

**Submission
No 7**

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

Organisation: Namoi Water

Date Received: 1 June 2020



namoi water

28th May 2020

Mr Mick Veitch MLC
Chairman
Regulation Committee
Parliament House
Sydney NSW 2000

Dear Mick,

**Re: Inquiry into the impact and implementation of the Water Management (General)
Amendment (Exemptions for Floodplain Harvesting) Regulation 2020**

Namoi Water writes to you regarding the Upper House inquiry into the exemption for Floodplain Harvesting (FPH). We represent water license holders in the Namoi Region, many of whom own land on the floodplains of the Upper and Lower Namoi. Floodplain harvesting (FPH) is an extremely complex form of water take and therefore we are grateful for the opportunity to submit our experience on this issue.

1. *What is your view on the way the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020 was implemented?*

It is not feasible, nor a legal requirement for government to publicly consult on every single regulatory change made. However it is an accepted practice to engage with stakeholders on changes that impact their ability to comply with new regulatory requirements.

The NSW Government has undertaken multiple consultation processes across NSW on FPH particularly around the policy settings and its implementation. The 2013 Floodplain Harvesting policy states;

“Providing a temporary exemption for floodplain harvesting from specified licensing and approvals requirements of the Water Management Act 2000.



An exemption is required so that floodplain harvesting by works constructed on or before 3 July 2008 can continue while the policy is being implemented. The exemption will apply only for the time required to issue work approvals, amend water sharing plans and issue floodplain harvesting access licences. Once implementation has concluded for a given valley, the exemption will lapse and all floodplain harvesting activities will require a water supply work approval and a floodplain harvesting water access licence authorised under the Water Management Act 2000.”

That the department intended to implement a State-wide exemption as an interim measure prior to licencing is not an issue for stakeholders in the Namoi. This was clearly communicated in multiple state wide public consultation meetings. Take under the Water Act 1912 (NSW) via Part 8 and 2 approvals was exempt from requiring a licence (as are many other legitimate water use activities) and the transitional arrangements provided that until licenced through the Health Floodplains project, the exemption would continue.

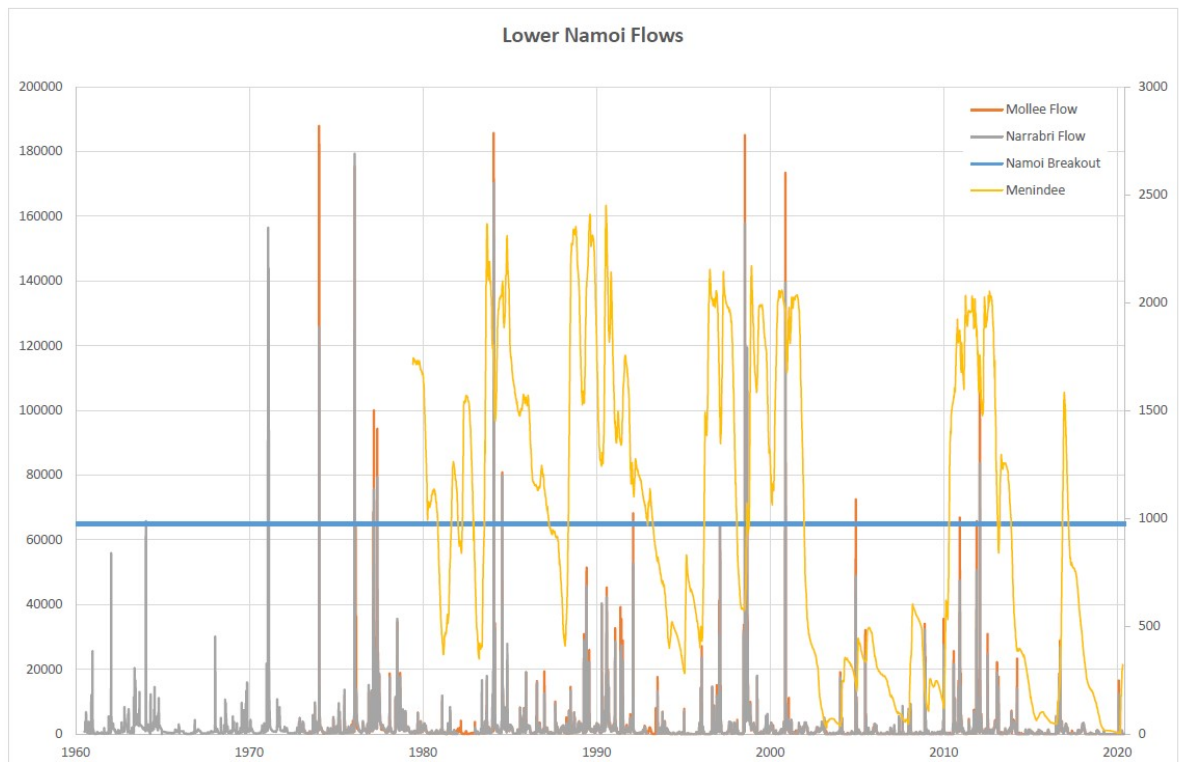
The timing of the implementation of the exemption, and the immediate removal via a Section 324 embargo caused substantial distress for water users. This was due the paucity of information to explain how the embargo would work in practice within existing farm operations and the handling of this process within the broader media resulted in negative perceptions of FPH within the context of the rain event that occurred.

It is our understanding the department undertook a risk assessment in relation to the potential for FPH take to reduce the outcome of downstream flows and on the basis of this assessment the regulation was rushed through prior to the predicted rain event to allow the embargo to be implemented.



Namoi Water questions whether this assessment is valid, and if it had/had been independently assessed. For example were the unique circumstances triggering FPH take and inherent differences in flow behaviour depending on when, where and how much rain falls within the catchment taken into account?

Our assessment of historical flow clearly demonstrates downstream outflow from the Namoi is a function of **water in the river**. The percentage of flow from the floodplain or overland flow contributing to the downstream flow volumes is minor. The graph below takes the outputs of gauging stations in the Namoi River and provides a benchmark for the breakout of FPH from the river. This shows when the Namoi River is breaking its banks, Menindee Lakes are usually already full (with the exception being 2004). The risk of Namoi farms access to FPH impacting downstream flow outcomes is negligible based hydrological data available.





The embargo of FPH and its removal and then reapplication without sufficient communication with affected stakeholders has resulted in upstream communities and FPH being misrepresented. This is mainly due to the perception of FPH take impacting flow outcomes, we suggest that transparent public interest test processes should be implemented to avoid this situation. The Northern Valley water users wrote to Mr Jim Bentley CEO of DPIE-Water seeking transparent and agreed process in relation to the application of embargos in January 2020 without response. The broader industry through NSW Irrigators Council has been asking for an improved public interest test process undergo public consultation since the Water Management Amendment bill in 2018. This was a commitment to Mr Robert Brown MLC and it would be worthwhile noting many of the negative issues associated with this inquiry would have been addressed. It would be beneficial for all communities to have a shared understanding of these issues and this comes from informed engagement, transparency and communication.

Whilst these issues are incidental to the inquiry question, they are relevant in terms of government process in relation to regulatory change. Issues such as FPH are already identified as contributing to the “toxic water environment” due lack of “water literacy” as highlighted by Inspector General Mick Keelty in his recent [report](#).

In conclusion the issue of the exemption is already documented as a preliminary step in the licencing process, and is supported by industry as continuing a transitional provision until FPH is licenced. However when combined with the embargo, the timing of the two issues resulted in poor outcomes for landholders in terms of public perception and ability to comply due to a lack of clear communication products being tailored to improving water literacy. This would be substantially improved if departmental staff were based in the regional areas to be on the ground to work with the community on these issues if and when they arise in the future.



2. *What is your view on the impact of the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020?*

As already stated the impact of exemption is as a preliminary step in the licencing process of Floodplain Harvesting. It is ultimately a temporary measure as the department continue the transition from 1912 Water Management Act (NSW) across to licenced access under Water Management Act 2000 (NSW). There is accepted agreement by industry to licence legitimate take that occurred from FPH activity as at the defined period of the 1994 NWI CAP on surface water, using the Rees line in the sand in 2008 as the individual share of the 1994 limit.

Floodplain Harvesting is the capture and use of water flowing across a floodplain. This is a crucial source of water for the community. Floodplain Harvesting (FPH) is the last substantial form of take to be licensed in the basin and it is important that it is undertaken using the agreed process and within the agreed NSW planning and policy arrangements.

We support the licensing of floodplain harvesting provided it occurs in a fair and equitable manner.

We thank the committee for the opportunity to host you on a tour of FPH farm and we look forward to addressing any and all question arising out of a broader understanding of FPH and more generally the process undertaken in the Healthy Floodplains project.

Regards

Brendon Warnock

Chairman