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NEW SOUTH WALES
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Flood Plain Harvesting Policy

081103

Introduction

NSW Irrigators' Council (NSWIC) represents more than 12,000 irrigation farmers across NSW. These irrigators are on regulated, unregulated and groundwater systems. Our members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries.

This document represents the views of the members of NSWIC. However each member reserves the right to independent policy on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

*THIS DOCUMENT IS A RESPONSE TO DRAFT POLICY DISTRIBUTED BY THE
NEW SOUTH WALES GOVERNMENT IN JULY OF 2008. AS SUCH, THIS
DOCUMENT MUST BE READ IN CONJUNCTION WITH THE NSW GOVERNMENT
DRAFT POLICY.*

Executive Summary

The NSW Irrigators Council is supportive of the need to licence floodplain harvesting activities and to issue the appropriate water access licences.

It believes the process should be done in a timely and efficient manner, balancing the competing needs of working with sound information, and the need to complete (or at least substantially complete) the process prior to the introduction of the 2011 Basin Plan.

The Council agrees:

1. That there may be third party impacts on other forms of water entitlement, including general security, high security and supplementary across the State from this policy. As such, Council requires a statement as part of the policy that this is a policy change pursuant to the terms of the National Water Initiative.
2. Work on essential components such as identify eligible licensees, gaining information on eligible works, and data on historical floodplain harvesting activity should start now, and should not wait until this policy is finalised;
3. Irrigators will willingly assist in gathering this information, provided they are given access to the raw data, and are consulted and involved in the floodplain harvesting model calibration process;
4. Floodplain Harvesting Water Sharing Plans should be stand alone plans, and not chapters attached to existing plans;
5. More information and consultation is required on any environmental impact assessments that may need to be carried out;
6. Clarity needs to be given about the July 3, 2008 works cut-off date. Specifically, information on how partially completed works, and approved but un-constructed works will be considered must be provided;
7. An Anomalies Committee will be required to adjudicate on issues such as the eligibility of works and the volume of entitlement shares issued to licence holders;
8. NSW Irrigators Council reserves its position on how the available entitlement pool should be shared among irrigators. It believes the emphasis now should be ensuring the Department's models accurately reflect the Long-term Average Extraction Limits. Further consultation and consideration is required before selecting a distribution method;
9. Floodplain harvesting accounts should be initialised, and allow full carry-over without a maximum account limit;
10. Floodplain Harvesting Water Access Licences should be issued in perpetuity; and

11. Floodplain Harvesting Water Access Licences should be fully tradeable.

NSW Irrigators Council recognises that the Department of Water and Energy is resource constrained, and meeting the 2011 target will be almost impossible without additional resources.

NSW Irrigators Council is sceptical about the proposed federally funded \$50 million floodplain management project.

The particular concern focus's on the Federal Government's pursuit of water licences in return for money spent. Sound floodplain management will return dividends to the environment without the need for issuing additional licences to the Federal Government.

NSW Irrigators Council asks that the NSW government actively involves itself in the development of a business case for this funding, and any negotiations it has with the Federal government over this priority project.

Introduction

This submission is a NSW Irrigators Council's (NSWIC) response to the NSW Government's Draft Floodplain Harvesting Policy Framework, which was first distributed to irrigator groups in late July 2008.

NSWIC recognises the efforts of the Department in providing briefing opportunities on the policy at Sydney, on August 28 and Moree on October 9, which were attended by a number of NSWIC members, primarily from Northern NSW.

NSWIC welcomes the extended time frame outlined by DWE staff at the Moree meeting to complete this planning process. It understands this time frame in general terms to be:

- Amended policy to be presented to NSW Cabinet for acceptance January / February 2009
- Public consultation and formal policy adoption completed August / September 2009
- Ground-truthing process to ensure accurate assessment of LTAEL for overland flows approximately October 2010
- Informing the policy detail regarding measurement and compliance issue as well as the application of environmental policy approximately October 2010

Background

The responsible and sustainable harvesting of waters as they cross the flood plain has been a critical part of the irrigation resource mix in the northern NSW valleys since large scale irrigation development commenced in the 1960's and 70's.

Its importance is not limited to the farm. Floodplain harvesting is a key economic and social driver for the towns of the Northern Murray-Darling Basin, and to a lesser degree the southern irrigation valleys. This policy will impact on the economic viability of the region, and the NSW Government must acknowledge that the NSW Water Reform process has already removed production capacity, and this policy will lead to a further reduction, that will not be able to be made up by simply increasing on-farm irrigation efficiency.

The historical reliance on this resource can be traced to a number of factors including:

1. The relatively low yield of public infrastructure dams;
2. The influence of the sub-tropical climate and the significant rainfall events which produce regular, large, medium and small floods; and
3. The historical switch of water infrastructure investment from public investment to privately funded on-farm investment.

In the northern valleys, floodplain harvested water may account for 25 to 60 per cent of the average available water resource, and in some seasons it represents the majority of the resource.

Up until the introduction of the *Water Management Act 2000* the taking of floodplain harvested water was an implied right, in a similar manner to the taking of supplementary (off-allocation) water.

In general terms, the practice and the development of the associated infrastructure has taken place with the full knowledge (and encouragement) of the Government of New South Wales.

NSWIC members accept the right of the NSW Government to licence floodplain harvesting in accordance with the *Water Management Act 2000*, but also strongly make the point that the timing of the licencing process has always been the responsibility of NSW government.

It should be recognised that it was the NSW Government, in consultation with the Federal Government that set the priorities and focus of the NSW Water Reform Agenda. Consequently the licensing of floodplain harvesting under the *Water Management Act 2000* is following the licensing of regulated water, supplementary, unregulated and groundwater in the major irrigation valleys.

Council also very strongly holds the view that the licensing of floodplain harvesting should not result in any net reduction of the overall Cap, or the Cap on any other classes of water.

State and Federal Government must recognise that the licensing of Floodplain Harvesting water is only bringing a recognised and accepted practice into line with the requirements of the *Water Management Act 2000*, and will not nor cannot lead to any increase in extractions.

The NSWIC strongly supports the NSW Government's decision to licence floodplain harvesting under the Transition/Interim Resource Management Plan arrangements as outlined in the Commonwealth *Water Act 2007*, and is therefore very mindful of the need to have the process completed before the introduction of the Basin Plan in 2011.

Potential Third Party Impacts

Council is concerned that this policy could produce third party impacts, particularly with the move to Commonwealth management of the Basin and the introduction of a Basin Wide Cap. These impacts are potential only given the non-definitive nature of the draft policy and the lack of detail of Commonwealth management, including the fact that the Basin Plan is not yet defined, let alone details.

Council believes that this issue can be adequately dealt with by a formal statement from the NSW Government that this is a policy change and, as such, is subject to the risk assignment provisions of the National Water Initiative.

Specific Comments (Section by Section) on the Draft Floodplain Harvesting Policy Framework

Overview

The irrigation farms of North-West NSW are in no way commodity specific. Irrigators make daily decisions as to what commodity will produce the greatest return per megalitre used. Therefore, it is incorrect to use the phrase “most commonly associated with irrigated cotton development” as the same development supports a broad range of irrigated production.

What is Floodplain Harvesting

There appears to be some room for confusion as to what constitutes floodplain harvesting. The general definition refers to the extraction or impoundment of water flowing across the floodplains, which makes the definition location specific.

However, if the definition of floodplain harvesting is confined to what is not specifically excluded by the “Floodplain harvesting exclusion categories” then it is possible that taking of overland flow water that is not on a floodplain, could be considered floodplain harvesting.

This calls into question whether the need for full or partial *1912 Water Act* Part 8 or Part 2 approvals as a minimum requirement for consideration for a floodplain harvesting WAL and/or works approval will always be the appropriate test. It may be the case that activities are defined as floodplain harvesting, but occur at a site where a Part 8 or Part 2 Approval were never required.

With particular regard to the Exclusion Category 3, there does appear to be some confusion as what is deemed agreed Industry Best Practice. Our understanding of the intent of the Cotton Industry Best Management Practice is for an irrigator to do all possible to minimise the risk of potentially contaminated storm water captured within levied areas from reaching a watercourse, and therefore should do all possible to capture and contain all run-off from within developed areas. NSWIC also believes that this is consistent with the requirements of the *Protection of the Environment Operations Act 1997*.

Principles that underpin the Floodplain Harvesting Policy Framework

Point 2 - NSWIC understand that floodplain harvesting extractions must be managed within Murray-Darling Basin Cap. However, clarification is sought on section 2.a.

Does the first dash point apply to areas affected by regulated plans such as the Gwydir, Macquarie, Lachlan, Border Rivers and Namoi Regulated River Plans, or just Unregulated plans?

If it applies to the above regulated plans, then it is not appropriate that the policy refers to the “existing long-term average annual extraction limits”, as that implies a

set number. It is acknowledged by the Department and the industry that existing IQQMs for each valley do not accurately reflect floodplain harvesting. Therefore, the reference should be to the “Long-term Average Extraction Limit” as determined by the appropriate NSW Department of Water and Energy model.

Sub-point C - NSWIC strongly endorses the statement that “Growth in extractions from other water users will not affect future floodplain harvesting extractions”, but also equally believes that the policy should also explicitly point out that any growth in floodplain harvesting extractions will not impact on extractions from other sources, and floodplain harvesting growth management will be achieved solely by the management of access to floodplain harvesting.

NSWIC believes that the need to completely “ring fence” licensed floodplain harvesting from other water extractions is strong justification for the establishment of specific stand-alone valley based floodplain harvesting water sharing plan, rather than adding a floodplain harvesting chapter to existing plans..

Point 3 – as previously raised NSWIC is not convinced that full or partial compliance with Part 8 & 2 requirements will always be the appropriate test for assessing whether works are eligible for floodplain harvesting licencing.

In addition, NSWIC requires far greater consultation and input into whatever environmental assessment that may be required as part of the works licensing process.

Point 4 – NSWIC believes greater consultation and thought needs to be given to how floodplain harvesting entitlements should be distributed. The Capacity of Works process as described in the policy is but one possible method. There are numerous other possible ways including “History-of-Use”, “Across-the-Board”, and historical flood inundation assessments.

However, the collection of data identifying works, and their capacity, is work that will need to be done no matter what method is chosen, as this information will be crucial for the proper development and calibration of the IQQM (or other appropriate model) floodplain harvesting components, and for proper measurement and compliance.

Therefore, NSWIC recommends that this data collection process commences as-
soon-as possible with full support and assistance from the industry.

What are the issues?

NSWIC acknowledges that the taking of floodplain harvesting water does diminish the total water resource pool that is available to the environment. However, the Council also believes the policy needs to acknowledge the fact that only a percentage of water passing across a floodplain ever entered, or re-entered, the river system, with much being soaked up by the soils of the floodplain (in particular with small and medium events). In addition, the nature of large events is such that

floodplain harvesting extractions can only ever take a very small proportion of these events due to a number of factors including the enormous volumes of water involved, saturated soils, and the limited diversion and storage capacity.

Management Approaches

NSWIC has general support for the staged approach towards implementing this policy, however, it is very conscious of the fact that this process should be completed before the introduction of the Federal Basin Plan in 2011, and therefore urges the NSW government to bring forward a number of specific tasks.

There is no need for the policy to be finalised prior to the following tasks being commenced:

1. Identification (through an expression of interest process) those landholders who believe they should be considered eligible for floodplain harvesting Water Access Licences, Works and Use Approvals;
2. Collection of data on works location and capability;
3. Collection of any "History-of-Use" data held by landholders; and
4. Preparation and calibration of the floodplain harvesting modules of each valley's IQQM (or other appropriate model).

These tasks are required regardless of the final entitlement sharing process adopted.

Stage 1 – Works Management

As previously stated the NSWIC has concerns as to whether full or partial compliance with Part 8 and Part 2 is an appropriate standard. There is a very real need to consider the appropriateness in light of the definition for Floodplain Harvesting.

In addition, there will be a need to establish an anomalies procedure, as there will be instances where compliance or otherwise will not be a clear cut matter.

There is also ambiguity about the cut-off date.

The NSWIC's position is that partially completed works at the cut-off date should be considered eligible, provided they meet the other criteria, as should un-constructed works that have received Departmental approval.

The policy also needs to clearly define the criteria and process for any environmental assessment that may be required.

The Council remains very concerned about the vague reference to environmental reviews, and their need for them to be consistent with the *Water Management Act 2000*. Much greater consultation with industry is required on this matter.

Stage 2 – Volumetric Management

The establishment of the Long-Term Average Extraction Limits (LTAEL) for each valley is obviously a key plank to the policy.

It is absolutely crucial that the floodplain harvesting LTAEL component in each valley accurately reflects historical floodplain harvesting activity.

While the Council recognises the need to comply with the Murray-Darling Basin Cap, it does not and will not, endorse any policy aimed at further reducing floodplain harvesting below the minimum level required for Cap compliance. In addition, it has no confidence that current IQQMs for each valley accurately reflect floodplain harvesting.

Council is therefore not in a position to endorse any LTAEL, for any valley, at this stage.

However, it does urge the NSW Government to immediately start compiling the data required to upgrade the valley based IQQMs (or other appropriate models), so they do accurately reflect floodplain harvesting.

With this in mind relevant NSWIC members are keen to offer their assistance in gathering accurate irrigation information, provided that all raw information gathered is made freely available to the industry, and the IQQM calibration process is open to industry scrutiny and feedback.

The Council recognises that it is in its best interest that the IQQMs (or other appropriate models) are calibrated as accurately as possible.

NSWIC requires further information on how the policy will apply where unregulated and regulated sources interact.

For example, in situations where water spills from an unregulated creek, but enters a property with both regulated and unregulated licences, how will the water be accounted for?

NSWIC also needs to have far more confidence in how the models will distinguish between Floodplain harvesting and rainfall run-off harvesting. Indeed, the Council believes it is a legitimate question to ask, and have considered, whether there is any need to split rainfall run-off and floodplain harvesting. Splitting and separate accounting maybe the sensible approach, but it is also possible that it is an unnecessary complication. The Council wishes to stress it has no preferred position on this matter at this time, but it believes it is an area that deserves further consideration.

NSWIC wants to emphasise that any references to existing LTAEL is inappropriate, as the Department recognises the inadequacy of its current models to accurately model floodplain harvesting activity.

The Council also wants to emphasise that floodplain harvesting needs to be ring fenced so it cannot be affected by “growth-in-use” provisions attached to other classes of water, and nor can it affect through its “growth-in-use” provisions access to any other class of water.

Stage 3: Licensing Floodplain Harvesting

NSWIC acknowledges the requirement of the *Water Management Act 2000* to licence floodplain harvesting activity. However, the industry also believes that the policy should make it clear that while the licencing process is being completed floodplain harvesting remains a lawful activity, and should be exempt from the *WMA 2000* provisions making it illegal to take water without a Water Access Licence and associated works and use approvals.

The Council emphasises that it does not believe there has been enough explanation or consultation on what environmental assessments will need to be conducted prior to granting a Floodplain Water Access Licence or works and use approval.

The development of an environmental policy relating to the licensing of floodplain harvesting is a requirement of the *Water Management Act 2000*. Our previous experience of developing these policies was gained during the transition of regulated water and groundwater from the 1912 act to the *WMA 2000*. This experience tells Council that these are arduous, and at times contentious, processes and we request that reasonable time is allocated to the development of this policy.

The Council urges the government to consult more with industry on this matter, with the aim of developing a very clear environmental assessment criteria and process.

The process for issuing floodplain harvesting licences on regulated river systems

The Council, supports, in general, the process as outlined in points 1-4, however, makes the following comments.

- There is no reason for the call for applications to be delayed until the policy is finalised. This first stage should commence immediately.
- The Council calls on the government to enter into meaningful discussions with industry on what constitutes an appropriate charge. Any charge needs to recognise the public good associated with licensing, and the considerable expense prospective licence holders will have to go to in providing the government with the required information.

Establishing the total floodplain harvesting access licence share component

As previously discussed, it is absolutely essential that the Department accurately calibrate its models to ensure they reflect the true extent of floodplain harvesting activity, prior to any determination of a valley’s LTAEL.

While it is expected that there will be some controversy associated with whatever method is used to distribute entitlements among licence holders, the initial focus of the Department and industry must be to ensure the total volume to be distributed accurately reflects historical floodplain harvesting practices eligible under Cap.

Issuing the individual floodplain harvesting access licences

The Council does not, to date, have a position on how share components should be distributed among eligible individuals.

It urges the government to remain flexible, and allow time for the industry to fully assess a range of options. It may be the case that different methods may be used in different valleys (eg. regulated supplementary water).

There is no real reason for this issue to be resolved at this stage of policy development/and or implementation. There is even precedence for issues such as these to be resolved after a Water Sharing Plan has commenced (eg GAB Zone 1A).

It is expected that this part of the policy will be among the most controversial for irrigators, and therefore the government needs to recognise that additional time and consideration is required.

However, NSWIC does not believe that this should be taken as an excuse not to commence the implementation of other parts of the draft policy such as calling for “Expressions of Interest for obtaining a WAL”, and requesting information on existing works and historical activity.

Water account initialisation

The Council is pleased that DWE has recognised the episodic nature of Floodplain Harvesting and has proposed the initialisation of accounts with an amount equalled to the highest ever annual floodplain harvesting volume, modelled on at least 100 years of data.

The initialisation should also take into account the highest volume of modelled extraction over a sequence of years, so it allows for the possibility of two or three major floodplain harvesting opportunities over consecutive years.

The Council strongly supports the provisions for allowing carry-over of unused floodplain harvesting allocations, but rejects any need for a total account limit.

If total licences issued only equal the LTAEL, there is no justification for a total account limit.

An irrigator may miss out on floodplain harvesting opportunities for 10 years, if on the 11th year he/she takes 11 times his/her's share of the LTAEL then the Cap still cannot be broken.

Any setting of an account limit presents a risk of the industry not being able to fully access its entitlement rights, while there is no risk from not imposing an account limit because by issuing licences on the basis of the LTAEEL there is no possibility of Cap being exceeded without licence holders breaking the law. Should that occur, offenders should be dealt under the appropriate provisions of the *Water Management Act 2000*.

The Council understands there has been no maximum account limit applied to account holders covered by the Darling River Unregulated Water Sharing Plan.

Floodplain harvesting licence tenure

NSWIC totally rejects the draft policy's position that floodplain harvesting licences should be issued with the same tenure and compensatory rights as supplementary water access licences. The Council and its members have a well documented position that supplementary licences should have been issued in perpetuity, and strongly argues that floodplain harvesting licences should also be issued in perpetuity, and should be fully compensable under the National Water Initiative framework.

The recognition of the NWI framework for Compensation would be achieved by allowing floodplain harvesting the rights of compensation detailed within section 87 of the *Water Management Act 2000*.

Flood plain harvesting has significant investment in infrastructure and employment related to the activity. It is longstanding practice recognised by the NSW government in all northern NSW valleys.

It is our understanding that the investment in and employment related to Floodplain harvesting was secure prior to the implementation of the WMA 2000 and we expect an accurate translation of this prior right into the WMA 2000.

While it is true that Clause 33 of the National Water Initiative provides some scope for not issuing licences in perpetuity, those do not apply to floodplain harvesting in NSW.

Floodplain harvesting is an integral part of the resource, and while the rainfall events that generate the opportunity are episodic; history and modelling will show that access occurs frequently, and is predictable over the mid to long-term.

In some instance, irrigators can demonstrate that floodplain harvesting is more reliable than their regulated water.

This policy, and the NSW government, must recognise the distinct differences between the southern snow-melt system and the sub-tropical, storm base system of northern NSW.

In northern NSW floodplain harvested water, and supplementary water, is no more opportunistic than regulated water.

Nor is it a viable argument that the resource is not well enough understood to allow for licensing in perpetuity. Since the early days of northern basin irrigation floodplain harvested water has been a key resource. In addition, more than a century of weather observation confirms the relative reliability of the resource.

It is far more appropriate for section 28 of the National Water Initiative to apply – *“The consumptive use of water will require a water access entitlement, separate from land, to be described as a perpetual or open-ended share of the consumptive pool of a specified water resource, as determined by the relevant water plan....”*

Dealing with Rainfall Harvest

Given the practical difficulties of distinguishing between rainfall harvest and floodplain harvest water, the Council calls on the NSW Government, and the Department, to further consider whether there are real advantages in merging these two water sources in a regulatory sense.

At this point, the Council has no firm view on this matter, but does consider it warrants further discussion.

Trading Arrangements

The Council supports the trading of floodplain harvesting entitlements, both permanently and by assignment (temporary).

It believes if the management, metering and compliance policies and procedures are put in place it should be straight forward for an irrigator to be able to demonstrate compliance with the policy.

Conclusion

The NSW Irrigators Council is supportive of the need to licence floodplain harvesting activities and to issue the appropriate water access licences.

It believes the process should be done in a timely and efficient manner, balancing the competing needs of working with sound information, and the need to complete (or at least substantially complete) the process prior to the introduction of the 2011 Basin Plan.

The Council agrees:

1. Work on essential components such as identify eligible licensees, gaining information on eligible works, and data on historical floodplain harvesting activity should start now, and should not wait until this policy is finalised;
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