



New South Wales
Government

Harvestable Rights (coastal-draining catchments) Order 2022

under the

Water Management Act 2000

I, KEVIN ANDERSON, Minister for Lands and Water, in pursuance of section 54 of the *Water Management Act 2000*, make the following Order.

Dated 12 May 2022

KEVIN ANDERSON, MP
Minister for Lands and Water

Explanatory note

This Order is made under section 54 of the *Water Management Act 2000*. The object of this Order is to (amongst other things) constitute land as a harvestable rights area, specify the kind of water that may be captured and stored in the area in exercise of harvestable rights, and specify the method for calculating the maximum harvestable right volume for works constructed or used in exercise of harvestable rights on landholdings in the area.

1 Name of Order

This Order is the *Harvestable Rights (coastal-draining catchments) Order 2022*.

2 Commencement

This Order commences on the day on which it is published on the NSW legislation website.

3 Repeal of other orders

This order repeals all orders made under section 54 of the Act prior to the date of commencement of this order, other than the order titled 'Harvestable rights – Western Division', published on 31 March 2006 in the Government Gazette No. 40, pp 1628.

Note: The orders repealed include the following:

- (a) order titled 'Harvestable Rights – Eastern and Central Division', published on 31 March 2006 in the Government Gazette No. 40, pp 1628-1630
- (b) order titled 'Harvestable rights – Western Division', published on 1 July 2004 in the Government Gazette No. 110, pp 5515-5516
- (c) order titled 'Harvestable rights – Eastern and Central Division', published on 1 July 2004 in the Government Gazette No. 110, pp 5517-5522.

4 Constitution of land, name of area and fixing of boundaries

- a) The land identified as 'coastal-draining catchments' on the map at Annexure A (also available on the Department's website) is:
 - i. constituted as a harvestable rights area with the boundaries as shown on the map, and
 - ii. named the 'Coastal-draining catchments harvestable rights area'.
- b) The harvestable rights area comprises all water sources to which the following water sharing plans (as amended or replaced from time to time) apply:
 - i. *Water Sharing Plan for the Bega and Brogo Rivers Area Regulated, Unregulated and Alluvial Water Sources 2011*
 - ii. *Water Sharing Plan for the Bellinger River Area Unregulated and Alluvial Water Sources 2020*
 - iii. *Water Sharing Plan for the Brunswick Unregulated and Alluvial Water Sources 2016*
 - iv. *Water Sharing Plan for the Central Coast Unregulated Water Sources 2009*
 - v. *Water Sharing Plan for the Clarence River Unregulated and Alluvial Water Sources 2016*
 - vi. *Water Sharing Plan for the Clyde River Unregulated and Alluvial Water Sources 2016*
 - vii. *Water Sharing Plan for the Coffs Harbour Area Unregulated and Alluvial Water Sources 2009*
 - viii. *Water Sharing Plan for the Deua River Unregulated and Alluvial Water Sources 2016*
 - ix. *Water Sharing Plan for the Greater Metropolitan Region Unregulated River Water Sources 2011*
 - x. *Water Sharing Plan for the Hastings Unregulated and Alluvial Water Sources 2019*

- xi. *Water Sharing Plan for the Hunter Unregulated and Alluvial Water Sources 2009*
- xii. *Water Sharing Plan for the Lower North Coast Unregulated and Alluvial Water Sources 2009*
- xiii. *Water Sharing Plan for the Macleay Unregulated and Alluvial Water Sources 2016*
- xiv. *Water Sharing Plan for the Murrumbidgee Area Unregulated and Alluvial Water Sources 2010*
- xv. *Water Sharing Plan for the Nambucca Unregulated and Alluvial Water Sources 2016*
- xvi. *Water Sharing Plan for the Richmond River Area Unregulated, Regulated and Alluvial Water Sources 2010*
- xvii. *Water Sharing Plan for the Snowy Genoa Unregulated and Alluvial Water Sources 2016*
- xviii. *Water Sharing Plan for the Towamba River Unregulated and Alluvial Water Sources 2010*
- xix. *Water Sharing Plan for the Tuross River Unregulated and Alluvial Water Sources 2016*
- xx. *Water Sharing Plan for the Tweed River Area Unregulated and Alluvial Water Sources 2010.*

c) This order only applies to landholdings within the harvestable rights area.

5 Kind of water and type and location of works

- a) The kind of water that may be captured and stored in the harvestable rights area in exercise of harvestable rights is rainfall runoff.
- b) The type of water supply work that may be used by a landholder to capture and store harvestable rights water is a dam.
- c) A harvestable rights dam cannot be constructed or used if, at the time of construction or first use of the harvestable rights dam, the dam is:
 - i. on, in or within 40 metres (measured perpendicularly) of any river or stream that is not a minor stream
 - ii. on any floodplain
 - iii. on or within 3 kilometres upstream, including in or within stream and within the catchment generally, of any Ramsar wetland.

Note: *dam, harvestable rights area, harvestable rights dam, harvestable rights water, landholder, minor stream, floodplain* and *Ramsar wetland* are defined in paragraph 10.

6 Calculation of maximum harvestable right volume and accounting for water in mixed-rights dams

- a) The maximum harvestable right volume for a landholding is to be calculated in accordance with the method set out in Schedule 1 and by reference to 30% of the average annual regional rainfall runoff on the landholding.
- b) The maximum harvestable right volume for a landholding is expressed as a dam capacity (in megalitres).

Note: Section 54(3) of the Act provides that the kind of ways in which a maximum harvestable right volume for landholdings in a harvestable rights area may be expressed includes by reference to the capacity of water supply works.

- c) Despite subparagraph 6 a), if a landholding resulted from a subdivision approved by a relevant planning authority before 1 January 1999 and the maximum dam capacity for the landholding calculated in accordance with Schedule 1 is less than one megalitre, the maximum dam capacity for that landholding is taken to be one megalitre.
- d) The method for accounting for water that is captured or stored in mixed-rights dams is set out in Schedule 2.

Note: *landholding* and *mixed-rights dam* are defined in paragraph 10.

7 Rules about purposes for which water may be captured, taken, stored or used

- a) If a landholder constructs and uses, or uses, a Type 1 dam, the water captured and stored in that dam may be taken and used for any purpose.
- b) If a landholder constructs and uses, or uses, a Type 2 dam, all of the water captured and stored in that dam may only be taken and used for the purposes of domestic consumption, stock watering and extensive agriculture.
- c) If a mixed-rights dam captures and/or stores water taken in the following circumstances, all water captured and/or stored in that dam may only be taken and used for the purposes of domestic consumption and stock watering:
 - i. in the exercise of a domestic and stock right under section 52 of the Act,
 - ii. under a domestic and stock access licence or a licence granted under Part 5 of the *Water Act 1912* for stock and domestic purposes,
 - iii. under an exemption provided for in clauses 6 and 7 of Schedule 1 to the *Water Management (General) Regulation 2018*.
- d) Water cannot be moved from a Type 1 dam to an excluded work or to any other dam on the landholding.
- e) Water cannot be moved from a Type 2 dam to an excluded work or to any other dam on the landholding that is not a Type 2 dam.

Note: *Type 1 dam*, *Type 2 dam*, *domestic consumption*, *excluded work*, *stock watering* and *extensive agriculture* are defined in paragraph 10.

8 Notification form

A landholder must submit a notification form in the following circumstances and within the following timeframes:

- a) if constructing a new Type 2 dam on the landholding— within 28 days of construction of the new dam commencing
- b) if converting an existing dam or work on the landholding to a Type 2 dam— before the conversion occurs.

Note: *notification form* is defined in paragraph 10.

9 Arrangements for permitted shared use of a harvestable rights dam that straddles landholdings

- a) The shared use of a single harvestable rights dam by two or more landholders is permitted where the dam straddles their landholdings.
- b) The method of apportioning the capacity of a harvestable rights dam where the dam straddles the landholdings of two or more landholders is to apportion the capacity of the dam between each landholding in proportion to the surface area of the water stored on the respective landholding when the dam is full.

10 Dictionary

In this Order:

Act means the *Water Management Act 2000*.

dam for the purposes of this Order excludes an excluded work.

dam reliability factor is a number determined by the Minister for a location and reflects a measure of reliability of water capture and supply for that location.

Department means the Department of Planning and Environment.

domestic consumption has the same meaning as in section 52 of the Act.

excluded work means any of the following –

- a) a dam identified as an excluded work in clauses 1 - 4 of Schedule 1 to the *Water Management (General) Regulation 2018*
- b) a dam that cannot capture rainfall runoff.

extensive agriculture means any of the following –

- a) the production of pasture and fodder crops for the primary purpose of feeding livestock
- b) the care of livestock, not including livestock raised on an intensive commercial basis that are housed or kept in feedlots or buildings for all (or a substantial part) of the period during which the livestock are being raised.

floodplain has the same meaning as under the Act.

the harvestable rights area means the harvestable rights area constituted and named at paragraph 4.

harvestable rights dam means a dam or proportion of a dam on a landholding in the harvestable rights area used in the exercise of harvestable rights.

harvestable rights multiplier is a number determined by the Minister that represents 10% of the average annual regional rainfall runoff in megalitres per hectare for a given locality, as adjusted to take into account evaporation, periods between runoff-producing rainfall events and assumed demands on harvestable rights dams.

harvestable rights water is water captured, stored, taken and used in the exercise of harvestable rights.

hydroline spatial data has the same meaning as in clause 3(1) of the *Water Management (General) Regulation 2018*.

landholder has the same meaning as under the Act.

landholding has the same meaning as under the Act.

minor stream means the following:

- a) any stream or part of a stream:
 - (i) identified as a watercourse in the hydroline spatial data, and
 - (ii) that is a first or second order stream, or part of such a stream, determined in accordance with the Strahler system set out in Schedule 2 to the *Water Management (General) Regulation 2018*, and
 - (iii) that does not maintain a permanent flow of water, being a visible flow which occurs on a continuous basis, or which would so occur if there were no water extractions, diversions or obstructions of flows upstream, and
- b) any stream or part of a stream which is not identified as a watercourse in the hydroline spatial data.

Note: **hydroline spatial data** is defined above.

mixed-rights dam means a dam for capturing and storing harvestable rights water and other water that has been lawfully taken from a water source.

Notes:

1. Section 53(2) of the Act provides for the use of mixed-rights dams that do not exceed the maximum harvestable rights volume for the landholding calculated in accordance with the method in Schedule 1.
2. Section 53(3) of the Act specifies the circumstances in which harvestable rights water and other water lawfully taken from a water source can be captured and stored in a dam or dams that exceeds the maximum harvestable rights volume for the landholding calculated in accordance with the method in Schedule 1.

notification form means the online form titled 'Coastal harvestable rights notification form' available from the Department's website.

Ramsar wetland means a wetland included, from time to time, in the List of Wetlands of International Importance of the International Convention on Wetlands (Ramsar, Iran, 1971).

stock watering has the same meaning as in section 52 of the Act.

Type 1 dam means a harvestable rights dam of a capacity up to and including 10% of the average annual regional rainfall runoff as calculated using the method set out at Schedule 1, but excluding a dam referred to in (b) of the definition of Type 2 dam.

Type 2 dam means any of the following –

- a) a harvestable rights dam of a capacity exceeding 10% of the average annual regional rainfall runoff, and less than or equal to 30% of the average annual regional rainfall runoff, both volumes calculated using the method set out at Schedule 1,
- b) a harvestable rights dam of a capacity up to and including 10% of the average annual regional rainfall runoff as calculated using the method set out at Schedule 1 that, when

combined with all previously constructed Type 1 dams on the landholding, results in all Type 1 dams on the landholding having a combined capacity that exceeds 10% of the average annual regional rainfall runoff (as calculated using the method set out at Schedule 1).

Schedule 1 Method for calculating the maximum capacity of harvestable rights dams on a landholding

- a) The maximum capacity of a harvestable rights dam or dams on a landholding (in megalitres) is to be calculated using the online 'maximum harvestable rights dam capacity calculator' on the WaterNSW website (online calculator).

Notes:

1. The online calculator gives two dam capacity outputs for landholdings in the coastal-draining catchments harvestable rights area – one representing up to 10% of the average annual regional rainfall runoff for the landholding and one representing up to 30% of average annual regional rainfall runoff for the landholding.
2. The online calculator is used in the method for accounting for harvestable rights water in mixed-rights dams in Schedule 2.

- b) The method applied by the online calculator is as follows:

- (i) identify the location of the landholding
- (ii) identify the total size of the landholding in hectares (being only that part within the harvestable rights area)
- (iii) identify the area (in hectares) of the landholding from which water is captured, taken or otherwise impounded by means of an excluded work or works specified in clauses 1-4 in Schedule 1 to the *Water Management (General) Regulation 2018*
- (iv) to calculate the maximum capacity for a harvestable rights dam or dams which represents up to 30% of the average annual regional rainfall runoff on the landholding - subtract (iii) from (ii) and then multiply that number by three times the harvestable rights multiplier.
- (v) to calculate the capacity for a harvestable rights dam or dams which represents up to 10% of the average annual regional rainfall runoff on the landholding (for the purpose of determining whether a harvestable rights dam is a Type 1 or Type 2 dam) - multiply (ii) by the harvestable rights multiplier.

Note: *harvestable rights multiplier* is defined in paragraph 10.

Schedule 2 Method for accounting for harvestable rights water captured and stored in mixed-rights dams

This schedule sets out the method for accounting for harvestable rights water that is captured or stored in mixed-rights dams.

Water NSW uses this method to determine the maximum volume of harvestable rights water in mixed-rights dams in megalitres per year.

The method is:

- (i) calculate the maximum capacity for a harvestable rights dam or dams on a landholding in accordance with Schedule 1
- (ii) calculate the capacity of any existing harvestable rights dam or dams on the landholding
- (iii) subtract (ii) from (i)
- (iv) divide the dam capacity value calculated at (iii) by the dam reliability factor shown in Column B of the table below for the corresponding harvestable rights multiplier that applies at the location of the landholding. If a harvestable rights multiplier for a landholding is between any two values specified in Column A, the relevant corresponding dam reliability factor will also be between the corresponding values specified in Column B.

Notes:

1. Section 53(2) and (3) of the Act provide for the construction and use of mixed-rights dams.
2. **harvestable rights multiplier** and **dam reliability factor** is defined in paragraph 10.

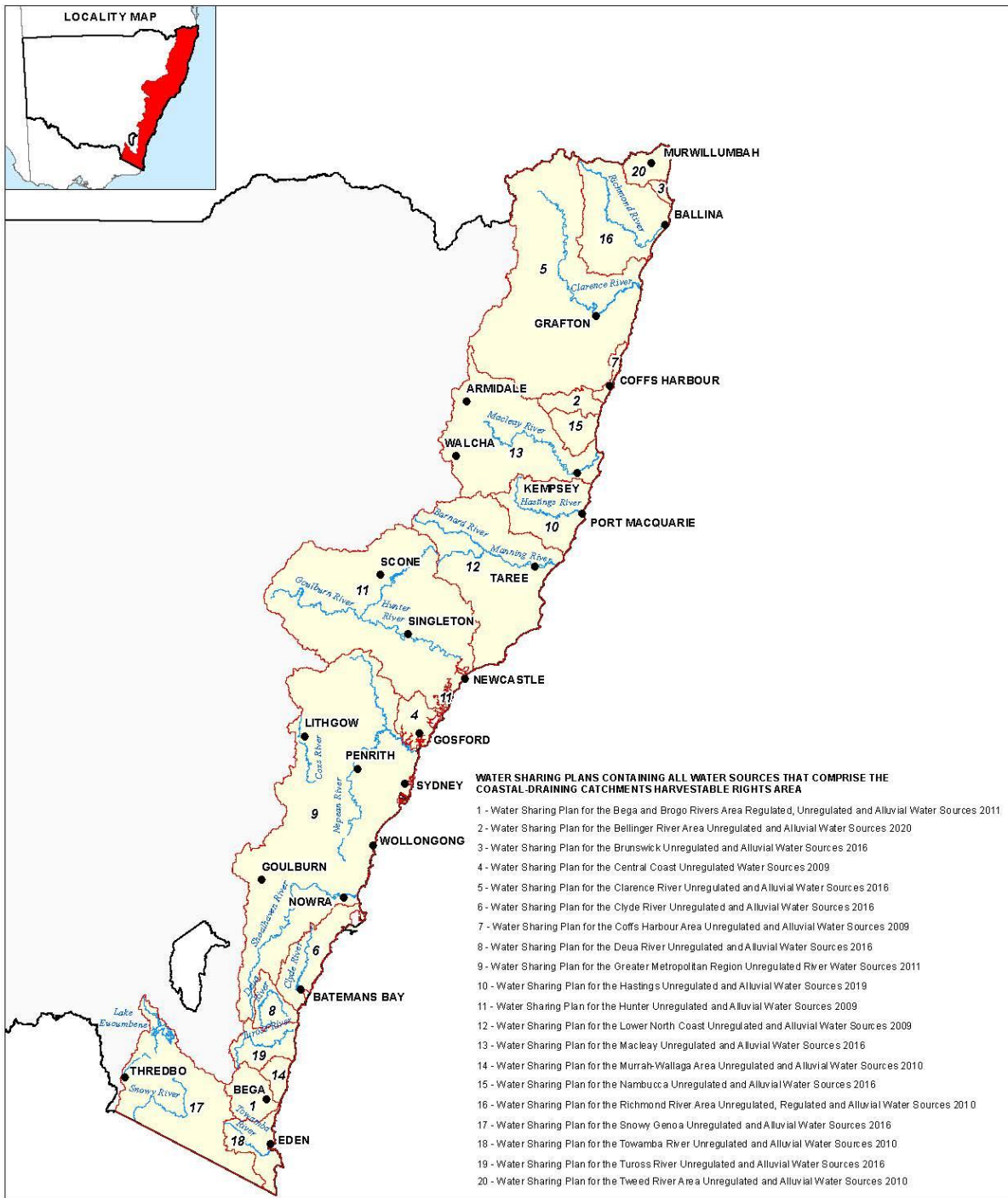
Column A	Column B
Harvestable rights multiplier	Dam reliability factor
0.050	2.50
0.051	2.32
0.052	2.17
0.053	2.04
0.054	1.93
0.055	1.83
0.056	1.75
0.057	1.68
0.058	1.61
0.059	1.55
0.060	1.50
0.062	1.41
0.064	1.33
0.066	1.27
0.068	1.21
0.070	1.17
0.075	1.07
0.080	1.00
0.090	0.90
0.10	0.83
0.11	0.79

0.12	0.75
0.13	0.72
0.14	0.70
0.15	0.68
0.16	0.67
0.17	0.65
0.18	0.64
0.19	0.63

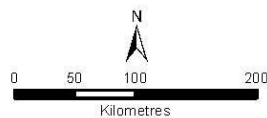
Annexure A – map of the harvestable rights area



Coastal-draining catchments harvestable rights area



- Town
- Major River
- Water Sharing Plan boundary
- Coastal-draining catchments harvestable rights area
- NSW boundary



Data Sources:
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Map produced by DPE Water 26 April 2022