

**Submission  
No 11**

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

**Organisation:** Australian Floodplain Association

**Date Received:** 31 May 2020

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

This submission is made on behalf of the Australian Floodplain Association (AFA). The Regulation was implemented on Friday 7 February 2020 by Water Minister Pavey without prior notice, consultation or explanation of its purpose. The Regulation is highly contentious because it legalises a form of water extraction that impacts on other water users' shares. It was accompanied by a 28 day restriction on floodplain harvesting extraction from the Director of Policy, Planning and Sciences. The restriction was then lifted almost immediately giving a right under the Regulation to conduct floodplain harvesting. Members of this organisation have seen emails leaked to the Guardian dated shortly before this change, soliciting irrigators for reports of potential damage to on-farm infrastructure to be lodged. This is clear evidence that organised lobbying was undertaken to lift the restriction. The argument that structures, designed to be built on floodplains for the explicit purpose of taking floodwaters, were threatened by damage from floodwaters is implausible. In our view it certainly was not a valid reason for lifting the restriction to allow unmeasured take from the first flows in the northern tributaries from entering the Barwon-Darling system after a long and intense period of drought. The triggers applied in this event are appropriate to a widespread general rainfall event. This event was characterised by a number of isolated storms. The way in which the Regulation was implemented was ad hoc, opaque and highly questionable. It sets a very poor precedent of favouring access to free, un-metered water by a privileged few; over the ecological, social and cultural benefits to the wider public, all people and communities on the river and the river itself. The process failed to deliver on the Priorities of Water Use set out in the Water Management Act 2000. At the time the restriction was lifted on Monday 10 February, the Lower Darling was dry and Menindee Lakes effectively empty. Lifting restrictions reduced the volumes of important first flush flows into Ramsar listed wetlands in the Macquarie and Gwydir catchments and reduced the extent and duration of wetting of backwaters, billabongs, ox bow lakes and other habitats important to native fish and biodiversity in the Barwon Darling system.

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

Floodplain Management Plans have not identified existing floodplain works built without approval. The Regulation appears to give legality to floodplain structures that have never been through a licencing or approvals process. The impact of the Regulation is therefore to exempt illegal works on the floodplain. In our view, the definition of eligibility should only include supply works constructed with approval on or before 3 July 2008. All works constructed since should be required to be removed as a matter of urgency. The impact of the regulation is to continue to allow unmeasured, unlicensed take of overland flows from floodplains in the NSW Northern Basin. This water take has not been assessed for the environmental and social impacts, particularly downstream in the Barwon-Darling and Ramsar wetlands; and – crucially, the Menindee Lakes System (MLS) which was effectively empty at the time. There had been no flows passed Pooncarie for 18 months and High Security water users on the Lower Darling had received zero allocation during that time. Nevertheless, as the flow moved into the Barwon-Darling system, priority access was given to holders of the least secure water entitlements of all – C Class. The additional inflows into MLS would have bolstered high security water entitlements, basic landholder rights and town water supplies in the Lower Darling for several years. The benefits to traditional owners and native fish would have been longer lasting. In our view it is

arguable that the minister has exceeded her power under the Water Act in exempting such floodplain structures.

**Do you have any other comments on this regulation?**

The separation of water from land titles was a massive transfer of public wealth into private hands. Legitimising another tranche of illegal FPH infrastructure will create another compensatable right for taxpayers to bear. The AFA is tired of the looting and pillaging of our country by corporate mates and influential donors. FHP should never have been allowed on an industrial scale. Since the 2007 (Interim) State of the Darling Report (Webb, McKeown & Associates) we have known that the system is under severe stress with the full impacts of development in 2007 not yet fully evident. NSW commenced the Healthy Floodplains process in 2008 and the capacity to extract floodwaters has increased by ~800GL in the Gwydir and NSW Border Rivers valleys alone since that time. The Regulation confirms that the government has no intention of reducing the FPH take in NSW, thus perpetuating very significant downstream impacts. Total take is significant but measurement remains inaccurate and inadequate. There should be a complete embargo on harvesting of overland flows until such time as all licensing, monitoring and compliance measures (as per recommendations in the Matthews report) are in place. Floodplain harvesting is currently unregulated through a licencing and measurement process and remains unaccounted for in floodplain modelling. Failure to account for a significant volume is recognised as a contributing factor to the downstream impacts on environmental and town drinking water supplies. Managing floodplain harvesting is critical for the survival of the Darling River which the Natural Resources Commission considers to be on the brink of ecological collapse. The practice has heavily impacted communities along the Darling River financially, socially, culturally and environmentally. The social impacts of the new Regulation should be assessed. Event management will never satisfactorily resolve these issues without sound principles and AFA has little faith that these can and will be adopted in NSW. ALL licences must be consistent with the objectives of the State and Federal Water Acts and the MDB Plan. Until such time as realistic downstream targets are met, first flush flows must be allowed to pass unimpeded. In the AFA's experience, there is ALWAYS 'wriggle room' for the interests of wealthy, influential donors to be prioritised. In the absence of real principles and a commitment to upholding them, we support a rigorously enforced rules-based approach in which WSP/WRPs recognise connectivity with up and downstream catchments, include realistic EOS targets and triggers and contain no discretionary powers for Ministers or Senior officers.