

**Submission
No 41**

INQUIRY INTO FLOODPLAIN HARVESTING

Organisation: Coleambally Irrigation Co-operative Limited

Date Received: 12 August 2021

12 August 2021

Committee Secretary
Select Committee on Floodplain Harvesting

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CICL Submission Legislative Council – Inquiry into Floodplain Harvesting

Introduction

Coleambally Irrigation Co-operative Limited (CICL) welcomes the opportunity to make a submission to this inquiry.

CICL is looking to this inquiry to find solutions so that regulations can be made that achieve the following:

1. Legal certainty for irrigators implementing 'best management practices on farm' which involve capturing rainfall run-off from irrigation layouts in their tail water systems. Legal certainty can be efficiently achieved by a regulation which exempts rainfall run-off collection from the requirement to hold a licence or a work approval.
2. A robust and equitable mechanism for returning water take to within the legal limits established by NSW water sharing plans and subsequently the Murray-Darling Basin Plan. The policy framework necessary to support this approach is to have a licencing framework for flood plain harvesting (FPH) through eligible works which is supported by regulation.
3. The introduction of measurement and monitoring of volumes captured in farm storages from overland flows. Regulation is required for government to implement the required measurement and monitoring regime.

CICL understands that the three regulations made by government, and subsequently disallowed by the Legislative Council, did provide solutions to CICL's concerns. It is therefore contingent on this inquiry to find a solution, as the current situation is unacceptable for the following reasons:

- All irrigation farmers who capture water in the tail water systems after rainfall on their irrigation layouts face legal ambiguity between their responsibilities to retain run-off on farm under their work approval and or the Protection of the Environment Operations Act 1997 (NSW) and the requirements under the Water Management Act 2000 (NSW) to have a water access licence and water supply work approval.
- The status quo will continue in the NSW northern Basin under present arrangements, without the need to hold an access licence for FPH harvesting (see NSWIC legal advice [HERE](#)).
- Extraction from the floodplain will not be reduced as proposed by the licencing and water sharing plan framework, and currently without licencing there is no capacity to reduce floodplain harvesting to the long-term average annual extraction limit of Water Sharing Plans. This failing is now impacting on other water access holders in the valleys impacted through reduced access to supplementary water.
- FPH will not be required to be measured or metered.
- Works constructed after the July 2008 deadline which would not have been eligible works under the NSW Flood Plain Harvesting Policy will continue to be used to harvest water, including works in the southern Basin.

Background

CICL is based in the Riverina and operates an 'off river' irrigation and supply and drainage scheme providing services to nearly 500 farms via an open, earthen, gravity fed, channel network. The CICL area of operations is 456,821 ha including 317,281 ha which is serviced by the West Coleambally Outfall Channel. The intensively irrigated area is approximately 80,000 ha. Our members grow a range of irrigated crops, their farming systems are predominately annual production, and there is some investment in permanent plantings.

CICL and its members are subject to significant regulation. A summary of the governance arrangements for CICL and its members relevant to this inquiry is at Figure One.

Figure One – Summary of relevant governance of CICL

- CICL holds an operating licence under the Water Management Act 2000 (NSW) which authorises CICL to carry out the business of supplying water provided to it by the Ministerial Corporation and to exercise its functions under this Part (Division 3 – Operating licences).
- CICL holds a number of Murrumbidgee Regulated River Water Source 2016 Water Access Licences.
- CICL holds a Water Supply Works and Water Use Approval under the Water Management Act. (Often referred to as a Combined Approval.) This Approval allows for the authorised water supply works (channels and regulators) and use of water.
- This Approval includes conditions such as:
 - Requiring any water supply work to allow free passage of floodwaters flowing into or from a river or a lake.
 - CICL must make all reasonable efforts not to allow any used water to discharge, by any means including surface or subsurface drains or pipes, into or onto any adjoining public or crown land, any other person's land, any crown land and river creek, watercourse or aquifer.
 - Monitoring and reporting must be carried out as specified in CICL's Monitoring and Reporting Plan for the approval 16 March 2018.¹ CICL's annual compliance report is prepared to meet the requirements of the monitoring and reporting plan.
- CICL is not to take water using a work approval authorised by the Approval unless in compliance with the conditions of the access licence under which the water is being taken.
- CICL holds an Environment Protection Licence (EPL) issued under the Protection of the Environment Operations Act 1997 (NSW). This EPL allows CICL to discharge irrigation water to surface waters within CICL's area of operation and at its authorised discharge points outside of its area of operations. It also allows CICL to discharge stormwater run-off. This EPL, unless expressly provided by a condition in the EPL, must comply with section 120 of the Protection of the Environment Operations Act 1997. This section makes a person guilty of an offence for polluting waters.
- Our members are required to comply with our [Rules](#). Division 8 – Water Supply Rules clause 89 describes our members' obligations in relation to drainage. These rules restrict the release of irrigation tail water into the drainage system.

¹ The 2018 reporting and monitoring plan omits several items previously reported. CICL, on advice from NRAR, is preparing the Annual Compliance Report based on the May 2011 requirements.

Historically our members were encouraged through the Coleambally Land and Water Management Plan (LWMP), a joint government and community investment in improved land and water management, to design and construct irrigation tail water recycling systems. These systems capture irrigation and rainfall run-off from the irrigated land. LWMP planning began in the early 1990s and implementation ran from 2000-2014. An investment of \$17M from government, \$6M from irrigators and local government leveraged a \$70.6M investment by CIA irrigators in improved irrigation layouts. All farms in the intensively irrigated part of the CIA had EM31 surveys completed, 95 percent completed a whole farm plan, and 70 percent completed recycling systems.

Policy Principles

CICL believes resolution of a framework for regulation of FPH relies on elected representatives reaching agreement on the policy principles underpinning this reform. CICL believes the public discourse on floodplain harvesting has turned what should have been straight forward 'machinery of government' regulations into a polarising, often ill-informed debate.

CICL supports the following principles:

1. FPH activity must be included in a licencing and work approval (eligible works) framework like other forms of water take.
2. FPH volumes captured in farm storages must be metered and monitored.
3. Regulation through licencing, metering and rules in relevant Water Sharing Plans must ensure water take is consistent with long term extraction limits and also the Murray-Darling Basin Plan sustainable diversion limits. Specifically, irrigators should be able to take up to the legal limits which have been established or agreed to by the NSW government.
4. Legal frameworks should be clear and irrigators across the state must not be exposed to legal uncertainty when implementing 'best management practices' which involve capturing rainfall run-off from irrigation layouts in tailwater systems.
5. Water sharing rules should effectively provide for critical human needs and at risk and environmental or cultural needs and these rules should be informed by science and community consultation.

CICL encourages this inquiry to establish similar principles and believes this is the only constructive way to progress improved governance. If there isn't agreement on the principles it is impossible to develop the detail.

CICL makes the point that the Water Sharing Plans are the vehicle for ensuring take is within 'legal limits' and there are relevant targets for prioritising access, not regulations per say.

CICL does not agree with attempts by some sectors to make floodplain harvesting illegal. This is akin to attenuating irrigators' historical access to water under state law and in the southern basin would be like attenuating access to un-controlled flow events or supplementary water in the Murrumbidgee Valley.

However, CICL believes the work of the *Healthy Floodplain Project* which is providing the foundations for improved governance of FPH, including reducing take to legal limits, is long overdue and this is disappointing.

CICL is a member of NSWIC and is aware their submission provides detailed technical explanations addressing the terms of reference of this inquiry. It also provides details of actions underway to progress introducing downstream targets in relevant water sharing plans in NSW.

This submission focuses on the rationale for an exemption for the capture of rainfall run-off from irrigation layouts in irrigation tail water systems.

Rainfall run-off exemption

CICL supports a regulation that exempts irrigators from requiring a licence and work approval for rainfall run-off captured in irrigation tail water systems. CICL believes any regulation should clear that rainfall run-off captured by tail water drains could be transferred to a recycling storage and subsequently used

Providing an exemption is an efficient administrative solution to the conflicts between:

- CICL's Combined Water Supply Work Approval and Water Use Approval Water Management Works Licence and the Water Management Act 2000 (NSW).
- CICL's responsibilities under its Environment Protection Licence under the Protection of the Environment Operations Act 1997 (NSW) and the Water Management Act 2000 (NSW).
- CICL's Rules (applying to its Members) and the Water Management Act 2000 (NSW).

CICL is concerned irrigators in the southern Basin think the [Harvestable Rights Order](#) (HRO) allows irrigators within irrigation corporations to harvest 10 percent of their rainfall run-off or at least capture irrigation run-off in tail water systems without a licence or work approval. CICL has been advised unequivocally by the Department of Planning, Industry and Environment (the Department) they do not agree with this position, with the following written advice provided:

- *The HRO only establishes harvestable rights in relation to dams located on minor streams subject to certain volumetric limits and the exempt classes of dams listed in Schedule 2 (which do not have to be located on minor streams and are not subject to volumetric limits). All other dams in the Eastern and Central Divisions of NSW must have the relevant licence and approvals, unless another exemption applies.*
- *In practice, the only work type permitted under the HRO is a dam on a first or second order stream within a capacity as determined in Paragraph 3 of the HRO, or one falling within the exempt classes of dams in Schedule 2 of the HRO. Rainfall runoff taken through a tailwater drain cannot be considered as water taken as a harvestable right.*
- In addition:
 - *The dams in category 3 of Schedule 2 (of the HRO) are very unlikely to exist in the world of irrigation because dams are not built 'solely' for this purpose. This category of dams is common as overflow detentions in sewerage treatment plants, construction sites and in the urban water context.¹*

It is CICL's view that there should not be legal uncertainty for irrigators or conflict between government laws. The legal framework should give irrigators implementing best management practice and capturing rainfall run-off from irrigated land in tail water systems confidence they are operating legally.

CICL believes the regulation as made by the government is a sound way forward to firstly resolve the conflict between the Water Management and Protection of the Environment Operations Acts and secondly to efficiently allow irrigators to continue to capture run-off into their tail water systems without the requirement for either a licence or work approval.

A common concern raised about this regulation was it was effectively a 'back-door' way of allowing FPH and increased water take. CICL understands that during FPH events this exemption was not to apply i.e. it is switched off and all water captured would be included in FPH volumes. This misconception needs to be addressed as does the misconception that the FPH reform is not relevant or applicable to the southern Basin.

¹ DPIE communication Thursday 15 July 2021.

Conclusion

Significant public money has been invested to progress this important public interest reform. The regulations made by government and subsequently disallowed would have achieved outcomes consistent with CICL's priorities.

The NSW parliament now has the opportunity and responsibility to find a constructive pathway forward. The status quo, which is continuation of unmetered take outside the licencing framework and the legal uncertainty for irrigators capturing rainfall run-off, is not acceptable.

CICL would be pleased to answer any questions you may have on this submission. If you require further information please contact [redacted], via reception on [redacted].

Yours sincerely

Clifford Ashby
Chief Executive Officer