact

#### *Temporary water access licence exemption for floodplain harvesting*

The Regulation provides clarity that certain water users in NSW can undertake floodplain harvesting legally using eligible works until implementation of the Policy is complete.

The Regulation will cease to apply in each floodplain valley as implementation of the Policy is complete in that valley and floodplain harvesting licences have been issued. The regulation that will be used to enable the issuing of floodplain harvesting licences for each valley will include a provision to switch off the water access licence exemption for that valley.

#### *Temporary water supply work approval exemption for floodplain harvesting*

The Regulation provides clarity that certain water users can undertake floodplain harvesting using eligible works legally until implementation of the Policy is complete. For the purpose of the Regulation, eligible works are those that are located on a floodplain and were constructed on or before 3 July 2008, or were constructed after 3 July 2008 in accordance with an approval or licence for which an application was made but not yet determined on 3 July 2008.

The Regulation will cease to apply in each floodplain valley as implementation of the Policy is complete in that valley and water supply work approvals have been issued. The regulation that will be used to enable the issuing of floodplain harvesting licences for each valley will include a provision to switch off the water supply work approval exemption for that valley.

### The exemptions are temporary and consistent with existing Government Policy

Floodplain Harvesting has to date been outside the water licensing framework under the *Water Management Act 2000*. The exemption is a holding pattern only, effectively halting the potential for future growth in FPH, it will be replaced by the licences upon full implementation of the Policy.

The Regulation is required under the Policy as a transitional arrangement to completing the licensing process. These transitional arrangements will ensure that there is more certainty for water users and that the Natural Resources Access Regulator (NRAR) has clear and unambiguous rules to follow until the Policy is implemented.

Temporarily exempting certain users from the licensing requirements will not result in more water being taken by FPH. The Regulation will restrict current floodplain harvesting where it has grown and will also help guard against further growth.

## Implementation

### ***Current status and next steps***

Implementation of the Policy is planned to be completed in five northern inland valleys [Border Rivers, Gwydir, Namoi, Barwon-Darling and Macquarie] by June 2021. The Regulation will cease to apply in each of these valleys once implementation is complete.

For all other areas of NSW, the Regulation will continue to apply until such time as the Government either implements the Policy in the relevant area (by issuing licences and approvals) or ceases the Regulation.

### **First Flush Protection**

The s.324 Order restricting Floodplain harvesting in the Northern Basin could not have been practically achieved without the temporary exemption being put in place.

Works used for floodplain harvesting have historically been designed to maximise the capture of floodplain water, not prevent or exclude it. Without water supply approvals in place (existing approvals are for flood works only), there is no way to condition these works so that they do not take water. Recognising this, the intent of these restrictions was to prevent floodplain harvesting where it was both possible and practical to do so. The temporary exemption provides legal clarity about the taking of floodplain harvesting through passive take setups.

This Order was crucial for maximising the volume of floodplain water that could enter rivers and creeks in order to assist in providing a 'first flush' flow along the entire length of the Barwon and Darling Rivers to meet critical human and environmental needs.

When fully implemented, the Policy will ensure that the volume of floodplain harvesting that can be taken in future does not exceed the legal limits for water extractions set by NSW Water Sharing Plans and the Basin Plan.