

Outcomes from public consultation on the Active Management in Unregulated Rivers – Draft Policy

From September through to October 2019 the Department of Planning, Industry and Environment (the department) publicly exhibited and sought submissions on the Active Management in Unregulated Rivers – Draft Policy. We also sought feedback on proposed amendments to the following three water sharing plans required to implement active management:

- *Water Sharing Plan for the Macquarie Bogan Unregulated and Alluvial Water Sources 2012*
- *Water Sharing Plan for the Gwydir Unregulated and Alluvial Water Sources 2012*
- *Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012.*

We held public meetings on the proposed changes on:

- 9 October 2019 at Moree with 17 attendees
- 10 October 2019 at Warren with 9 attendees
- 15 October 2019 at Walgett with 20 attendees
- 16 October 2019 at Bourke with 23 attendees
- 17 October 2019 at Wilcannia with 20 attendees
- 18 October 2019 at Menindee with 25 attendees.

Departmental staff presented information about the proposed amendments to water sharing rules in the Gwydir, Macquarie and Barwon–Darling and explained how to submit feedback. The public meetings held in the Barwon–Darling also included information about the draft Barwon–Darling water resource plan.

We received considerable valuable feedback from stakeholders. We used the feedback to finalise the policy and proposed amendments. The public feedback also helped us develop operational procedures for each of the three valleys that will facilitate active management of the water.

Overview of submissions

We received 10, 14 and 29 submissions on the proposed amendments to the Gwydir, Macquarie and Barwon–Darling water sharing plans respectively. Although the submissions received were in response to the proposed amendments to the water sharing plans to facilitate active management, most submissions also made comments relevant to the draft policy.

We received submissions from a range of stakeholders including consumptive and environmental water licence holders, community members, user groups, environmental groups, local councils and organisations.

While comments were generally supportive of active management in unregulated systems to protect environmental water from extraction, there were concerns and comments regarding some policy positions and implementation.

This report summarises the issues raised on the draft policy.

Consideration of the issues raised

In responding to the issues raised in each submission, we considered the objectives of active management and any statutory, technical or administrative constraints. We also considered the principles of the policy to:

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- avoid unacceptable change to reliability and access characteristics – mitigate or offset material impacts and avoid unintended gains
- design solutions that are evidence-based and outcomes-focussed
- design solutions and create operational tools that are simple, practical and cost-effective
- continuously improve through adaptive management.

Key issues raised about the draft policy

Objectives and principles

The submissions generally supported the objectives and principles of the draft policy.

There was some concern that the objectives prioritised the continued protection of existing water allocations and the economic use of water over environmental needs and Aboriginal cultural uses and values. Comments in some submissions suggested redrafting the third secondary objective (maximising economic opportunity) to include social and cultural opportunities, while still meeting the primary objective.

It was also suggested that discretionary planned environmental water (PEW) that is assessed as additional to inflows and/or upstream PEW that is protected in downstream unregulated water sources by a water sharing plan should be included as a primary objective of the policy.

There was also comment that water leaving the regulated river system and entering the unregulated system as active environmental water should have its own specific environmental objectives.

Our response

The primary objective of the policy is to protect and allow for held environmental water (HEW) to remain instream for environmental purposes. This remains the focus of active management.

We will only actively manage PEW from an upstream water source if it is already protected under an existing unregulated water sharing plan and is not a primary objective of active management.

We will remove the reference to maximising economic opportunities from the secondary objectives. Instead, we will add a new principle that seeks to maintain economic opportunities while protecting active environmental water. The secondary objectives will become:

- ‘support compliance with the protection of PEW, transparency, and equity of access’
- ‘provide certainty through enduring arrangements’
- ‘avoid reliance on temporary arrangements to protect HEW from extraction’.

Defining active environmental water

The draft plan defined active environmental water as the water needing protection from extraction on any given day. Those who made submissions generally accepted that protecting HEW was an important and necessary contribution toward achieving Murray–Darling Basin Plan objectives. The principle was strongly supported in multiple submissions.

Stakeholders asked that we expand the definition of active environmental water to include any unregulated river access licence where the licence holder wants to use their water as active environmental water, not just HEW licence holders. Some submissions suggested that we identify this type of active environmental water as ‘volunteered active environmental water’.

Some stakeholders strongly supported protecting PEW, while other submissions expressed concern regarding transparency on what PEW would be subject to active management and the

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potential effects on reliability. Some felt PEW was already adequately protected and should not be subject to further complexity and restriction.

There was some confusion about the need to define active environmental water at all. One submission indicated that ‘active’ environmental water was a poor choice of term as the word active is used to define a particular parcel of PEW in the Macquarie (the Macquarie Environmental Water Allowance (active) Sub-allowance 2).

One submission suggested that we broaden the definition of active environmental water to include HEW licences in regulated river water sources when account water is released from an upstream regulated storage to flow through to downstream regulated water sources.

Our response

A key element of active management is having a well-defined volume of water to protect from extraction as it moves through the system.

The definition of environmental water outlined in the draft policy has been updated as a result of public comment. PEW that is discretionary in nature and assessed as in addition to inflows that were considered when the plan commenced has been removed from the definition of active environmental water. Protecting this water is beyond the objectives of active management. Removing it from the definition removes the risk of affecting the historic reliability for downstream users.

In summary, PEW has been removed from the definition of active environmental water except for protecting PEW from upstream water sources where extraction is already prohibited by water sharing plans at 1 July 2020.

This change means active environmental water will be limited to the water in an actively managed river arising from:

1. HEW flowing from an upstream water source including:
 - a. water released from an upstream regulated storage and debited from registered, licensed accounts that remains in the water source and flows into the actively managed unregulated water source
 - b. regulated river supplementary water licences where a volume of water is debited from the account and recognised as active environmental water during a supplementary access event and flows through to the downstream actively managed unregulated water source
2. water from an unregulated water access licence where the licence holder has notified the relevant minister that they want the water protected from extraction in the unregulated water source
3. PEW from upstream water sources protected from extraction under the existing rules in the downstream unregulated water sharing plan where active management is applied.

The definition of active environmental water includes any unregulated river access licence (not just HEW) where the licence holder wants water protected from extraction in the unregulated water source. To protect this water from being taken, the licence holder must notify the minister that they intend to protect the water. The minister will determine the volume of water to be protected as active environmental water.

Each water sharing plan where active management applies will include a definition of active environmental water. The active management procedures manuals will detail how we identify active environmental water.

Priority areas to implement active management

Some stakeholders supported the priority areas while others want the priority areas for active management expanded, particularly to the Intersecting Streams, Lower Namoi and Border Rivers and through Menindee Lakes.

Our response

We are not proposing any change to priority areas. We may consider active management in other unregulated water sources in the future. We will prioritise this after determining if implementing active management is effective in meeting the objectives and principles of the policy.

Protecting environmental water arising in Queensland

Some submissions asked that we immediately protect environmental water arising in Queensland as it moves through NSW waterways.

Our response

Flows arising from HEW licences originating from Queensland (other than releases from the regulated Border Rivers System) will not be recognised as active environmental water and managed through NSW systems until the NSW Government agrees a method for determining the volume of HEW arriving at the NSW–Queensland border. The NSW and Queensland authorities will work together to develop an accounting method for cross-border HEW by the end of June 2021.

The definition of active environmental water in the Barwon–Darling water sharing plan allows HEW originating in Queensland to be protected from extraction once a method is agreed by NSW for determining the volume of held environmental water arriving at the border. The definition also requires that we establish an operationally feasible method to forecast flows through the Intersecting Streams.

Managing active environmental water in-stream

There was general support for the way in which the draft policy proposed to account for in-stream use of unregulated HEW and the management of an equivalent in-stream volume.

There were mixed responses to how river transmission losses should be assigned.

Several submissions did not support sharing losses proportionally, indicating that losses should not be assigned to the environment. Others supported the proportional approach.

Some submissions indicated that losses represent water used by vegetation, contributing to the health of the river system. For that reason, transmission losses should be assigned to the environment.

There was support for socialising losses. Comments indicated that this was the most appropriate way to manage healthy ecosystems, better reflect the periodic nature of flows in the northern basin and is the simplest method to implement.

Some submissions indicated that active environmental water needs to accrue some transmission losses, particularly when these flows cannot be contained within channel banks.

Our response

We will adopt the approach to assign losses proportionally in the final policy. This approach is simple, reasonable and ensures that losses are shared between unregulated licence holders and the active environmental water we are protecting.

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The volume of active environmental water transferring to the next management zone will be reduced by its share of river transmission losses in proportion to the total flows in the management zone or river reach. We will amend the draft policy to allow the procedures manual to consider alternative options to sharing losses if active environmental water is delivered outside of the channel and sharing losses proportionally has a demonstrated effect on access licences.

Access for unregulated river access licences

Adjusting access arrangements

There were mixed views on how we should manage access arrangements under the policy. Some submissions supported adjusted flow classes, adjusted cease-to-pump thresholds and individual volumetric limits to protect active environmental water.

Other submissions indicated that if adopted, adjusted flow classes, adjusted cease-to-pump thresholds or volumetric limits would result in decreased financial viability and require compensation.

One submission indicated concern that by protecting active environmental water on top of the existing cease-to-pump threshold, significant or extended over-bank scenarios could occur, eliminating water user access despite the occurrence of localised flooding.

Distributing the volume available among licences

There were mixed views about setting volumetric limits for licences to protect active environmental water. Submissions expressed concern about how we would distribute the available volume among licences, suggesting it may be open to abuse.

Several submissions did not support the ability for an inactive licence holder to participate in water sharing as there would be less opportunities for active unregulated water users. These submissions indicated that if we included inactive licences, we should require them to have a works approval and meter.

Others sought equitable treatment of active, inactive and held environmental water licenses throughout the unregulated system.

There were also mixed views on distributing the available volume of water between licence holders who had expressed an interest based on individual daily extraction components or shares. Submissions that were in support indicated that this approach ensures equity and transparency. Submissions that did not support this approach indicated concern that the expression of interest process could involve communication difficulties, major delays, lack of transparency, risk of concentrating extractions in one place and be too complex.

Announcements

Submissions generally supported announcing the flow classes, adjusted cease-to-pump threshold and volumetric limits that may apply under active management on any day. Those in support indicated that announcements increase confidence and transparency and should be timely, based on the best available information and not hindered by technology.

There was some opposition to announcements in some water sources where events in the upstream section can be short and fast. There were concerns that announcements may not be timely, decision-making will not be transparent and legitimate access may be missed.

Two submissions indicated that arrangements in the Macquarie prior to 2012 that required them to contact WaterNSW before accessing unregulated water worked well and remains their preferred arrangement.

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Our response

We have made no changes to the policy as a result of public submissions in terms of the options to adjust access for unregulated licences to protect active environmental water. The options available under the draft policy allow us to consider the specific circumstances in each water source to ensure active environmental water is protected while access to other sources of water is not affected.

We are treating licences of the same class and category equitably under active management. A licence that has been inactive has the same right to take water as an active licence.

The active management procedures manuals will identify the circumstances where distributing the available volume is necessary to protect the active environmental water from extraction. We will consider implementation concerns in developing the method while still recognising individual daily extraction components if they exist or shares where extraction components do not exist.

Access under basic landholder rights and other licence categories

The exhibited draft policy noted access under basic landholder rights, local water utilities and domestic and stock licences would not be affected by active management unless evaluations demonstrate a significant risk to active environmental water from extraction under these licences and there has been an assessment of the effects, risks, feasibility and cost-effectiveness of amending access.

Several submissions did not support this position on the basis that supplying human requirements is not the purpose of environmental water. One submission supported the exemption.

One submission suggested reasonable use guidelines as a means of controlling the amount of take by basic landholder rights holders.

Our response

We will maintain the current access conditions for specific-purpose access licences. There will be no change to access under basic landholder rights. The active management procedures manuals will outline licence categories for which access conditions will not be adjusted.

Forecasting and managing uncertainty

Two submissions indicated that the process for estimating initial losses based on comparable historical events was a reasonable and fair approach and that these be adaptively adjusted. Another submission indicated that there needs to be a precautionary approach in the early implementation phase and a commitment of resources and time to gather and improve forecasting abilities.

Our response

We have made no changes to the forecasting and management of uncertainty proposed in the draft policy in response to public submissions. We have updated the policy to include guidance on how tributary gains are considered in forecasts.

Implementation and procedures manuals

Submissions commented on implementation processes including measuring, monitoring, improved river modelling, and transparency of decision-making. They highlighted a need for consistent compliance mechanisms such as metering and measuring requirements.

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The submissions raised concerns about the feasibility of estimating transmission losses due to insufficient metering, complexities in the systems, variations depending on the condition of the Macquarie Marshes and local rainfall. Stakeholders also had concerns about who would be responsible for active management, suggesting the WaterNSW river operators are best placed to undertake this role.

Submissions recommended that procedures manuals must demonstrate transparency of the process, fairness, and sufficiently and realistically account for system complexities such as transmission losses and measuring environmental water present.

Submissions indicated the importance of developing the procedures manuals in a transparent and consultative manner.

Some submissions emphasised the importance of clear compliance requirements and ready access to information to assist license holders.

Our response

We will consider the comments regarding transparency of decision-making, complexity and implementation when we develop the active management procedures manuals that set out how active management will operate in each of the unregulated water sources where active management applies.

The department is consulting with WaterNSW to ensure the methods established to implement active management are practical.

We consulted with licence holder representatives and local environmental group representatives on draft active management procedures manuals in the first half of 2020.

Adaptive management

There was general support for the use of the best available data and processes that are regularly reviewed, reported against and improved. Some submissions recommended that implementation should include mechanisms for reviewing and improving processes and considering additional data as it becomes available.

Our response

We have not made any changes to the adaptive management approach proposed in the draft policy.

Consultation

Submissions from stakeholders suggested there had been inadequate or rushed consultation on active management. There was feedback that it is unclear which of the various independent reviews of water management in NSW the draft policy responds to.

Our response

Staff from the department met with licence holders and other interested parties during targeted consultation in June 2019 to discuss active management. We considered the outcomes of the discussions and additional correspondence received when we prepared the draft water sharing rules and draft policy that was exhibited in September and October 2019.

River health and connectivity

Maintaining the health of NSW rivers and their dependent environmental assets and supporting connectivity between water sources was a key concern in several submissions.

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Threats to environmental water focused mainly on the adequacy of PEW. Many submissions raised concerns about the impact that take from upstream valleys had on the Barwon–Darling and that more needed to be done to protect environmental water originating in Queensland.

Our response

The adequacy of PEW is beyond the scope of active management and we will not be considering it in the policy.

The NSW Government is committed to better managing environmental water in the NSW Northern Murray–Darling Basin through policy reform. Improvements to water management are underway. However, we need to take the time to understand the complexity of the issues and to consult on any potential changes.

The department is doing a stocktake of water sharing rules that potentially contribute to connectivity in the northern NSW Basin. We will use the stocktake to inform the future work needed to improve our understanding of how water sharing plan rules and the use of HEW contributes to improved connectivity in the northern Basin.

For more information on the department's latest initiatives on protecting water for the environment please see the department's [environmental water hub website](#)¹.

Out of scope

Enforcement

Two submissions indicated concerns regarding enforcement. There was a suggestion to include a strict penalty system in the policy. When genuine mistakes do happen, operators should be able to correct them with low or no penalty.

Our response

The Natural Resources Access Regulator (NRAR) is the independent regulator, responsible for monitoring and enforcing compliance with the *Water Management Act 2000* and associated water sharing plan rules.

The water sharing plan rules and associated mandatory conditions set the active management operational framework. NRAR will apply its risk-based approach to active management compliance.

NRAR applies a range of compliance monitoring and audit activities across the water sharing plan areas in regional, industry or other targeted programs. NRAR relies on a wide range of data sources, such as metering records, logbooks, satellite and aerial imagery and conducting site inspections.

Enforcement is the responsibility of the NRAR and will not be considered in the policy.

Temporary water restrictions

Two submissions asserted it was critical that section 324 orders be maintained to protect first flush flows and environmental water through the Barwon–Darling if they occur before the active management procedures manual is finalised. Section 324 orders were maintained if flows occurred in the tributaries of the Barwon–Darling prior to water resource plans being in place.

¹ <https://www.industry.nsw.gov.au/water/environmental-water-hub>

Our response

Section 324 will continue to be available if required before we implement active management. While active management will protect HEW from extraction, temporary water restrictions will remain a tool for protecting other environmental water if it is determined to be in the public interest. The resumption of flow rule in the Barwon–Darling water sharing plan is also designed to protect the first flow after an extended low-flow or dry period.

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