

Using Farm Dams for Irrigation in NSW? Know Your Harvestable Rights

Merran Davis, Manager Engagement, Education and Engagement, Natural Resources Access Regulator

Many berry growers rely on farm dams to support irrigation, particularly during dry periods. If a dam is used to capture and store rainfall runoff, it's vital that water users understand whether it falls within NSW harvestable rights rules.

The Natural Resources Access Regulator (NRAR) is the independent NSW water regulator responsible for enforcing water laws through monitoring compliance and providing education.

Most of the time, landholders in NSW need to hold a water access licence (WAL) to take water. An exception to this rule is basic landholder rights. In certain circumstances, landholders can take water without a licence or approval under basic landholder rights.



It is not automatically the case that you can capture and hold all the water that falls and runs off on your land Photo credit: Salty Dingo

What are harvestable rights?

Harvestable rights are one type of basic landholder right in NSW that allow eligible landholders to capture and store a limited amount of rainfall runoff, in certain farm dams, without needing a WAL or approval.

These rights are designed to balance private water use with the protection of downstream flows and shared water resources.

The permitted size and location of these dams depend on the location of the landholding and the average annual rainfall runoff in that region. In the coastal and central divisions of NSW, landholders may generally capture up to 10% of the average annual rainfall runoff for their landholding. In the western division, different rules apply. Landholders may capture all rainfall runoff, subject to the relevant harvestable rights requirements.

Permitted location and size for harvestable rights dams

Harvestable rights dams **can't be located:**

- within 40 metres of a third-order stream or higher
- within 3 km upstream of a wetland of international significance (listed under the Ramsar Convention)
- on a floodplain

Harvestable rights dams **can be located on:**

- non-permanent minor streams
- hillsides
- gullies

Every landholding has a maximum dam capacity, which determines the lawful amount of water a landholder may capture and store across all harvestable rights dams on the property. Landholders are encouraged to use WaterNSW's online **maximum harvestable rights calculator** to determine the specific size and location permitted for their harvestable rights dams, and what proportion of rainfall runoff they may capture.

Building harvestable rights dams

The construction of harvestable rights dams doesn't require a water access licence, water supply work approval, or water use approval.

However, the following circumstances may require approvals prior to construction:

- Mixed dams – dams that store water captured under harvestable rights as well as water taken under another right or licence.
- Channels or diversion works constructed to capture and transfer rainfall runoff into a harvestable rights dam.

Common compliance issues with harvestable rights dams

Did you know that property size affects harvestable rights? When land size changes, harvestable rights change with it.

This can catch landholders off guard.

Situations where problems arise include:

- subdivision of larger rural properties
- sale of part of a holding
- boundary realignments
- consolidation or separation of parcels

A dam that was once compliant when the property was larger may become non-compliant once land is sold or subdivided. The dam may now be considered oversized and no longer fall within harvestable rights limits.

If you are buying a berry farm with existing dams, it's your responsibility to make sure to check that the dams are compliant with NSW water laws. Remember to check the dam's size, location, and any associated approvals before relying on the dam for irrigation.

The good news is that the NSW Public Water Register can help landholders check whether water licences or approvals are associated with a property. Buyers should still make their own enquiries about whether existing dams comply with harvestable rights rules.

Once a dam exceeds allowable harvestable rights capacity and doesn't have the required licence or approval, there are limits on how it can be used. If it continues to be used for irrigation, compliance action may follow, including reducing use, obtaining the necessary approvals, or other steps to bring the dam back into compliance.

GROWERS CHECKLIST TO AVOID ANY COMPLIANCE ISSUES:

- ✓ Make sure an existing dam is within the maximum harvestable rights capacity for the property
- ✓ Review whether any property subdivision or boundary change has affected their harvestable rights
- ✓ Know if your dams being used for irrigation need a licence or approval
- ✓ Seek advice, if needed, before buying land with existing dams

More information

NRAR:

Learn more about what you need to do to be compliant with NSW's water laws by visiting nrar.nsw.gov.au

Learn water regulation online with our free self-paced online course:

nrar.nsw.gov.au/about-us/what-we-do/Helping-people-comply/study-water-compliance-online

NSW Department of Climate Change, Energy, the Environment and Water:

visit water.dcccew.nsw.gov.au and search 'harvestable rights'.

WaterNSW:

visit waternsw.com.au and search 'maximum harvestable rights calculator' or 'NSW Public Water Register'.

