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## **SUBMISSION**

# **Lachlan Surface Water Resource Plan**

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## **Introduction**

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigation farmers and the irrigation farming industry in NSW. Our Members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries. Through our members, NSWIC represents 12,000 water access licence holders in NSW who access regulated, unregulated and groundwater systems.

NSWIC engages in advocacy and policy development on behalf of the irrigation farming sector. As an apolitical entity, the Council provides advice to all stakeholders and decision makers.

Irrigation farmers are stewards of tremendous local, operational and practical knowledge in water management. With over 12,000 irrigation farmers in NSW, there is a wealth of knowledge available. To best utilise this knowledge requires participatory decision making and extensive consultation to ensure this knowledge can be incorporated into best-practice, evidence-based policy. NSWIC and our Members are a valuable way for Governments and agencies to access this knowledge.

NSWIC welcomes this public exhibition as an opportunity to work with the NSW Department of Industry to incorporate local, practical and operational knowledge and expertise in water management. NSWIC offers the expertise from our network of irrigation farmers and organisations on an ongoing basis to ensure water management is practical, community-minded and follows participatory process.

As a fundamental principle, NSWIC believes all water policy and reform of water management within NSW must maximise the social and economic outcomes achieved from the scarce resource that is water. It is therefore reasonable that all current and future policies must undergo a rigorous social and economic impact assessment.

This submission represents the views of the Members of NSWIC with respect to the draft Lachlan Surface Water Resource Plan. However, each member reserves the right to independent policy on issues that directly relate to their areas of operation, expertise or any other issues that they deem relevant.

## **Overview**

NSWIC welcomes the Draft Lachlan Surface Water Resource Plan (WRP) as part of the first tranche of WRPs in NSW to be released for public consultation. NSWIC acknowledges that the development of WRPs is a key commitment of the NSW Government's obligations under the Murray-Darling Basin Plan. This submission includes the viewpoints of both those in the Lachlan area who are directly impacted by this WRP, and irrigation farmers from across NSW who have an interest in state-wide issues and the connectivity between WRPs. The focus of this submission will be on state-wide implications of this WRP. For valley specific issues we refer the Department to the submission made by Lachlan Valley Water Inc.

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WRPs are to outline how each region aims to achieve community, environmental, economic and cultural outcomes, but also ensure that state water management rules meet Basin Plan objectives. Thus, WRPs have important considerations at both a regional and state-wide level. The Basin Plan 2012 (Chapter 10) outlines the requirements for WRPs. The WRP must comply with Chapter 10 requirements for it to be accredited under Part 2 Division 2 of the Water Act 2007 (Cth). This includes compliance with the Sustainable Diversion Limit (SDL), water trade rules, planning for environmental watering, water quality objectives, measuring and monitoring, and arrangements for extreme weather events. Whilst Water Sharing Plans remain as the key regulatory instrument, WRPs are of critical importance to irrigation farmers and the irrigation industry as they also underlie operations and practices, and have potentially large economic and social impacts.

### **Submission**

In this submission, we focus on the areas of most concern to our members, both in the Lachlan and state-wide:

1. Improved readability is needed to ensure clarity and reduced likelihood of misinterpretation
2. Need for clarity in aligning the objectives, strategies and measures
3. Balance between environmental, economic and social objectives
4. Delegation of powers to the NSW Environmental Water Manager and removed statutory responsibility for Environmental Water Advisory Groups
5. Compliance issues
6. Need for a review period and greater clarity about processes to improve modelling.
7. Greater community participation is required
8. Basic Landholder Rights (including Native Title)
9. Clarification is needed on Aboriginal cultural access licenses

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### 1. Improved readability is needed to ensure clarity and reduced likelihood of misinterpretation

To read this WRP (and the WRPs previously on public exhibition) requires simultaneous reading of multiple supporting documents. Where previously extracts of legislation were included, the WRP now primarily has references instead. NSWIC understands that the necessity for this approach was to allow flexibility for supporting documents to be amended as required, without needing to amend the WRP itself. There is concern that this density and lack of consolidation may limit the ability of users to comprehend the rules, and result in a lack of clarity. This complexity also broadens the scope of interpretation. Whilst it is acknowledged that documents of this kind are inherently complex in nature, greater consideration is needed to simplify the format and availability of information to be accessible. Hyperlinks may offer one method of allowing flexibility of supporting documents whilst more easily guiding the reader. As primary principles of any WRPs, the plan must be communicated in a manner where it is able to be effectively, easily and clearly understood by water users. The colour-coding system which identifies explanatory text, Basin Plan components (grey based text), and items for accreditation by MDBA (blue based text) is useful to demonstrate the intended audience.

**Recommendation:** Reduce the complexity of the WRP and provide additional explanatory materials for stakeholders. To reduce complexity, NSWIC encourages DoI-Water to consolidate multiple documents by incorporating sections of key supporting documents into the WRP where length of text permits, or provide hyperlinks to more easily guide the reader. Explanatory materials should be plain English, and prioritise key principles of accessibility, clarity, comprehension and simplicity.

### 2. Need for clarity in aligning the objectives, strategies and measures

The objectives of the WRP, while defined by the Basin Plan, need to clearly link to the WSP. The WSP vision statement (as required under Section 35.1 of the Water Management Act 2000) should be drafted in a way that makes it clear they are meeting the outcomes described on the WRP. NSWIC requests that DoI-Water commit to resourcing so there is capacity to meet these objectives.

**Recommendation:** Clearly link the objectives of the WRP to the WSP. Commit to resourcing to ensure there is capacity to meet these objectives.



### 3. Balance between environmental, economic and social objectives

NSWIC seek clarification of whether the priority of usage has been adjusted under the WRP. The WSP outlines priority of use to flow from basic landholder rights to domestic and stock access licences and then entitlements and environmental water allocations<sup>1</sup>. However, the change in terminology from Basic Landholder Rights to be inclusive of *Domestic and Stock Rights* and *Native Title Rights* raise questions about the prioritisation of access and the long-term security of entitlements if the inherent assumed value of either of those ‘rights’ grows. NSWIC do not support any reprioritisation that negatively impacts on the rights and abilities of entitlement holders to utilise their entitlements.

### 4. Delegation of powers to the NSW Environmental Water Manager and removed statutory responsibility for Environmental Water Advisory Groups

NSWIC is concerned that the representation of water users through advisory groups is being reduced. NSWIC is not comfortable with the delegation of power solely to the Office of Environment and Heritage, on the basis that industry perspectives (social and economic) remain as key considerations in environmental water management. Examples from other valleys include the Gwydure which has a statutory committee to manage environmental water, where the composition of this committee was listed in the WSP. There are concerns that representative authority is being removed from these groups. This was the case in the Murray where the EWAG has evolved to move away from a community committee to being primarily composed of government agency representatives. Further, there is concern regarding the conflict that arises from NSW Environmental Water Manager, who is a water user, being the sole user to have a voice in an advisory capacity.

**Recommendation:** That a provision for an EWAG is put into the Water Sharing Plan, including a provision that the committee is comprised of local representatives with a balance of environmental, economic and social interests. There is opportunity to move towards skills-based selection of committee representatives.

### 5. Compliance issues

Water management still constitutionally resides with State governments. Therefore, NSWIC believes the WSP is the primary instrument for NSW to manage and regulate water usage within the state. Extraction limits and compliance regimes must be clearly defined in WSPs along with remedial actions to address compliance issues.

Differing compliance provisions between NSW WSPs and the Basin Plan adds complexity and confusion. NSW assesses all licenced usage in defining use limit and determining compliance, whereas the Basin Plan defines use limit as the SDL minus the water recovery target and doesn't include usage by environmental licences. This has potential negative third party impacts on water users if environmental licence holders increase their rate of usage.

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<sup>1</sup> DRAFT Water Sharing Plan for the Lachlan Regulated River Water Source 2016 (amended 2019), S66



NSWIC questions if it is necessary to refer to cumulative compliance<sup>2</sup> (as part of the Basin Plan and Commonwealth legislation) in state-based legislation. To avoid duplication and confusion, NSWIC requests that the various requirements between compliance regimes be made explicit and clear in the WSP. Clear understanding of the compliance requirements will ensure self-monitoring is possible.

NSWIC requests that the definition of reasonable excuse provisions be explicitly included.

**Recommendation:** Ensure consistency of compliance provisions between NSW WSPs and the Basin Plan, and make the various requirements between compliance regimes explicit. The definition of reasonable excuse provisions should also be made explicit.

#### 6. Need for a review period and greater clarity about processes to improve modelling.

There are concerns of policy creep if there is no formalised review step. A review step ensures adaptive planning to incorporate new knowledge and make necessary improvements. NSWIC seeks a commitment to reviewing aspects of the WRPs and the WSPs.

A mechanism which clearly establishes a process for addressing outstanding issues is also required. A number of issues raised in the review of the WSPs have not been addressed in the draft WSPs due to lack of time. This includes the need for clarity on how improvements in the accuracy of modelling are being treated. For example, the baseline the MDBA is using for Planned Environmental Water (PEW) is the level of protection in place prior to the Basin Plan (Nov 2012). In the Belubula Regulated River, the model used to develop the WSP significantly over-represented end of system flows, which has been acknowledged and a new Belubula Source model developed and presented. However, according to statements made during the public exhibition, the MDBA is continuing to rely on the 2012 model. As a result, the proposed end-of-system flow rule change that was extensively discussed in the SAP has been put on hold while more work is done. A clear resolution process would ensure transparency and foster confidence of water users that outstanding issues are being addressed.

Simply, the very rigid interpretation by MDBA of “no net change in protection of planned environmental water” means that neither volume nor timing can be changed, even though improved knowledge since 2012 means that different management could provide for better outcomes for both the environment and productive use. A review period and process for amendments is required.

**Recommendation:** NSWIC recommend that a formal review step is included in the WRP, and review timeframes and dates be established. NSWIC recommend that outstanding issues which were not progressed or resolved are tabled and scheduled as part of the WRP. This process would ensure the best outcomes for all water users, extending to environmental management.

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<sup>2</sup> Schedule A: Draft Water Sharing Plan for the Lachlan Regulated River Surface water source, Division 3 Cumulative annual extraction limit (33).



### 7. Greater community participation is required

NSWIC is concerned about the lack of representation by local community stakeholders on Critical Water Panels. It has been observed that these panels are mostly attended by government agency representatives. NSWIC strongly encourages that Critical Water Panels are community staged with a significant representation by water users and local community members. This would ensure that local knowledge can be effectively incorporated.

NSWIC was informed at a workshop with DoI that the inclusion of water users on Critical Water Panels was not an option. DoI expressed that it was the role of WaterNSW to represent water users at this forum. NSWIC values the representation of the river operator; however, strongly feel that this is no substitute for having water users present. At a minimum, if water users cannot be a formal member, they should be invited as an observer with a capacity to contribute to the discussion if not the decision making.

NSWIC firmly believes that the continual reduction in stakeholder involvement is becoming a critical issue, which risks the loss of valuable practical and operational knowledge that is integral to sustainable management of water resources.

**Recommendation:** Greater stakeholder participation in decision making, such as by requirements for representation on advisory panels (such as Critical Water Panels) to ensure practical and local knowledge resources are utilised. The WRP should include a clear process for how Critical Water Panels should be established, how they should operate, what transparency requirements are needed, and what communications and reporting are required.

### 8. Basic Landholder Rights (including Native Title)

NSWIC members seek clarification on whether the definition of basic landholder rights has been changed. NSWIC further seeks clarification on the linkages between native title rights and basic landholder rights, specifically regarding the order of priority of native title access entitlements (over basic landholder rights) and impacts on other water access entitlement holders. NSWIC recommend that the different character of cultural water and native title access entitlements are explicitly distinguished within the WSP/WRP.

### 9. Clarification is needed on Aboriginal cultural access licenses

NSWIC is greatly respectful of water entitlements for Aboriginal and cultural use. NSWIC is concerned about the creation of any new entitlements when resources are already fully distributed.

With native title being included within the definition of basic landholder rights in the WSP (Division 2), clarification is needed regarding the prioritisation of native title above other entitlements, and the process followed to claim an entitlement. This is needed to ensure all water users have clarity and certainty on the process.



*Part 6 Rules for granting access licenses S 26(2) states that: “A person may make an application for a regulated river (high security) (Aboriginal cultural) access licence if the share component of the proposed access licence is no greater than 10 ML/year”.* However, the WSP does not specify how many licenses of this kind may be granted, thus the total volume of water which may be allocated under a high security Aboriginal cultural access licence is not known. Greater certainty is needed about these licenses and how they may be granted and the accountability of any water attached so other water users have a clear understanding of the parameters and possible impacts on other water users.

The WSP should include (under *Division 3 Requirements for water for under access licenses*) the share components of regulated river (high security) access licenses for Aboriginal and cultural use – even if the volume on issue is currently zero.

Further, it needs to be clarified how water attributed to native title holders may differ from regulated river (high security) access licences for Aboriginal and cultural, if at all.

#### 10. There is greater scope for the performance indicators for economic objectives

Currently performance indicators are largely based around trading rather than economic benefits from water use. There is great opportunity to consider economic development and community-based indicators. Irrigation farming fosters substantial economic development in regional communities through multiplier effects across the supply chain and broader communities. Irrigation farming creates jobs and supports large populations across many communities. Irrigation farming and the income derived from it supports local businesses, industries, schools, sporting facilities and community groups. These broader economic development and multiplier effects are currently not captured appropriately in WRPs. Inclusion of these economic development and multiplier effects as economic indicators would give a broader and more representative indication of the true economic benefits.

## **Conclusion**

NSWIC welcomes the Draft Lachlan Surface Water Resource Plan. NSWIC requests that DoI-Water respond to the aforementioned issues. NSWIC is happy to work with DoI-Water on any of the above issues.