



New South Wales  
Government

## **Water Sharing Plan for the NSW Border Rivers Regulated River Water Source Amendment Order 2022**

under the

Water Management Act 2000

I, KEVIN ANDERSON MP, Minister for Lands and Water, in pursuance of section 45 (1) of the *Water Management Act 2000*, being satisfied it is in the public interest to do so, and in such circumstances, in relation to such matters and to such extent as provided for under the *Water Sharing Plan for the NSW Border Rivers Regulated River Water Source 2021*, make the following Order to amend that Plan.

Dated 28 July 2022

KEVIN ANDERSON, MP  
**Minister for Lands and Water**

### **Explanatory note**

This Order is made under section 45 (1) of the *Water Management Act 2000*. The object of this Order is to amend the *Water Sharing Plan for the NSW Border Rivers Regulated River Water Source 2021*. The concurrence of the Minister for Environment and Heritage was obtained prior to the making of this Order as required under section 45 of the *Water Management Act 2000*.

**1 Name of Order**

This Order is the *Water Sharing Plan for the NSW Border Rivers Regulated River Water Source Amendment Order 2022*.

**2 Commencement**

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

**Schedule 1      Amendment of Water Sharing Plan for the NSW Border Rivers  
Regulated River Water Source 2021**

**[1]    Clause 3 Commencement**

Omit “1 July” from the clause. Insert “2 July” instead.

**[2]    Clause 3, Note**

Omit Note 1 under clause 3.

**[3]    Clause 4 (2) (a)**

Omit “, and”. Insert “.” instead.

**[4]    Clause 4 (2) (b)**

Omit the subclause.

**[5]    Clause 4 (2), Notes**

Insert a new note after Note 3 at subclause 4 (2):

- 4      Section 57A(4) of the Act provides that any water taken under a floodplain harvesting (regulated river) access licence from a floodplain for a regulated river identified in clause 4(2) of this Plan is to be treated as having been taken from the regulated river water source for the purposes of this Plan.

**[6]    Clause 5 Interpretation**

Insert the following after subclause 5 (7):

- (8)    A reference in this Plan to the calculation of values which do not have the same unit is a reference to the calculation of values in ML, ML/year or unit shares (as the case requires), without regard to the unit.

**Note:** For example, the sum of 40 unit shares plus 40 ML/year is taken to be 80.

**[7]    Clauses 8, 9, 10 and 11**

Omit “reaching” from subclauses 8 (3), 9 (3), 10 (3) and 11(3). Insert “achieving” instead.

**[8]    Clause 8**

Insert after clause heading and before clause 8 (1) -

**Note.** The environmental water objectives, strategies and provisions in this Plan make a contribution towards achieving the Aboriginal cultural objectives of this Plan.

**[9]    Clause 8 (3) (b)**

Omit “ ” after “Pindari Dam inflows” from Note 2 (ii).

**[10]    Clause 17 Application**

Omit subclause (2). Insert instead:

- (2)    The volumes of water specified in this Part represent the estimated requirements for water to satisfy basic landholder rights and the total volumes or unit shares specified in the share components of all access licences on commencement of this Plan, excluding floodplain harvesting (regulated river) access licences which are estimated in clause 24A as at 1 July 2022.

**[11]    Clause 18 Domestic and stock rights**

Omit “On the commencement of this Plan,”. Insert instead “It is estimated that at the time of commencement of this Plan,”.

**[12]    Clause 18**

Omit “are estimated to”.

**[13]    Clauses 20, 21, 23, 24, and 25**

Omit “On the commencement of this Plan,”.

Insert “at the time of commencement of this Plan” after “It is estimated that”.

**[14] Clause 22 Share components of regulated river (high security) access licences**

Omit “On the”. Insert instead “It is estimated that at the time of”.

**[15] Clause 24A Share components for floodplain harvesting (regulated river) access licences**

Insert the following after clause 24:

**24A Share components of floodplain harvesting (regulated river) access licences**

It is estimated that on 1 July 2022 the share components of floodplain harvesting (regulated river) access licences total 51,742 unit shares.

**[16] Clause 26 Exclusions, inclusions and variations in calculations**

Insert “the” at the beginning of subclause 26 (1) (b).

Omit “or 71V” from subclauses 26 (2) and 26 (4) (a).

Insert the following after subclause 26(4):

(5) The calculation of long-term annual extraction under clause 28 must not include water taken under clause 43A.

**[17] Clause 27 Calculation of the long-term average annual extraction limit**

Insert “excluding the collection of rainfall run-off from an irrigated field by a tailwater drain, except where another work on the land, other than a tailwater drain, takes overland flow water,” after “in the water source” in subclause 27 (2) (a) (v).

**[18] Clause 27 (3)**

Omit Note 1 under subclause 27 (3). Insert instead:

1 Under section 8F of the Act the long-term average annual extraction limit is taken to be varied by the amount of any change to the amount of water committed as licensed environmental water.

**[19] Clause 28 Calculation of long-term average annual extraction**

Omit ‘,’ from the end of subclause 28 (d). Insert ‘.’ instead.

**[20] Clause 28 (e)**

Omit the subclause.

**[21] Clause 33 Action following non-compliance**

Omit “Subject to subclauses (2) to (3)” from subclause 33 (1).

Insert instead “Subject to subclauses (2) to (4C)”.

**[22] Clause 33 (1)**

Omit “both” from subclauses 33 (1) and 33 (2). Insert “more” instead.

**[23] Clause 33 (1) (b)**

Insert “under” after “taken” in subclause 33 (1) (b).

**[24] Clause 33 (1) (b)**

Omit ‘.’ from the end of subclause 33 (1) (b). Insert ‘,’ instead.

**[25] Clause 33 (1) (c)**

Insert the following after subclause 33 (1) (b):

(c) make future available water determinations for floodplain harvesting (regulated river) access licences under clause 39A of less than 1 ML per unit share.

**[26] Clause 33 (3A)**

Insert the following after clause 33 (3):

(3A) The Minister must only take action under subclause (1) (a) if total extractions (excluding extractions under floodplain harvesting (regulated river) access licences) exceed the sum of the amounts under clause 27 (2) (a) (i) to (iv).

**[27] Clause 33 (4) (a)**

Insert “taken action under subclause (1) (a) and” after “the Minister has”.

**[28] Clause 33 (4) (b)**

Omit subclause 33 (4) (b). Insert instead:

(b) there is the same proportional reduction to the limit that may be taken under or assigned from for both regulated river (general security—A class) access licences and regulated river (general security—B class) access licences under clause 42 (3).

**[29] Clause 33 (4)**

Insert the following after clause 33 (4):

(4A) In taking action under subclause (1) (a) and (b), the Minister must have regard to the extent that total extractions (excluding extractions under floodplain harvesting (regulated river) access licences) have exceeded the sum of the amounts under clause 27 (2) (a) (i) to (iv).

(4B) The Minister must only take action under subclause (1) (c):

- (a) if the total extractions under floodplain harvesting (regulated river) access licences exceeds the amount under clause 27 (2) (a) (v), and
- (b) having regard to the extent that total extractions under floodplain harvesting (regulated river) access licences have exceeded the amount under clause 27 (2) (a) (v).

(4C) Subclauses (1) (c), (3A), (4A) and (4B) only apply if floodplain harvesting (regulated river) access licences have been issued in the water source.

**[30] Clause 34 General**

Insert “and floodplain harvesting (regulated river) access licences” after “regulated river (general security – B class) access licences” in subclause 34 (2).

**[31] Clause 39A Available water determinations for floodplain harvesting (regulated river) access licences**

Insert the following after clause 39:

**39A Available water determinations for floodplain harvesting (regulated river) access licences**

At the commencement of each water year, the Minister is to make an available water determination for floodplain harvesting (regulated river) access licences of 1 ML per unit share, unless a lower amount is determined under clause 33.

**Note.** The Minister may also make an available water determination for floodplain harvesting (regulated river) access licences other than at the commencement of a water year pursuant to section 59 of the Act. For example, if floodplain harvesting (regulated river) access licences are issued after 1 July.

**[32] Part 7 Rules for granting access licences**

Insert “and water supply work approvals” after “access licences” in the heading to this Part.

**[33] Clause 41A Rules for water supply works located near flood-dependent areas**

Insert the following after clause 41:

**41A Rules for water supply works located near flood-dependent areas**

- (1) A water supply work approval must not be granted if the water supply work is to be:
  - (a) nominated by a floodplain harvesting (regulated river) access licence, and

- (b) located within the Border Rivers Management Zone A or Border Rivers Management Zone D, as established under clause 5 of the *Floodplain Management Plan for the Border Rivers Valley Floodplain 2020*.

**Notes.**

- 1 Border Rivers Management Zone A includes areas of the Floodplain where a significant discharge of floodwater occurs during floods, with relatively high flood flow velocity and depth.
  - 2 Border Rivers Management Zone D is a special protection zone for areas of ecological or cultural significance, or both.
  - 3 An overview of Border Rivers Management Zone A and Border Rivers Management Zone D are shown in Appendix 1.
- (2) A water supply work approval must not be amended to add a work to which the approval relates if:
    - (a) the water supply works currently subject to the approval are nominated by a floodplain harvesting (regulated river) access licence, and
    - (b) the water supply work proposed to be added is not located on the Border Rivers Valley Floodplain, as declared under clause 252 of the *Water Management (General) Regulation 2018*.

**Note.** An overview of Border Rivers Valley Floodplain is shown in Appendix 2.

- (3) A water supply work approval must not be amended to add a work to which the approval relates if:
  - (a) the water supply works currently subject to the approval are nominated by a floodplain harvesting (regulated river) access licence, and
  - (b) the water supply work proposed to be added is located within Border Rivers Management Zone A or Border Rivers Management Zone D (as established under clause 5 of the *Floodplain Management Plan for the Border Rivers Valley Floodplain 2020*).
- (4) A water supply work approval must not be amended if all of the following apply:
  - (a) the water supply works currently subject to the approval are nominated by a floodplain harvesting (regulated river) access licence,
  - (b) amending the water supply work approval would increase the capability of water supply works subject to the approval to take water within Border Rivers Management Zone A or Border Rivers Management Zone D (as established under clause 5 of the *Floodplain Management Plan for the Border Rivers Valley Floodplain 2020*), and
  - (c) the increase in capability is not a result of adding a water supply work that is or was previously nominated by that floodplain harvesting (regulated river) access licence.
- (5) Subclauses (2), (3) and (4) do not apply if all of the following apply:
  - (a) the applicant was determined to be eligible for a replacement floodplain harvesting access licence under Division 1 of Part 2A of the *Water Management (General) Regulation 2018*,
  - (b) the work was constructed on or before 12 February 2021, but was not the subject of a water supply work approval prior to that date,
  - (c) if the work is also a flood work, the work is subject to a flood work approval, and
  - (d) the work is the subject of an application for the grant or amendment of a water supply work approval which was made prior to 31 December 2022.

**Note.** *Replacement floodplain harvesting access licences* is defined in section 57A of the Act.

**[34] Part 8 Division 1 Accounting for water allocation accounts**

Omit the heading of Division 1. Insert instead:

## **Division 1 Water allocation account management rules**

### **[35] Clause 42 Credits to and debits from an individual water allocation account**

Insert “or a floodplain harvesting (regulated river) access licence” after “a supplementary water access licence” in subclause 42 (1).

### **[36] Clause 42 (2A) and (2B)**

Insert the following after subclause 42 (2):

- (2A) For a floodplain harvesting (regulated river) access licence, the Minister must debit the volume of water extracted during a notified measurement period by the water supply works nominated by the access licence from the water allocation account for that access licence, except where subclause (2B) applies.
- (2B) For a floodplain harvesting (regulated river) access licence, the Minister must not debit the volume of water extracted in accordance with clause 43A from the water allocation account for that access licence.

### **[37] Clause 43 Limits on water allocation accounts and carryover**

Omit ‘.’ from the end of subclauses 43 (1) (b) and 43 (4) (b). Insert ‘,’ instead.

### **[38] Clause 43 (1) (c)**

Insert the following after subclause 43 (1) (b):

- (c) for a floodplain harvesting (regulated river) access licence – 5 ML per unit share.

### **[39] Clause 43 (4) (c)**

Insert the following after subclause 43 (4) (b):

- (c) floodplain harvesting (regulated river) access licence.

### **[40] Division 1A Taking of water under floodplain harvesting (regulated river) access licences**

Insert the following after clause 43:

#### **Division 1A Taking of water under floodplain harvesting (regulated river) access licences**

#### **43A Taking of uncontrolled flows under floodplain harvesting (regulated river) access licences**

##### **Notes.**

1. This clause is made under section 85A of the Act.
  2. **Uncontrolled flow, irrigated field** and **tailwater drain** are defined in the Dictionary.
  3. **Overland flow water** is defined in section 4A of the Act.
- (1) This clause does not apply if an exemption from section 60A (1) and (2) of the Act is in force in relation to the taking of water from a tailwater drain for the purpose of collecting rainfall run-off from an irrigated field.
- (2) The Minister may, by order published on the Department’s website, authorise the holders of floodplain harvesting (regulated river) access licences to take water from uncontrolled flows that have not been credited to the water allocation accounts of the licences in accordance with the rules in this clause.
- (3) This clause only authorises the taking of water from uncontrolled flows if:
- (a) the water from the uncontrolled flows is captured by means of a tailwater drain, and
  - (b) no other work, other than a tailwater drain, is taking overland flow water at the time the tailwater drain is capturing uncontrolled flows.

#### **43B Taking of water under floodplain harvesting (regulated river) access licences**

- (1) For the purposes of this clause *Menindee Lakes Storage* has the same meaning as it does under the Murray-Darling Basin Agreement.
- (2) The taking of water under a floodplain harvesting (regulated river) access licence may only occur if the Minister has announced that the taking of overland flow water is permitted.
- (3) The Minister must not announce that the taking of overland flow water is permitted if the volume of water stored in Menindee Lakes Storage is less than 195 gegalitres.
- (4) Subclause (3) does not apply during periods for which, in the Minister’s opinion, the flow in the Barwon River at Mungindi gauge (416 001) will remain at or above 3,000 ML/day.

#### **[41] Clause 47 Announcement of supplementary water events downstream of the Macintyre River and Dumaresq River junction**

Omit “Boomi” from Column 4 of Table B in clause 47. Insert “Macintyre” instead.

#### **[42] Part 9 Access licence dealing rules**

Omit Note 3.

#### **[43] Clause 49 Assignment of rights dealings (within the water source or without a water management area)**

Insert the following after clause 49 (1):

- (1A) A dealing under section 71Q of the Act is prohibited if the dealing involves an assignment of rights to a floodplain harvesting (regulated river) access licence that nominates a water supply work:
  - (a) not located within the Border Rivers Valley Floodplain (as declared under clause 252 of the *Water Management (General) Regulation 2018*) unless the work was nominated by the licence when the licence was first issued in the water source, or
  - (b) located within the Border Rivers Management Zone A or Border Rivers Management Zone D, as established under clause 5 of the *Floodplain Management Plan for the Border Rivers Valley Floodplain 2020* unless the work was nominated by the licence when the licence was first issued in the water source, or
  - (c) located on a natural pool, lagoon, lake or wetland specified in Schedule 5 or 6 of the *Water Sharing Plan for the NSW Border Rivers Unregulated River Water Sources 2012* unless the work was nominated by the licence when the licence was first issued in the water source.

#### **[44] Clause 51 Assignment of water allocations dealings**

Omit ‘.’ from the end of subclause 51 (b). Insert ‘,’ instead.

#### **[45] Clause 51 (c)**

Insert the following after subclause 51 (b):

- (c) the dealing involves an assignment of water allocation to or from a floodplain harvesting (regulated river) access licence.

#### **[46] Clause 53 Nomination of water supply works dealings**

Insert the following after subclause 53 (1):

- (1A) A dealing under section 71W of the Act is prohibited if it involves a floodplain harvesting (regulated river) access licence being amended to nominate a water supply work located:



- (a) outside the Border Rivers Valley Floodplain, as declared under clause 252 of the *Water Management (General) Regulation 2018*, or
- (b) within the Border Rivers Management Zone A or Border Rivers Management Zone D, as established under clause 5 of the *Floodplain Management Plan for the Border Rivers Valley Floodplain 2020*, or
- (c) on a natural pool, lagoon, lake or wetland that is specified in Schedule 5 or 6 of the *Water Sharing Plan for the NSW Border Rivers Unregulated River Water Sources 2012*.

**[47] Clause 65 Mandatory conditions on access licences**

Omit “practicable” in subclause 65 (1) (a) (i). Insert instead “practical”.

**[48] Clause 65 (1)**

Omit subclause 65 (1) (b).

**[49] Clause 65 (2)**

Insert “and a floodplain harvesting (regulated river) access licence” after “a supplementary water access licence” in subclause 65 (2).

**[50] Clause 65 (4) and (5)**

Insert the following after subclause 65 (3):

- (4) Each floodplain harvesting (regulated river) access licence must have a mandatory condition requiring that the licence holder only take water from overland flow within the Border Rivers Valley Floodplain, as declared under clause 252 of the *Water Management (General) Regulation 2018*.

**Note.** *Overland flow* is defined under section 4A of the Act.

- (5) Each floodplain harvesting (regulated river) access licence must have a mandatory condition that gives effect to Division 1A of Part 8.

**[51] Clause 66 General conditions**

Omit clause 66 and insert instead:

**66 General conditions**

- (1) Each water supply work approval must have mandatory conditions to give effect to:
  - (a) the clauses set out in this Division, and
  - (b) any other condition required to implement the provisions of this Plan.
- (2) Upon becoming aware of a breach of any condition of the approval, the approval holder must:
  - (a) notify the Minister as soon as practical, and
  - (b) if the notification under paragraph (a) was not in writing, confirm this notification in writing within seven days of becoming aware of the breach.
- (3) Flow measurement devices must be installed and maintained on all water supply works used for extraction of water under an access licence (other than a floodplain harvesting (regulated river) access licence) and must be of a type and maintained in a manner, which is acceptable to the Minister.

**Note.** The *Water Management (General) Regulation 2018* provides that measurement devices must be installed by the date specified in the regulation for all water supply works used for extraction of water under a floodplain harvesting (regulated river) access licence.

- (4) Water extraction, property water management infrastructure and cropping details must

be provided on request, in the form and in accordance with procedures established by the Minister.

- (5) The taking of water may only occur in accordance with the conditions applying to the access licence that will have its water allocation account debited for that take.
- (6) Subclauses (3) to (5) do not apply to approvals for water supply works held by Water NSW provided the approval is not nominated by an access licence.
- (7) Subclauses (3) and (4) are taken to be repealed on the day on which the temporary exemption from the mandatory metering equipment condition ceases to apply to the water source in accordance with clause 230 (1) of the *Water Management (General) Regulation 2018*.

**Notes.**

- 1 **Mandatory metering equipment condition** is defined in clause 228 of the *Water Management (General) Regulation 2018*.
  - 2 Clause 230 of the *Water Management (General) Regulation 2018* provides that the mandatory metering equipment condition applies to existing and new water supply works required to have a meter from 1 April 2019, and to other approvals in the water source from 1 December 2021.
- (8) Water supply work approvals held by Water NSW must have mandatory conditions to give effect to the provisions in Part 10.

**[52] Clause 70 Amendments relating to floodplain harvesting**

Omit the clause. Insert instead:

**70 Amendments relating to floodplain harvesting**

- (1) This Plan may be amended to add, modify or remove provisions relating to floodplain harvesting (regulated river) access licences in response to any of the following:
  - (a) to protect overland flow for environmental purposes,
  - (b) monitoring, evaluation and reporting outcomes,
  - (c) an improved understanding of the influence of floodplain harvesting on downstream flows,
  - (d) a review that assesses the potential benefits and impacts of new access provisions for floodplain harvesting (regulated river) access licences,
  - (e) a review of dealing rules in the *Water Sharing Plan for the NSW Border Rivers Unregulated River Water Sources 2012*,
  - (f) other circumstances as determined by the Minister.
- (2) Clause 39A may be amended to provide available water determinations for floodplain harvesting (regulated river) access licences that are:
  - (a) less than 1 ML per unit share if the Minister is satisfied that they are appropriate because the determination of the amount under clause 27 (2) (a) (v) is less than the determination of the amount under clause 27 (2) (a) (v) when floodplain harvesting (regulated river) access licences were first issued in the water source,
  - (b) greater than 1 ML per unit share if the Minister is satisfied that they may be made without total extractions exceeding the long-term average annual extraction limit, because the determination of the amount under clause 27 (2) (a) (v) is greater than the determination of the amount under clause 27 (2) (a) (v) when floodplain harvesting (regulated river) access licences were first issued in the water source.
- (3) Before making an amendment in accordance with subclause (2) the Minister may consult with water user representatives, the NSW Environmental Water Manager and

the operator regarding the following:

- (a) the data used for the calculations under clause 27 (2) (a) (v),
  - (b) the proposed amendment under subclause (2).
- (4) Actions under subclause (1) or subclause (5) must not substantially alter the long-term average annual total amount of water able to be extracted under floodplain harvesting (regulated river) access licences in the water source.
- (5) This Plan may be amended to add, remove or modify rules in clause 43B.
- (6) Before making any amendment under subclause (5) and before 1 July 2025, the Minister will:
- (a) seek, consider and publish independent expert advice on the adequacy of the rules in clause 43B including:
    - (i) the needs of the environment, basic landholder rights, domestic and stock access licence holders and local water utility access licence holders,
    - (ii) the adequacy of the existing flow target and volume to meet those needs,
    - (iii) any changes to the flow target and volume that would be required to meet those needs, and
    - (iv) the impact of those changes to the flow target and volume on the long-term average annual total amount of water able to be extracted under floodplain harvesting (regulated river) access licences in the water source,
  - (b) consider the views of stakeholders and other community members on the independent expert advice.

**[53] Clause 71 Amendment relating to individual daily extraction components**

Omit the clause. Insert instead:

This Plan may be amended to include provisions to establish and manage individual daily extraction components of access licences.

**[54] Dictionary**

Insert the following after the definition of *flow regimes*:

*held environmental water* has the same meaning as it has in section 4 of the *Water Act 2007* of the Commonwealth.

*irrigated field* means an area of land that is used for the growing of crops using irrigation.

**[55] Dictionary**

Insert the following after the definition of *supply capability*:

*tailwater drain* means a channel or trench that collects excess water from an irrigated field.

**[56] Dictionary**

Omit the definition of *uncontrolled flows*. Insert instead:

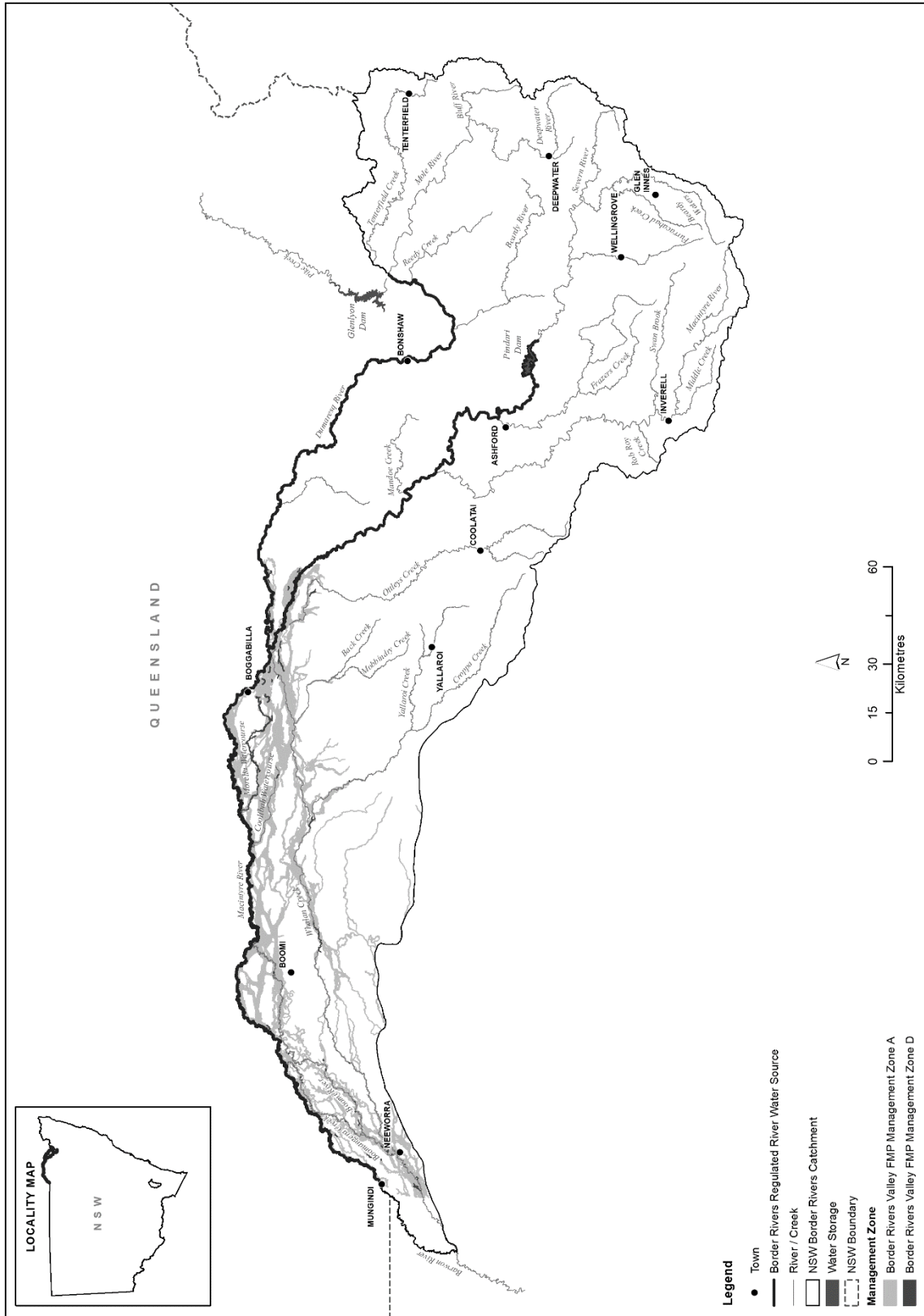
*uncontrolled flows* are:

- (a) except in clause 43A, flows not able to be captured in an operator managed water storage that are in excess of that needed to meet the following:
  - (i) the environmental flow rules in Division 1 of Part 10,
  - (ii) the requirements of basic landholder rights in the water source,
  - (iii) the requirements for the delivery of replenishment flows set out in clause 58,
  - (iv) access licence water orders and the water required to meet transmission losses associated with those water orders, and Queensland water requirement as set out in the IGA, or
- (b) in clause 43A, rainfall runoff from an irrigated field.

[57] **Appendix 1 Overview map of Border Rivers Management Zone A and Border Rivers Management Zone D**

Insert the following after Schedule 3:

**Appendix 1 Overview of Border Rivers Management Zone A and Border Rivers Management Zone D**



## Appendix 2 Overview map of Border Rivers Valley Floodplain

