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## **SUBMISSION**

# **Draft Gwydir Surface Water Resource Plan**

**November 2018**



## **Introduction**

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigators and the irrigation 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 sector. As an apolitical entity, the Council provides advice to all stakeholders and decision makers.

This submission represents the views of the Members of NSWIC with respect to the draft Gwydir 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 Gwydir 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 Gwydir area who are directly impacted by this WRP, but also irrigators from across NSW where the WRP is yet to be developed and is thus subject to the precedence of this Gwydir WRP. The focus of this submission will be on state-wide implications of this WRP.

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 whilst efficiently sharing resources between users. 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), recognising and managing significant hydrologic connections between connected resource areas, 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 irrigators 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 Gwydir and state-wide.

This submission will focus on 7 key issues:

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
7. Greater community participation is required
8. Basic Landholder Rights (including Native Title)
9. Clarification is needed on Aboriginal cultural access licenses

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

To read this WRP requires simultaneous reading of multiple supporting documents. Where previously extracts of legislation were included, this WRP now primarily has references instead. 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. 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.

**Recommendation:** Reduce the complexity of the WRP and provide additional explanatory materials for stakeholders. To reduce complexity, NSWIC encourages DoL-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. For example, the Plan vision should reflect the Plan's core role which is to enable the sustainable and efficient use of water.

## 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

The Gwydir has a statutory committee to manage environmental water. The composition of this committee was listed in the WSP. 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. NSWIC is concerned that the representation of water users through advisory groups will be reduced. 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.

**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.

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



### 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.

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.

### 6. Need for a review period

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.

### 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 requests that Critical Water Panels are community staged with a significant representation by local community members. This would ensure that local knowledge can be effectively incorporated. Quotas on the representation of local stakeholders are encouraged.

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.

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



### 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.

### **Conclusion**

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

**Jim Cush**  
**Chair**