HOLDING REDLICH

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Christine Freak
Policy Manager
New South Wales Irrigators' Council
PO Box Q640
Queen Victoria Building
SYDNEY NSW 1230

By email christine@nswic.org.au

Special Counsel Peter Holt
Direct Line (02) 8083 0421
Email Peter.Holt@holdingredlich.com
Partner Thomas Kwok
Our Ref 19750323

Dear Ms Freak

Advice in relation to the operation and necessity of the *Water Management (General) Amendment (Exemption for Rainfall Run-off Collection) 2021*

1. Background and request for advice

(a) We refer to your request for advice dated 25 May 2021 in relation to whether the *Water Management (General) Amendment (Exemption for Rainfall Run-off Collection) Regulation 2021* (**Rainfall Run-off Regulation**) is required.

(b) The Rainfall Run-off Regulation was made under the general regulation making power in section 400(2) of the *Water Management Act 2000* (**WMA**) which allows regulations to make provision for or with respect to the exemption of any person, matter or thing from the operation of the WMA Act or any specified provision of the WMA Act, either unconditionally or subject to conditions.

(c) In those circumstances the Rainfall Run-off Regulation does two things: it exempts a landholder from the need for a water supply work approval for the use of a tailwater drain for the purpose of collecting rain-fall run off from an irrigated field. The Rainfall Run-off Regulation also exempts the landowner for needing an access licence to take water from a tailwater drain, other than during the period where a work on the land takes overland flow water.

(d) The Rainfall Run-off Regulation commenced on 30 April 2021 when it was published on the NSW Legislation website. The Rainfall Run-off Regulation was repealed when it was disallowed by the Legislative Council on 6 May 2021.

(e) As we understand it there is a view that the Rainfall Run-off Regulation is not required, particularly amongst irrigators in the Southern Basin being the subject of the water sharing plans listed at **Annexure A**.

(f) The Department of Planning, Industry and Environment (**Department**) has sought to justify the Rainfall Run-off Regulation by stating rainfall run-off over and above a harvestable right is the taking of water from a water source that needs to be licensed.

(g) Our advice has been sought in relation to the necessity of the Rainfall Run-off Regulation in the context of the licencing framework for floodplain harvesting.

2. Assumptions relied on for this Advice

2.1 Floodplain harvesting licences in a regulated system

(a) In order for the NSW Government's floodplain harvesting licencing regime to take effect regulations will need to be made to address the issuing of replacement floodplain harvesting (regulated rivers) access licenses under section 57A of the WMA.

(b) In addition to the regulation, amendments also need to be made to the various regulated river water sharing plans. Those changes will likely be made by an amendment to the plans made by the Minister for Water, Property and Housing (**Minister**) under section 45 of the WMA. The exact nature of those changes is not known but for the purpose of this advice it is assumed that the following amendments will be required:

(i) water in the water source will be defined to include water taken under a floodplain harvesting access licence (s.57A(4) of the WMA);

(ii) the plan will identify the total unit shares for floodplain harvesting access licences;

(iii) provisions would allow the Minister to reduce the value of a unit share for future water determinations for floodplain harvesting access licences if non-compliance with either the long term average annual extraction limit or the long-term average sustainable diversion limit is demonstrated;

(iv) the plan would impose limits on the ability to amend a water supply work approval where water supply works subject to the approval are nominated by a floodplain harvesting access licence and certain other circumstances exist;

(v) the plan would make provision for matters including the volume of water extracted during the nominated floodplain harvesting measurement period, account rules and restrictions on dealings.

(c) As discussed below, these amendments will have significance for the operation of the Rainfall Run-off Regulation. By expanding the definition of 'water source' to include water taken under a floodplain harvesting access licence, that will in turn be defined to include water flowing across floodplains, including rainfall run-off and overbank flow, there is scope for the Rainfall Run-off Regulation to operate.

2.2 Floodplain harvesting in unregulated systems

(a) Far less detailed information has been provided about the NSW Government's approach to floodplain harvesting in unregulated systems.

(b) As with the regulated river, regulations will need to be made to address the issuing of replacement floodplain harvesting (unregulated rivers) access licenses under section 57A of the WMA.

(c) Amendments will also be required to the unregulated water sharing plans to make provision for the total unit shares for floodplain harvesting access licences, account management, access rules and trading.

(d) The NSW Floodplain Harvesting Policy published by the NSW Department of Industry dated September 2018 (**FPH Policy**) provides that in unregulated river water sources, the water available for floodplain harvesting has in most cases already been accounted for within existing access licence share components and the long-term average annual extraction limits (**LTAAEL**) as part of the conversion of licences from the *Water Act 1912* (**1912 Act**) to licences under the WMA.

(e) The FPH Policy provides in instances where floodplain harvesting works satisfy the assessment criteria in the FPH Policy and the associated floodplain harvesting extractions are not already accounted for under the relevant water sharing plan, the LTAAEL will be recalculated to include an amount equal to the annual extraction averaged over the period from 1 July 1993 to 30 June 1999 by floodplain harvesting activities. This approach is to be applied, where relevant, to all unregulated water systems except the Barwon-Darling unregulated system.

(f) The FPH Policy provides whilst new licences may not be issued for floodplain harvesting in unregulated systems other than the Barwon–Darling, assessments for work approvals will still be required.

(g) Aside from these broad suggestive guidelines in the FPH Policy, it remains unclear how a floodplain harvesting licensing regime will actually be implemented into existing water sharing plans for unregulated water sources.

2.3 Floodplain harvesting in groundwater only properties

(a) It is also unclear exactly how a floodplain harvesting licensing regime will be implemented for properties that have historically only had access to groundwater.

(b) Groundwater water sharing plans are not concerned with the regulation of surface water or overland flow.

(c) It may be that the applicable unregulated water sharing plan will need to be amended in order to implement floodplain harvesting in this context.

(d) The FPH Policy provides no guidance for how floodplain harvesting will be authorised in those circumstances.

3. Rainfall Run-off Regulation and floodplain harvesting – Specific questions

3.1 Why is the Rainfall Run-off Regulation required?

(a) The Rainfall Run-off Regulation seeks to deal with the situation now where what is said to be the unregulated water source arguably includes overland flow water (s.4A of the WMA). In those circumstances overland flow water includes rainfall run-off. The term rainfall run-off is not defined in the WMA but would include water that falls on an irrigated field.

(b) In those circumstances the exemption seek to exempt the landholder from both the need for a works approval and an access licence to take that water.

(c) Also, as part of the implementation of the floodplain harvesting licencing framework for regulated rivers once the water sharing plans are amended to include overland flow as part of the water source some form of either a licence or an exemption will be required to account for rainfall run-off.

(d) The NSW Government has elected to as part of change to the FPH Policy in 2018 to seek to include rainfall run-off as part of a water source and then partially exempt it from the need for a licence.

(e) The aim of the Rainfall Run-off Regulation is to exempt rainfall runoff which occurs on fallow or cropped areas on days where no water is being harvested from outside the farm.

(f) The approach adopted by the NSW Government was not the only available approach. It could have if it wished chosen to either not include rainfall run-off as part of the water in water source or accounted for rainfall run-off as part of the entitlement under the floodplain harvesting access licence.

3.2 Rainfall Run-off Regulation and Irrigation Infrastructure Operators

(a) There is some confusion as to how the Rainfall Run-off Regulation will operate with respect to Irrigation Infrastructure Operators (**IIOs**).

(b) The Rainfall Run-off Regulator seeks to exempt landholders from:

(i) section 91B(1) of the WMA in relation to the use of a tailwater drain for the purpose of collecting rainfall run-off from an irrigated field that is part of the land; and

(ii) taking of water from a tailwater drain for the purpose of collecting rainfall run-off from an irrigated field that is part of the land.

(c) Section 91B(1) of the WMA provides it is an offence for a person to construct or use a water supply work without an approval to do so.

(d) In the case of IIOs, it is the IIO rather than the landholder that generally holds licences or approvals for water supply works and the extraction, capture and use of water.

(e) As the Rainfall Run-off Regulation specifically operates to exempt the 'landholder', it will not exempt an IIO who constructs or uses a water supply work without the requisite approval or an IIO that takes water from a tailwater drain for the purpose of collecting rainfall run-off from an irrigated field.

(f) In order to attract the protection of the Rainfall Run-off Regulation, the nominated activities must be conducted by the landholder.

3.3 The significance of 'replacement' floodplain harvesting access licences

(a) Section 57A of the WMA states the regulations may make provision for the conversion of the actual or proposed floodplain water usage by landholders into a list of licences collectively defined as 'replacement floodplain harvesting access licences'.

(b) There is some confusion as to why the word 'replacement' is used. Water collected pursuant to the proposed floodplain harvesting access licences has not previously been licensed or required an approval. Effectively the NSW Government is seeking to introduce a licensing system where there is no formal statutory entitlement to be 'replaced'.

(c) This can be explained as part of a strategy by the NSW Government to assume control of water on the floodplain as a resource to be licensed, allocated and regulated.

(d) The *Water Management Amendment Bill 2014* initiated this strategy by introducing significant changes to the WMA that laid the groundwork for the introduction of a floodplain harvesting licencing framework. These changes included inserting section 4A defining "overland flow water" and expanding the definition of State's water rights in section 392 of the WMA to include:

"all water occurring on or below the surface of the ground (including overland flow water flowing over or lying there for the time being) other than water referred to in subsection (1A)".[1]

(e) With these amendments, the NSW Government brought water on the floodplain within its regulatory reach. From here, the floodplain harvesting licencing framework will seek to 'replace' what was previously an unregulated and largely unmonitored common law rights for landholders to capture water coming off the floodplain during a flood event, with a statutory licence.

(f) A similar approach can be observed in the NSW Government's treatment of groundwater.

(g) In contrast to the approach in relation to floodplain harvesting, the NSW Government sort to regulate the taking of groundwater quite early with the sinking of artesian bores requiring a licence from 1906. From 1912 bore licences were governed by the 1912 Act. However the licencing regime was relatively lax, licences were generally issued without time limitations or other conditions.

(h) Gradually, an effort was made to impose conditions on licences amid concerns about resource exhaustion. Notably from 1966, groundwater was vested in the State of NSW which meant the use and flow of groundwater was restricted and controlled. This saw the extinguishment of common law rights to take and use groundwater.

(i) The enactment of the WMA in 2000 sort to replace the bore licences under the 1912 Act with aquifer licences under the WMA.

(j) In *ICM Agriculture Pty Ltd v The Commonwealth* (2009) 240 CLR 140 the High Court considered a challenge to the replacement of bore licences under the 2012 Act with aquifer licences under the WMA where the licence holders experienced a reduction of their entitlements by 56%. The licence holders argued that the replacement of their licences amounted to an acquisition of property under section 51(xxxi) of the *Commonwealth Constitution* and therefore they were entitled to compensation. French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ held that the replacement of bore licences issued under the 1912 Act with aquifer access licences issued under the WMA was not an acquisition of property within the meaning of s 51(xxxi).[2] French CJ, Gummow and Crennan JJ found that groundwater was a natural resource and the State always had power to limit the volume of water to be taken from that resource.[3]

(k) Parallels can be identified with the regulation of floodplain harvesting. The NSW Government has brought the water source – being water off the floodplain – within its

[1] *Water Management Act 2000* (NSW), S 392(1)(c).

[2] *ICM Agriculture Pty Ltd v The Commonwealth* (2009) 240 CLR 140 at 141.

[3] *ICM Agriculture Pty Ltd v The Commonwealth* (2009) 240 CLR 140 at 180.

sphere of regulation. Whilst there are no statutory licences to replace, the NSW Government now seeks to replace residual common law rights to take water from the floodplain with a licence regime strictly governed by the WMA.

3.4 Is the Rainfall Run-Off Regulation needed to cover rainfall run-off captured in tailings dams and other works/structures on irrigated farms? To what extent, if any, is this covered by any existing measures such as harvestable rights, basic landholder rights, licence conditions, or other land and water management plans?

(a) Harvestable rights are a form of basic landholder right. Harvestable rights do allow landowners and occupiers to capture and use rainfall run-off in accordance with the relevant harvestable rights orders.

(b) The taking of water under a harvestable right can be done without the need for any access licence, water supply work approval or water use approval for the taking of that water (s.53(1) of the WMA).

(c) What constitutes a harvestable right is determined by reference to the relevant harvestable rights order (s.53(1) of the WMA).[4]

(d) Those order impose restrictions on the size and location of harvestable dams under the harvestable rights orders, in that:

(i) harvestable rights dams must be located on a minor stream. This is generally determined in accordance with the Strahler System which, whilst simple in theory, can be difficult to implement and its application can be the subject of disagreement amongst experts.

(ii) the property, for the purposes of calculating a harvestable rights allocation, is referred to as a landholding, being a parcel of land under the *Valuation of Land Act 1916*. This means that owners of properties cannot combine their property areas to give a higher percentage of harvestable rights.

(iii) the maximum harvestable right may have already been reached for the property. Certain existing dams are required to be calculated in determining whether a property has reached its maximum harvestable right. Further the allocation of 10% of the average regional rainfall run-off for the Central and Eastern Divisions of NSW is not a significant amount meaning that the dam is unlikely to support a significant crop.[5]

(a) Importantly, dams for the capture, containment and recirculation of drainage and/or effluent to prevent contamination of a water source cannot be constructed relying on a harvestable rights order (Harvestable Rights Order *NSW Government Gazette* No 40, 31 March 2006, pp 1628 – 1630, Schedule 2).

(b) In summary then it may be the case that certain dams can be constructed relying on the harvestable rights order, but such dams must be constructed on minor streams, have a

[4] The current harvestable rights orders for the Western and Eastern and Central Divisions of NSW are contained in NSW Government Gazette No 40, 31 March 2006, pp 1628 – 1630.

[5] *'What Are Rural Landholders' Basic Rights To Water?' Water Management in New South Wales, Department Of Water and Energy, NSW, June 2007.*

maximum capacity (determined by reference to the order) and cannot be used to capture, contain and recirculate drainage or to prevent the contamination of a water source.

3.5 What are the consequences of not having the Rainfall Run-Off Regulation in place?

(a) At the moment what constitutes a water source for the purpose of the various regulated rivers water sharing plans in the Northern Basin Valleys do not include the taking of overland flow.

(b) That means that in those circumstances the Rainfall Run-Off Regulation has no work to do. However if as part of the implementation of a floodplain harvesting licensing framework what constituted the water source is changed to include overland flow then the Rainfall Run-Off Regulation would exempt a portion of that water from the need for an extraction licence and a works approval to take that water.

(c) As is the situation with the Northern Basin Valleys, in the water sharing plan for the New South Wales portion of the regulated Murray and Lower Darling Rivers, what constitutes the water source is the water between the banks of the rivers. As is the case in the Northern Basin Valleys the water sharing plans do not currently regulate the taking of overland flow.

(d) That said it would still be the case that if the water sharing plans for the New South Wales portion of the regulated Murray and Lower Darling Rivers were amended to include overland flow as part of the water source and the scope of the taking fell outside existing extraction licences and works approval, or the provisions relating to harvestable rights, the Rainfall Run-Off Exemption would still have work to do.

3.6 Is there currently a conflict/inconsistency between the *Protection of the Environment Operations Act* and the WMA on this matter? Are people in legal jeopardy, in simultaneously facing obligations to capture rainfall run-off from irrigated fields (under the POEO Act and licence conditions given it is considered 'contaminated'), and also, to not be legally able to capture that same run-off without a licence (under the WMA) - and thus having to choose which law to break?

(a) Generally farm dams are permitted without the need for development consent under the *Environmental Planning and Assessment Act 1979.*

(b) Where some form of approval is required to build the dam the public authority issuing the approval is under a duty to determine the impact on the environment as part of issuing that approval.[6] However with harvestable rights, provided that someone can comply with the relevant order, no environmental impact assessment is required.

(c) Where a dam requires some form of works approval under the WMA, Water NSW would be subject to the duty to consider the impact on the environment when issuing the licence.

(d) Under section 120 of the *Protection of the Environment Operations Act 1997* (**POEO Act**), a person who pollutes any water is guilty of an offence.

(e) 'Water pollution' or 'pollution of water' is defined in the Dictionary to the POEO Act to mean:

[6] Division 5.5 of the EP&A Act.

"(a) placing in or on, or otherwise introducing into or onto, waters (whether through an act or omission) any matter, whether solid, liquid or gaseous, so that the physical, chemical or biological condition of the waters is changed, or

(b) placing in or on, or otherwise introducing into or onto, the waters (whether through an act or omission) any refuse, litter, debris or other matter, whether solid or liquid or gaseous, so that the change in the condition of the waters or the refuse, litter, debris or other matter, either alone or together with any other refuse, litter, debris or matter present in the waters makes, or is likely to make, the waters unclean, noxious, poisonous or impure, detrimental to the health, safety, welfare or property of persons, undrinkable for farm animals, poisonous or harmful to aquatic life, animals, birds or fish in or around the waters or unsuitable for use in irrigation, or obstructs or interferes with, or is likely to obstruct or interfere with persons in the exercise or enjoyment of any right in relation to the waters, or

(c) placing in or on, or otherwise introducing into or onto, the waters (whether through an act or omission) any matter, whether solid, liquid or gaseous, that is of a prescribed nature, description or class or that does not comply with any standard prescribed in respect of that matter,

and, without affecting the generality of the foregoing, includes—

(d) placing any matter (whether solid, liquid or gaseous) in a position where—

(i) it falls, descends, is washed, is blown or percolates, or

(ii) it is likely to fall, descend, be washed, be blown or percolate,

into any waters, onto the dry bed of any waters, or into any drain, channel or gutter used or designed to receive or pass rainwater, floodwater or any water that is not polluted, or

(e) placing any such matter on the dry bed of any waters, or in any drain, channel or gutter used or designed to receive or pass rainwater, floodwater or any water that is not polluted,

if the matter would, had it been placed in any waters, have polluted or have been likely to pollute those waters."

(f) 'Water' is defined to mean the whole or any part of:

"(a) any river, stream, lake, lagoon, swamp, wetlands, unconfined surface water, natural or artificial watercourse, dam or tidal waters (including the sea), or

(b) any water stored in artificial works, any water in water mains, water pipes or water channels, or any underground or artesian water."

(g) In this context, releasing rainfall run-off water contaminated by fertiliser, herbicides and pesticides into a watercourse would be considered an offence under section 120 of the POEO Act.

(h) Section 123 of the POEO Act provides the maximum penalty for committing an offence under section 120 is a penalty of up to $1,000,000 in the case of a company, or a penalty of up to $250,000 in the case of an individual.

(i) There is considerable case law regarding breaches of section 120 of the POEO Act. For example in *Environment Protection Authority v Forbes Shire Council* [2014] NSWLEC 26 the Council entered a plea of guilty to a charge that it had polluted water in breach of section 120 of the POEO Act by the accidental surface run-off from an irrigation area of 11,000L of effluent, sewage, septic waste and animal manure into a stormwater drain flowing into creeks and dams. In that case there was no actual harm to the environment but there was the potential for environmental harm by the escape of pathogens. The offence was held to be in the middle range of objective seriousness. The Council pleaded guilty early, had no prior convictions, expressed remorse and at all times cooperated with the prosecutor. The Council was fined $130,000.[7]

(j) Similarly, in *Environment Protection Authority v Tea Garden Farms Pty Ltd* [2012] NSWLEC 89, Tea Garden Farms polluted of waters contrary to section 120(1) of the POEO Act was found due to the discharge of sediment-laden water from a rural dam into the waters of a marine park. An 11 metre section of the dam wall partially collapsed when an employee of Tea Garden Farms excavated the base of the dam wall to replace a blocked pipe. The environmental harm was in the "relatively low range" with overall objective seriousness lying in the low to moderate range. The defendant's remorse, early guilty plea and assistance to authorities operated to mitigate the sentence to some degree. In the circumstances of this case, the defendant was ordered to pay a total of $77,000 towards two environmental protection and remediation projects pursuant to section 250(1)(e) of the POEO Act. In addition, a publication order was made and the defendant was ordered to pay the prosecutor's legal and investigation costs totalling $121,464.[8]

(k) In order to avoid a breach of section 120, pollution needs to be authorised through an environmental protection licence or otherwise have some defence conferred under the POEO Regulation (s.121 of the POEO Act).

(l) The POEO Act also provides that 'irrigated agriculture' meaning:

> *"the irrigation activity of an irrigation corporation within the meaning of the Water Management Act 2000, but not including the irrigation activity of individual irrigators in the area of operations of any such irrigation corporation."*[9]

is a scheduled activity. A list of irrigation corporations to which this section refers is provided at sch 1 of the WMA.

(m) Section 48 of the POEO Act provides it is an offence for a person who is the occupier of any premises where irrigated agriculture is carried out is guilty of an offence unless the person holds a relevant EPL authorising the irrigated agriculture activity.

(n) The impact of the above may be summarised briefly as follows;

(i) irrigation corporations as defined in Schedule 1 to the WMA require an EPL to undertake irrigated agriculture;

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[7] *Environment Protection Authority v Forbes Shire Council* [2014] NSWLEC 26; *Environment Protection Authority v Orica Australia Pty Ltd (Nitric Acid Air Lift Incident)* (2014) 206 LGERA 239.

[8] *Environment Protection Authority v Tea Garden Farms Pty Ltd* [2012] NSWLEC 89; *Environment Protection Authority v Orica Australia Pty Ltd (Nitric Acid Air Lift Incident)* (2014) 206 LGERA 239.

[9] *Protection of the Environment Operations Act 1997,* Sch 1, Part 1, s 21.

(ii) individual irrigators within an irrigation corporation do not require an additional licence, however must comply with the EPL held by the irrigation corporation to which they are a member;

(iii) other farmers, landholders and irrigators that are not a member of an irrigation corporation must not cause pollution in breach of s 120 unless they have an EPL authorising such activities.

(o) The problem identified in the instructions is that where the water source in a water sharing plan was amended to include overland flow and if the Rainfall Run-off Regulation was not in place and the take of water was in excess of that authorised by a floodplain harvesting access licence a landowner may be required to allow that water to leave the tail water return system and would then run a risk that they may be prosecuted for polluting water under section 120 of the POEO Act.

(p) There is some concern that the Rainfall Run-off Regulation will enable rainfall run-off to be captured twice if floodplain harvesting is implemented.

(q) The FPH Policy proposes a broad definition 'floodplain harvesting' that includes rainfall run-off.

(r) Clause 17C(2) of the Rainfall Run-off Regulation provides:

> "The exemption conferred by this clause does not apply during a period in which a work on the land, other than a tailwater drain, takes overland flow water."

(s) Section 4A of the WMA defines 'overland flow water' to include floodwater and rainfall run-off.

(t) The FPH Policy provides floodplain harvesting will operate by issuing works approvals to harvest floodplain water where certain eligibility criteria are met. Water sharing plans will then be amended to provide floodplain harvesting access licences.

(u) Taking water in accordance with a floodplain harvesting licence would be considered a work on land taking overland flow water, meaning section 17C of the Rainfall Run-off Regulation would be enlivened. In effect, landholders would not be exempt from taking rainfall run-off under the Rainfall Run-off Regulation whilst a floodplain harvesting work is being used on the land to capture water off the floodplain.

4. Conclusions

(a) The Rainfall Run-off Regulation exempts a landholder from the need for a water supply work approval for the use of a tailwater drain for the purpose of collecting rain-fall run off from an irrigated field and also exempts the landowner for needing an access licence to take water from a tailwater drain, other than during the period where a work on the land takes overland flow water.

(a) The NSW Government has previously amended the WMA to give it the power to regulate overland flow water, which includes rainfall-run off.

(b) The adoption of replacement floodplain harvesting access licences should be seen as the replacement of a residual common law right to take water from the floodplain with a licence regime strictly governed by the WMA.

(c) As part of the implementation of that licencing framework the relevant water source in the various plans will be amended to include overland flow which would include rainfall run-off.

(d) The NSW Government has decided to seek to include rainfall run-off as part of a water source and then provide it with a partial exemption from the need for a licence.

(e) Without the Rainfall Run-off Regulation the taking of rainfall run-off will need to be authorised by a floodplain harvesting access licence.

(f) In those circumstances the Rainfall Run-off Regulation is necessary because the NSW Government has decided to recognise rainfall run-off as part of the water source. Having brought into the regulatory framework for floodplain harvest the Government has to deal with. We are not aware of any intent to licence it, so all they can be done is to provide an exemption.

(g) Harvestable rights are a form of basic landholder right. Harvestable rights do allow landowners and occupiers to capture and use rainfall run-off in accordance with the relevant harvestable rights orders.

(h) While it may be the case that certain dams can be constructed relying on the harvestable rights order, but such dams must be constructed on minor streams, have a maximum capacity (determined by reference to the order) and cannot be used to capture, contain and recirculate drainage or to prevent the contamination of a water source.

(i) Harvestable rights should not be seen as superseding the requirements for the Rainfall Run-off Regulation because of the limits on what can be constructed relying on the various harvestable rights orders.

(j) A person who pollutes any water is guilty of an offence. Releasing rainfall run-off water contaminated by fertiliser, herbicides and pesticides into a watercourse would be considered an offence under section 120 of the POEO Act.

(k) Without the Rainfall Run-off Regulation, or a floodplain harvesting access licence that authorises the taking of rainfall run-off a licence holder would potentially breach the WMA by taking water by means of a tailwater drain from an irrigated field. Conversely releasing rainfall run-off water from a field contaminated by fertiliser, herbicides and pesticides into a watercourse would be considered an offence under the POEO Act.

We trust that this advice is of assistance to you.

Yours sincerely

Holding Redlich

Annexure A

Region	Water Sharing Plans
Barwon, Darling and West	*Barwon-Darling Unregulated River Water Source 2012*
	Darling Alluvial Groundwater Sources 2020
	Intersecting Streams Unregulated River Water Sources 2011
	Lower Murray-Darling Unregulated River Water Source 2011
	North Western Unregulated and Fractured Rock Water Sources 2011
	NSW Great Artesian Basin Groundwater Sources 2020
	NSW Great Artesian Basin Shallow Groundwater Sources 2020
	NSW Murray and Lower Darling Regulated Rivers Water Sources 2016
	NSW Murray-Darling Basin Fractured Rock Groundwater Sources 2020
	NSW Murray-Darling Basin Porous Rock Groundwater Sources 2020
Murray	*Lower Murray-Darling Unregulated River Water Source 2011*
	Murray Alluvial Groundwater Sources 2020
	Murray Unregulated River Water Sources 2011
	NSW Murray and Lower Darling Regulated Rivers Water Sources 2016
	NSW Murrary-Darling Basin Fractured Rock Groundwater Sources 2020
	NSW Murray-Darling Basin Porous Rock Groundwater Sources 2020
Lachlan	*Belubula Regulated River Water Sources 2012*
	Lachlan Alluvial Groundwater Sources 2020
	Lachlan Regulated River Water Source 2016

	Lachlan Unregulated River Water Sources 2012
	NSW Murray-Darling Basin Fractured Rock Groundwater Sources 2020
Murrumbidgee	*Murrumbidgee Regulated River Water Source 2016*
	Murrumbidgee Unregulated River Water Sources 2012
	Murrumbidgee Alluvial Groundwater Sources 2020
	NSW Murray-Darling Basin Fractured Rock Groundwater Sources 2020
	NSW Murray-Darling Basin Porous Rock Groundwater Sources 2020