admin@southernriverinairrigators.com.au
PO Box 1254 Deniliquin NSW 2710
www.southernriverinairrigators.com.au

Peak body for five landholder associations and 2100 irrigators in the Murray Valley

24 September 2020

By email: nrar.enquiries@nrar.nsw.gov.au

Mr Craig Knowles and Mr Grant Barnes
Natural Resources Access Regulator
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

Dear Mr Knowles

RE: Enforcement of Floodplain Harvesting breaches

Southern Riverina Irrigators (**SRI**) are seeking clarification of the position of NRAR on the legality of flood plain harvesting pursuant to the Water Act 1912.

In the NSW Parliamentary Review report into the *Impact and implementation of the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020* it was emphasised the following organisations have not sought legal advice as to the legality of floodplain harvesting pursuant to the Water Act 1912:

1. NSW Government;
2. NSW Irrigators Council;
3. Naomi Waters;
4. Border Rivers Food and Fibre; and
5. Gwydir Valley Irrigators Association Inc.

Despite a lack of due diligence and an incomprehensible lack of oversight, these organisations have continue to proclaim that following the disallowance of the *Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020,* the Water Act 1912 will continue to govern the practice of floodplain harvesting.

It is the position of SRI any take and/or use of water beyond basic landholder rights, done without a licence and meter is now illegal.

The Water Act 1912 is no longer applicable as flood plain harvesting is now exclusively governed by the Water Management Act 2000.

The basis for our position is set out below.

Water Act 1912

In the absence of any legal opinion to the contrary, it is difficult to understand the basis for claims that the Water Act 1912 applies to floodplain harvesting. However, in the view of SRI the legality around floodplain harvesting is clear and defined.

The Water Act 1912 provides two avenues for access and use of water by way of floodplain harvesting:

1. Part 2 of the Water Act 1912 allows for the licencing and use of water take; and
2. Part 8 of the Water Act 1912 provided for controlled works approvals.

The NSW Parliamentary Library has confirmed no floodplain harvesting licences were issued under Part 2 of the Water Act 1912.

SRI maintain that a licence is required for take and use of water under the Water Act 1912 (despite this never being enforced). This point is moot because the *Water Management (General) Regulation 2018* [NSW] Schedule 4, provided an exemption to holding a water access licence for holders of Part 8, Water Act 1912 controlled works approval – provided that the holder used it within the defined set of conditions for approval. A key condition of any approval is its duration. Once expired, it is no longer valid.

Stated publicly by NSW Office of Water, a controlled works approval (under the Water Act 1912) was granted for five years – after which time it must be renewed.

In 2014, Part 8 of the Water Act 1912 was repealed with NSW Office of Water stating works approvals would be converted to "flood works approvals" and governed by the Water Management Act 2000.

The *Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020* sought to give an amnesty to expired controlled works approvals by deeming them "eligible works". Despite being expired, this allowed their holders to continue to harvest unlimited floodplain waters without fear of prosecution.

Whilst it is unclear how many controlled works approvals have been converted to flood works approvals, it is now six years since Part 8 of the Water Act 1912 was repealed and a review of the water register shows flood work provisions having commenced since at least 2016. SRI anticipates that all of these controlled works approvals have now expired.

Basic landholder rights

The ability to harvest rainfall runoff is a basic landholder right, governed by section 53 of the Water Management Act 2000. In Western NSW, this is limited to 10 per cent of the average annual rainfall runoff and is insufficient to support large scale irrigation.

There are no provisions under the Water Act 1912 to protect irrigators from taking floodplain harvested waters. By virtue of the expiring of old Part 8, controlled works approvals, the entire practice comes within the Water Management Act 2000.

Clarification sought

For the purpose of clarity for all water users in the Murray Darling Basin can you please confirm the position of NRAR with respect to these matters.

Will NRAR prosecute irrigators who take and use water without a licence beyond basic landholder rights? If so, when will NRAR commence these reviews and how does it propose to deal with this issue?

We note there is a proposal for metering of private dams >1,000ML by July 2021. Can you confirm how many private dams are >1,000ML in northern NSW? It is our understanding that it is a small quantity.

Given a dam <1,000ML is not required to be metered until July 2022, can you please confirm the approach NRAR will take to a person taking floodplain harvested water (with a licence) into an unmetered dam <1,000ML.

In other words, do you agree that the disallowance of the Regulation has assisted NRAR in being able to enforce the implementation of metering in northern NSW because there is now an incentive for northern irrigators to become compliant as soon as possible.

We look forward to receiving your confirmation with respect to these matters.

Thank you

Sophie Baldwin

Executive Officer

Southern Riverina Irrigators