

**Submission  
No 9**

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

**Name:** Ms Catherine Merchant

**Date Received:** 26 May 2020

---

9 Glenview Cres  
Hunters Hill 2110  
26 May 2020

Mr Mick Veitch  
Chair of Inquiry into the impact and implementation of the Water  
Management (General) Amendment (Exemptions for Floodplain  
Harvesting) Regulation 2020  
Regulation.Committee@parliament.nsw.gov.au

Dear Mr Veitch,

Thank you for an opportunity to comment on the impact and  
implementation of the *Water Management (General) Amendment  
(Exemptions for Floodplain Harvesting) Regulation 2020* (Exemption  
FPH Reg 20)

Floodplain harvesting has been a contentious and at times illegal  
activity across northern NSW. This landuse activity has been distressing  
to the broader community confronted by the devastating ecological and  
social impacts downstream as a consequence of water theft, conflicted  
government management and entrenched water over extraction in  
water sharing plans.

The robust and transparent accounting of floodplain water sources  
represents an important step in the delivery of improved environmental  
and social outcomes across the Murray Darling basin.

It is critical that government gets its legislative and policy settings  
consistent in floodplain harvesting management - both between various  
management policies and documents as well as how these working  
documents integrate to put into effect the various commitments by NSW  
government notably under the Murray Darling Basin Plan and the  
National Water Initiative.

For the broader community which has attempted to follow the circuitous  
policy trail of NSW Water Ministers as they move towards the extended  
deadline for signoff of WRP and their supporting documents, this  
Exemption FPH Reg 20 appears as a return to start reflecting “business  
as usual” in NSW water use and management.

The Minister has provided no supporting documents or explanation of  
how this regulation will fit within the already delayed and highly  
manicured floodplain harvesting policy planning processes except to  
reference s 400 (2) of the Water Management Act 2000.

To a layperson this section would seem to give ministerial powers to exempt from the Water Act 2000 Act “any person, matter or thing” presumably defined/covered under the Water Act and its related regulations.

However, “eligible work” doesn’t seem mentioned or implicit in the Act. The notion of “eligible work” seemly introduced directly into the Water Management (Regulation) 2018 by way of an exemption. To a layperson such as my self this seems illogical.

Further, “eligible work” seems a different entity defined by the NSW Floodplain Harvesting Policy 2013/18<sup>1</sup> which outlines a five staged implementation of the policy. The purpose of the FPH Policy is “...to *manage floodplain water extractions more effectively in order to protect the environment and the reliability of water supply for downstream water users, ensure compliance with the requirements of the WM Act, and meet the objectives of the National Water Initiative.*”

The consultants engaged by NSW government together with the Murray Darling Basin Authority undertook an independent peer review of the policy and its implementation.

The review report clearly communicated to the general public the water source to be properly accounted for in the FPH policy and the importance for this to occur via transparent accounting. Currently this water source is identified as a “floodplain system loss” in NSW water resource numerical modelling.

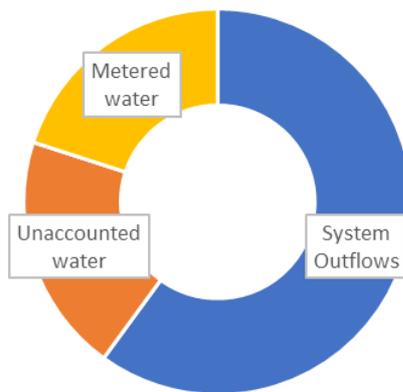
The independent consultant’s identified that “...*these volumes were not purely “losses” in a physical sense, but comprised elements of both Planned Environmental Water (i.e. water committed under a water sharing plan for fundamental ecosystem health or other specified environmental purposes and that cannot be taken or used for any other purpose) and floodplain harvesting volumes not previously separately quantified in the models.*”

The review report included clear diagrams (as below) to explain and analyse this complex policy. Transparent accounting of water take from floodplain harvesting will result in better protection of PEW.

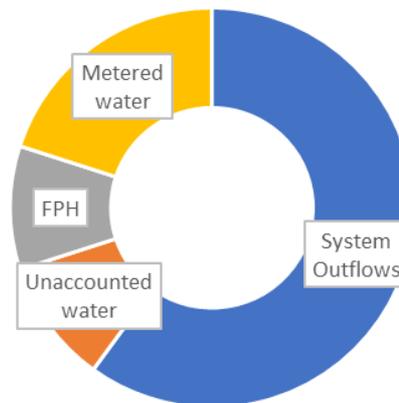
---

<sup>1</sup> Curiously unlike the original 2013 Floodplain Harvesting Policy there is no mention of how NSW government commitments to the Murray Darling Basin Plan are to be incorporated into policy processes especially in regard to the Long Term Average Annual Extraction Limits critical to the effective implementation of the MDBP.

River Basin Water Balance  
(prior to accounting for FPH)



River Basin Water Balance  
(accounting for FPH)



*Figure 1. Defining Floodplain Harvesting Volumes in the Numerical Models for Floodplain Harvesting Policy Implementation*

The review report rigorously critiqued the government implementation of the policy making detailed recommendations that NSW government states it has accepted in full.

Further, during 2018-19 the MDBA produced a series of informative practice notes to explain how floodplain waters can be rigorously measured and monitored through “remote sensing for measuring non-metered take, modelling and hydrometrics”.

All Basin states have agreed to manage water resources based on the best available data. The MDBA has demonstrated the effectiveness of emerging technologies in its “Monitoring ‘first flush’ flows in the Namoi, Macquarie and Warrego Rivers” last October.

Despite the substantial investment in new technology; the demonstrated opportunity and benefits of such technology provides, not least of all to restore public confidence in NSW’s capacity for transparent and sustainable management of inland waters; stated commitment by NSW government to the MDBP; expensive engagement of independent consultants - the Exemption FPH Reg 20 presents itself without warning on 7 February.

This is the same day a Temporary Water Restriction (Northern Basin) (Floodplain Harvesting) Order is placed on heavy local rainfall and Queensland floodwaters making their way across the northern floodplains to downstream waterless Darling/Barka ecosystems and townships.

How Exemption FPH 20 fits logically within the identified NSW government processes to improve floodplain management is absolutely baffling to the community. It is in the public interest for government to explain properly its purpose.

If I understand the situation correctly, it creates significant contradiction within government laws and policies in relation to floodplain harvesting activity.

The FPH Policy government is supposedly implementing relates to: *“Only works constructed on or before 3 July 2008 in accordance with an approval or that did not require an approval, or for which a valid application under Part 2 or Part 8 of the Water Act 1912 or the WM Act was made on or before that date, are eligible for assessment under this policy.”*

However, Exemption FPH Reg 20 seems to exempt from penalty and access licence requirement the “eligible works” that appear subject of the works eligible for assessment under the FPH Policy.

Legal and illegal “eligible works” are very blurred within the definitions. It implies retrospective application which will “undo” any progress made to correct the well recognised problems associated with unapproved and unlicensed take of water.

Even though it is impossible to find details on the web regards the actual status of the five staged implementation of the FPH Policy, Minister Pavey stated last September: *“It’s taken many years and more than \$37 million to collect the data, build the models and get ready to regulate floodplain harvesting in the five NSW northern valleys where harvesting is most prevalent: the Border Rivers, Gwydir, Namoi, Macquarie and Barwon–Darling.”*

Ministerial and government response to questions raised in parliament shed little light on the relevance of Exemption FPH Reg 20 to current government intent regards floodplain harvesting management or its linkage with the implementation of the FPH Policy.

It cannot be justified by the recent respite to downstream ecosystems and townships provided by the management of the Northern Basin First flush event now under independent assessment. Ecosystems are in collapse and long term climate trends predict less rainfall.

Opportunistic take of the recent floodplain waters prior to the critical stage of activating the WRP is contrary to the overall intent of the MDBP to manage basin waters sustainably.

The general public can only conclude that this is a “political” regulation rather than one designed to progress transparently and fairly the use of northern floodplain waters in ways that do not deprive downstream ecosystems and townships as currently occurs.

Such “political” regulations are time consuming and disruptive for efficient government administration. They are frustrating to the general public who quickly sees through them especially when confronted with media coverage of an ecosystem in collapse.

The previous rhetoric by government that it is committed to transparency and sustainability in response to mass fish kills, trucked drinking water and young Aboriginal children denied access to cultural water seems absolutely contradicted in this Exemption FPH Reg 20.

To introduce an unexplained new regulation which seems so contrary to stated government policy within the final critical months in which NSW government will fulfill its 2012 commitment to the MDBP seems cynical and clumsy business.

It suggests the “business as usual” ad hoc management approach of previous NSW Water Ministers and demonstrates continuation of the overall recalcitrance NSW government has long displayed in meeting its commitments to the National Water initiative and MDBP and the objects of state water laws.

It is pleasing that regulations can be reviewed via a Regulation Committee. For a layperson a “Regulation” presumably interprets/supports legislation hopefully derived via a robust and transparent process of parliamentary debate.

Hopefully rigour and transparency will underpin the Regulation Committee review process. In the public interest it should ensure improved understanding of the impact of Exemption FPH Reg 20 on current government policy and commitments and a considered assessment of who actually benefits from it as it is implemented.

Yours sincerely

Cathy Merchant