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Peak body representing 2200 landholdings annually producing \$6 billion in agricultural product and supporting 25,000 jobs in the Murray Valley.

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30 November 2020

Regional Water Strategies  
Department of Primary Industry, Planning and Environment  
12 Darcy Street  
PARRAMATTA NSW 2150

**By email:** [regionalwater.strategies@dpi.nsw.gov.au](mailto:regionalwater.strategies@dpi.nsw.gov.au)

Dear Sir/Madam

**Submissions with respect to the Draft Border Rivers Regional Water Strategy (Proposal)**

Southern Riverina Irrigators (**SRI**) are concerned current proposals for the issuing of new licenses for floodplain harvesting continues an inequitable approach by the NSW Department of Planning, Industry and Environment (**DPIE**).

On November 27 2020, the NSW Independent Commission against Corruption (**ICAC**) released a report highly critical of DPIE and their refusal to take an opportunity for reset.

Southern basin irrigators continue to be negatively affected by DPIE prioritizing the needs of these few northern based irrigators.

The recent proposal for floodplain harvesting licenses, which pre-dates the release of the ICAC report, is another failed opportunity. The Darling River is no longer flowing and the dependent ecosystems are evaporating along with the last drops of water within this once mighty river.

And yet the DPIE continue to repeat their mistakes of the past in the form of their proposed floodplain harvesting licensing process.

SRI is critical of:

1. Licencing volumes of water greater than the modelled volumes of diversions as at 30 June 1994;
2. Not incorporating known volumes of storage capacity as at 30 June 1994 into cap modelling to better estimate diversions;
3. Allowing 500% carryover and continuous accounting; and
4. Making licences compensable in the event they need to be withdrawn by NSW.

SRI demand the DPIE commence with a low volume of licensed water as per the Basin Plan's modelled 210GL for floodplain harvesting with no carryover or enhanced allocations, given there is a high degree of uncertainty around 'modelled numbers'. Storage capacity in northern NSW on 30 June 1994 was approximately 600GL. This volume has increased to approximately 1,430GL today and does not take into consideration significant increases in diversions from interception storages.

Floodplain harvesting licenses for all northern valleys should be 600GL less the total of other licensed forms of take as at 30 June 1994 and there is no justification for this to not be exceeded in any given year.

This conservative path allows DPIE to issue further licenses in the future without adversely impacting upon the environment or further reducing water reliability for southern irrigators. This reduction in reliability is directly a consequence of:

- a. Lower volumes of water in Menindee Lakes (which is used to make Available Water Determinations for NSW Murray Valley); and
- b. Increased conveyance losses to transfer additional volumes of environmental water (to make up for the lack of inflows from Menindee) the full length of the Murray River - losses which are borne by NSW Murray Valley.

### **Divergence from Floodplain Harvesting Principles**

If the Cap is based upon the level of diversions as at 30 June 1994, the most equitable and fair approach is for anyone who applies for a floodplain harvesting license must demonstrate:

1. They were taking the volume of water (in addition to other forms of take) as at 30 June 1994; or
2. The volume of water licenced is justified by an identifiable reduction in diversions elsewhere.

Failing to take this approach means that the newly licensed volumes breach the Cap.

### **Summary from ICAC**

ICAC found DPIE's approach to the triple bottom line is not working and with respect to the Barwon Darling Water Sharing Plan (**BDSWP**), it highlighted it was another missed opportunity to reset the rules in accordance with the WMA's priorities.

Whilst ICAC was unable to establish this was due to corruption, it emphasized:

- a. DPIE did not adhere to the legislated mandatory principles for water sharing, requiring protection of the environment and basic landholder rights as the overriding principle;
- b. there is considerable evidence of consistent failure by DPIE to give effect to the priorities for water sharing, as set out in the WMA; and
- c. a misdirected "triple bottom line" approach by the DPIE to the setting of local SDLs, the recovery of water for the environment and other related matters has obvious implications for the validity and even lawfulness of those plans.

ICAC declared the concept of a "duty" enshrined in section 9 of the *Water Management Act 2000* (NSW) (**WMA**), whether or not described as a political or legal duty, is indisputably one lawfully imposed by statute upon "all persons exercising functions under this Act". The DPIE are therefore bound by this duty.

SRI believe the current proposed floodplain harvesting policy of the DPIE falls alarmingly short of fulfilling this duty. It is worth noting the same people within DPIE who are attempting to reassure SRI and other stakeholders to trust this proposal, are the same people who developed the BDWSP which was heavily criticized by ICAC.

## **Environmental objectives lead to better socio-economic outcomes**

ICAC noted the third component of the WMA's objects is to recognise and foster significant social and economic benefits to the state, including urban communities, agriculture, fisheries, industry and recreation, from the sustainable and efficient use of water.

If the needs of the environment are met by reducing diversions from floodplain harvesting and water once again flows down the Darling River, the socio-economic benefits for the communities downstream (and also those in the southern basin which have been forced to underwrite increased extractions) will improve dramatically.

## **Other comments**

The DPIE webinar which re-introduced the floodplain harvesting policy contained many areas with cause for alarm, namely:

1. The proposed "honesty policy" approach by DPIE to allow licence holders to nominate when floodplain harvesting events commence (and conclude) is unsustainable and open to manipulation;
2. Allow irrigators to release volumes of water when they exceed their licenced volume is open to manipulation and abuse;
3. The ability to transfer licences within valleys goes against the NSW floodplain harvesting principles. It would render the healthy floodplains research of topography and hydrological flows as null and void.
4. Capture of rainfall runoff beyond the first flush is a diversion which must be accounted for and licenced; and finally
5. DPIE say:

*"More data collection and model enhancements are required to explicitly represent return flows in river system models. This is necessary to further improve management of floodplain harvesting in the northern basin. We have made a commitment under the Floodplain Harvesting Action Plan to invest in this work from July 2021."*

This statement indicates there is not enough information available and no urgency to rush through regulations, licenses or new policies. The starting point should be an audit of what each property was diverting and utilising as at 30 June 1994. Any structures built after were done so with full awareness of the potential likelihood for them to be adjusted (or removed) once the floodplain harvesting license process concluded.

NSW can no longer continue to reward people who have been taking free water for the past 25 years and the decimation must now stop – the concept of one basin plan with two sets of rules is killing the south while rewarding the north.