

**Submission
No 1**

**INQUIRY INTO IMPACT AND IMPLEMENTATION OF
THE WATER MANAGEMENT (GENERAL) AMENDMENT
(EXEMPTIONS FOR FLOODPLAIN HARVESTING)
REGULATION 2020**

Organisation: Murray–Darling Basin Authority

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Submission to the NSW Legislative Council's Regulation Committee into the impact and implementation of the *Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020*

The Murray Darling Basin Authority (MDBA) welcomes the opportunity to provide a submission to the NSW Legislative Council's Regulation Committee inquiry into the impact and implementation of the *Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020* (the Regulation).

Key Points

- **The MDBA supports the Regulation as a valid and necessary interim measure ahead of full implementation of the floodplain harvesting reform agenda.**
- The MDBA is supportive of the suite of reform measures that NSW is undertaking to bring floodplain harvesting into both the NSW licensing and regulatory framework and the Commonwealth framework for regulating water resources in the Murray–Darling Basin.
- Measurement and metering of take by floodplain harvesting is critical to building confidence and understanding of the impacts of this form of take on the environment and river flows.
- Water resource plans (WRPs) as required under the *Basin Plan 2012* and water sharing plans (WSPs) as required under the *NSW Water Management Act 2000* give legal effect to the regulation of take by floodplain harvesting.
- The MDBA expects that all recommendations from the independent review into the implementation of the *Floodplain Harvesting Policy 2018* will be implemented by NSW as part of the reform.
- The MDBA expects that WRPs will include interim arrangements as agreed between the MDBA and NSW. The MDBA encourages the timely completion and submission of these plans for assessment by the MDBA and for accreditation by the Commonwealth Minister for Water.
- The MDBA expects that the Regulation will be repealed and WSPs and WRPs will be amended when the floodplain harvesting reform agenda is complete.

Introduction

For the purposes of this submission, the ‘floodplain harvesting reform agenda’ or the ‘reform agenda’ is defined as the full implementation and operation of the NSW Healthy Floodplains Project, including the *NSW Floodplain Harvesting Policy 2018*, the *NSW Floodplain Harvesting Action Plan* and the Floodplain Harvesting Measurement Policy, which is due to be published in April 2020. To meet the Commonwealth Government’s requirements under the Basin Plan, the reform agenda also includes:

- the regulation of take by floodplain harvesting is to be within sustainable diversion limits (SDLs), and
- the methods for accounting for this take must be accredited as part of NSW’s water resource plans.

It should be noted that the Commonwealth Government has invested a total of \$56.91 million into the implementation of the NSW Healthy Floodplains Project. Most recently, the Commonwealth Minister for Water granted NSW an 18-month extension to June 2021 and \$7.9 million to support more thorough consultation with those affected by the reform, the development of accredited water resource plans and the licensing of take by floodplain harvesting.

It is the MDBA’s understanding that the Regulation is intended to be an interim arrangement until the floodplain harvesting reform agenda is operational and the requirements of the *NSW Water Management Act 2000* (the Act) should practicably apply to water users harvesting floodplain water. When the reform agenda is fully operational, then the exemption enabled through the Regulation will cease to be required and the requirements of the Act will then apply to the harvesting of floodplain water. It is noted that floodplain harvesting has been practiced for many years in NSW, and although it has not been specifically enabled through legislation, it also hasn’t been prohibited. This Regulation specifically enables that take.

The MDBA believes that the decision to enact the Regulation and its operation are matters for the NSW Government and are not within the scope of the Commonwealth Government’s regulatory responsibility. However, the management and measurement of water use from floodplains remains an important part of the states’ compliance reporting responsibilities. Therefore, the MDBA is supportive of the interim arrangements that allow the NSW Government to progress the floodplain harvesting reform agenda in a timely manner.

In June 2019, the MDBA released its statement of expectations for floodplain harvesting reform (<https://www.mdba.gov.au/sites/default/files/pubs/MDBA-position-statement-on-floodplain-harvesting.pdf>). These expectations are that the reform agenda should:

- ensure transparency and accountability for water use,
- give confidence in the regulation of floodplain harvesting,
- give confidence in estimates of floodplain harvesting volume used for water planning,
- ensure floodplain harvesting structures are well managed,
- ensure floodplain harvesting is legal,
- independently verify water take and use, and
- provide confidence that the floodplain harvesting reforms will be implemented.

Floodplain harvesting reform

The NSW Government is undertaking a program of reform in floodplain harvesting under the NSW Healthy Floodplains Project. NSW, together with the MDBA, commissioned an independent peer review of implementation of the *Floodplain Harvesting Policy 2018* in northern NSW in 2018-19.

The review made a number of recommendations regarding the technical rigour, communications and transparency of the policy's implementation. The MDBA is supportive of all recommendations and believe that their implementation is critical to the delivery of the floodplain harvesting reforms in NSW. The MDBA expects that NSW will address all recommendations made in the independent report in a timely manner.

The data from this process will be used to inform the models that are used to update the baseline diversion limits (BDLs, as part of the requirements of the Basin Plan) for floodplain harvesting in NSW and to calculate annual permitted take and annual actual take by floodplain harvesting under accredited water resource plans.

Further, MDBA believes that implementation of the recommendations will:

- lead to improvements in measurement and metering of take by floodplain harvesting, which will ensure that it is regulated in line with sustainable diversion limits, and
- enable water sharing plans and water resource plans to accurately represent floodplain harvesting use and provide the mechanisms to ensure take is below sustainable diversion limits.

Water resource plans

Confidence is built when communities and water users know the rules regarding the taking of water. Water resource plans provide this transparency and confidence.

The Basin Plan lists the requirements that water resource plans must meet, including that all forms of water take must be properly measured and accounted. It is understood that, given the breadth of work involved in finalising the floodplain harvesting reform agenda, it will not be complete when water resource plans are due for submission, assessment and accreditation.

Therefore, the MDBA is currently working with NSW to ensure that interim arrangements demonstrate the ability to manage take by floodplain harvesting to sustainable diversion limits (SDLs) which came into effect from 1 July 2019. The MDBA expects that water resource plans¹ that include take by floodplain harvesting will include necessary amendment provisions. These include amendments to the water sharing plans¹ under the Act for the share components of floodplain harvesting (regulated) access

¹ Water resource plans are prepared by Basin states to meet the requirements of the Basin Plan. Water sharing plans are required by the NSW *Water Management Act 2000* and are statutory documents that provide the rules for management of water in NSW. A water sharing plan is a component document within a package of documents that comprise a NSW water resource plan.

licences. It also includes amendments to the water resource plans under the Basin Plan for the elements affected by take by floodplain harvesting:

- the baseline diversion limit,
- definition of the forms of take,
- the annual permitted take models,
- the annual actual take models,
- rules relating to environmental watering requirements
- rules relating to trade

Until the reform agenda is complete and these amendments can be made, water sharing plans and water resource plans incorporate the best available information at the time of development. Interim arrangements are therefore necessary, including the exemption for a water supply works approval enabled by the Regulation.

One of the key agreed interim arrangements specifically for water resource plans is to include strategies under the requirements of section 10.25 of the Basin Plan. This is that a floodplain harvesting measurement strategy will be prepared by 31 December 2019. (Note as above that this is expected to be published in April 2020.) Additionally, the requirement for the measurement of floodplain harvesting will be in place and actioned by 30 June 2021.

Regarding the impact that the Regulation might have on water users, it would be substantial if the reform agenda is not completed in a timely manner and the above requirements are not included in the interim water resource plans. It should be stressed that the Regulation and the current draft water resource plans that do not include full regulation of floodplain harvesting should be temporary and repealed or amended when the reform agenda is complete.

The MDBA looks forward to the NSW Government putting forward water resource plans for accreditation that consider interim arrangements and subsequent amendments.

