

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

**Name:** Ms Melissa Gray

**Date Received:** 31 May 2020

---

The Director  
Regulation Committee  
Parliament House  
Macquarie Street, Sydney NSW 2000

By email: [regulation.committee@parliament.nsw.gov.au](mailto:regulation.committee@parliament.nsw.gov.au)

Sunday 31 May 2020

### **Submission**

#### **NSW Parliamentary Inquiry Impact and implementation of the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020**

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).

I present this submission as an individual. In the first part of this submission I have taken a look at the ways floods and their diversions have impacted my life directly. In the second part of the submission I have identified some aspects of the policy development that I consider contentious, which include but is not limited to the regulation mentioned above.

#### **Lived experience**

From 2002 to 2008 my parents managed sheep stations along the Darling-Baaka River around the Tilpa area. During visits home when there was a flood event expected, I remember the fax machine would ring every morning with a warning – a rise in the river of xyz metres is expected in your area in xyz weeks' time. Get prepared!

Growing up on our farm in the flood-zone of the Clarence River, the warning time for floods was days at best, and the impact to our lives and my parents business was all consuming. Like a well-oiled machine, we'd have the cattle and machinery to higher ground, the furniture lifted. Time to settle in and marvel at the awesome power of a Clarence River flood.

The gift that was left of thick rich fertile silt, up to several feet deep, would enrich and sustain the floodplain landscape, and my parent's business, for years. The salt water that inevitably creeps up the Clarence for several hundred river kilometres in dry times, pushed well back out to sea. The nutrient rich floodwaters kick starting the web of life in the prawn and crab rich estuaries like the Broadwater and Wooloweyah Lagoon and the coastal recreational and commercial fishing grounds off the coast of Yamba. Sea food heaven.

Now out west, we looked forward to experiencing the mighty Darling Baaka in flood. So we'd wait. And wait, and wait. The river levels remained unchanged, after several weeks the faxes would stop.



Mum in the Darling Baaka River at Tilpa, circa 2004

The floodplains remained dry, dusty, and without the rich covering of rich fertile silt. The rains that triggered the teasing faxes had fallen many hundreds of kilometres away. We'd heard stories of water skiing on the many enormous ephemeral lakes in the area. They remained empty. By now, almost two decades on, even the centuries old Red Gums are dying.

Since the 1990's, floods along the Darling Baaka have become smaller and less frequent. As a consequence the land, animals, people and economies have been dying.

The impact on First Nation communities is heart shattering. The average life expectancy for a male in Wilcannia is 37. The Baaka is the blood of the Barkandji People and without the river they are dying.



ABC News April 2018, Wilcannia

The communities are weakened to a point that we (the white benefactors of colonisation) cannot fully understand. 'We' have no way to fully understand how it must be for Elders to watch their 80,000 years plus culture die.

What is happening on the Darling Baaka is cultural genocide.

I moved to the Macquarie Valley in 2011, and fell head over heels in love with the Wambuul Macquarie River and the amazing internationally significant Ramsar listed Macquarie Marshes.

I volunteered a lot of my time restoring the riparian zone around Dubbo with our local BushCare group.



Community tree planting day July 2017

I joined a kayak club and got to know the river and Marshes well. I started a grassroots community group, and became an environmental advocate.

The summer of 2019/20 was shocking in the Macquarie Valley. The sharp severity of the drought was unprecedented. The frequency and intensity of the dust storms was actually a little scary.

The Warren weir was raised by WaterNSW stopping flows beyond. Downstream, the river rapidly dried up to a series of disconnected green pools.



Macquarie River, 20km downstream of Warren NSW,

November 2019

Insurance populations of turtles and fish were rescued from the river and secured in hatcheries by environmental agencies. Despite commendable efforts from the recreational fishing community to rescue as many fish as possible, mass fish deaths resulted.

The Macquarie Marshes were parched. There hadn't been any surface water in the core Marsh since January 2019. The impact of years of 'tight' river management was evident -

there was far less water around, and it disappeared very quickly.



Dead Red Gums, Macquarie Marshes August 2019

Critical human need and stock and domestic requirements had not been met along the creeks downstream of Warren or the Lower Macquarie.

There was a shocking loss of wildlife as a result. Mobs of kangaroos perished, many 50 year old plus turtles died, and we lost some of the oldest mussels known to exist in our fresh water rivers. The loss of vegetation meant less habitat for many and varied water dependant animals, fish and birds.

The North Marsh reed bed (the largest reed bed in the Murray Darling Basin) caught a lightning strike in October 2019 and about 5,000 ha was burnt.



North Marsh reed bed, October 2019

It was a tough time for the Traditional Owners and Elders, the landholders, recreational fishers, the whole community. It was a tough time to be an environmentalist.

We knew the reed beds need flood water ASAP. While they shot up after some rain fall that summer, we understood that they were using what little precious reserves their rhizomes held, making floodwater even more critical to their recovery.

Then the floods came in February 2020, entering the Macquarie in several events through the Bell, Little and Talbragar Rivers – all of which are downstream of Burrendong Dam.

Supplementary access to several of the flows was allowed, removing about 35 Gigalitres before the Marshes. From the 130 GL that was metered upstream of the Marshes, an unknown, unmetered volume of water was floodplain harvested.

These extraction activities were allowed from the critical first flush after the most severe drought we have known. From the information I have been able to find through the WaterNSW and DPIE water websites, I do not think the critical environmental needs of the Ramsar listed internationally significant Macquarie Marshes, or the water-starved river and



creeks downstream of Warren, were given enough consideration when the decision to allow take was made.

The go ahead to pump and divert was given before critical human need, and stock and domestic requirements downstream had been actually met (only forecast to be met).

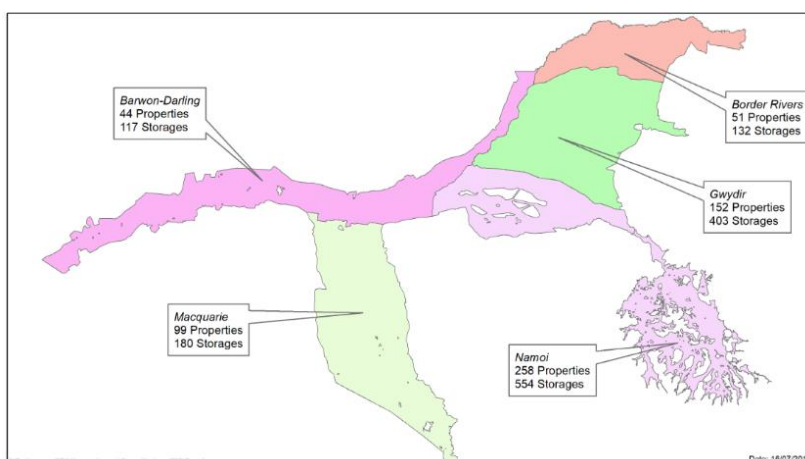
It was not until late April 2020, after the on-farm storages near the river were reportedly almost full, that flood water finally made it to the northern most part of the charred reed bed. Because the flows were delayed, the reeds in the northern most area missed the opportunity to get as much growth in as possible while the days were still warm, so they could store as much energy as possible before winter. We will see the impact of the delayed inundation on the recovery of the northern most section of the reed bed in spring.

Because of the delay in flows reaching all of the fire damaged reed bed, the requirement for environmental water in the Macquarie Marshes is still classified as HIGH as of autumn 2020. Connecting the Macquarie to the Barwon-Darling Rivers is a critical requirement for native fish and season water replenishment in the Barwon. With flows reduced by unknown volumes, it will be more difficult to achieve the connection.

It is difficult to overstate to the reader how frustrating it is that the volumes of floodplain harvested water taken this year in the Macquarie Valley are not public.

When asked in a drought update public forum on Thursday 28<sup>th</sup> May 2020 what the volumes of floodplain harvesting take have been in the Macquarie Valley so far in 2020, WaterNSW stated they were under no obligation to tell the public. In the media, on twitter and facebook, when discussing floodplain harvesting take, representatives of the local irrigation industry play down the volume involved: "we only have a small number of floodplain harvesters in the Macquarie."<sup>1</sup>

As this map shows, there are 99 properties and 180 storages being assessed for floodplain harvesting in the Macquarie.



Harvesting Measurement Policy March 2020.

Source: NSW Govt, Floodplain

<sup>1</sup> Tony Quigley, Chair Macquarie River Food and Fibre on ABC radio, NSW Country Hour 27/5/2020  
<https://www.abc.net.au/radio/programs/nsw-country-hour/nsw-country-hour/12269824>

## **The Policy**

The protection of first flush flows as droughts are breaking is a critically urgent matter that needs to be addressed ASAP. Floodplain harvesting should be completely restricted before the issuing of new property rights in the form of floodplain harvesting licences.

The cumulative impact of floodplain harvesting on the environment, culture, communities and economies of the Basin must be assessed before the issue of brand new property rights.

The climate is drying and water is becoming scarcer. In the spirit of the Commonwealth Water Act 2007 and the Murray Darling Basin Plan, the needs of the environment must be prioritised. Following the development of the floodplain harvesting it seems to me that the current NSW Government prioritises maximising irrigation extraction, framing that priority as 'supporting communities'.

The issuing of floodplain harvesting licences will be the biggest issue of brand new property rights since the 1990's. It will signify a massive wealth shift from the public purse to private and corporate hands.

Floodplain harvesting licences should not be tradable. As physical structures are involved it would be difficult and expensive to monitor compliance. Opportunistic access to flows should not be a tradable right.

Floodplain harvesting licences were made compensable in a 2014 amendment to the NSW Water Management Act 2000 (WMA), even though they still don't exist. Section 87AA of the WMA must be overturned. Until it is, there is a risk that any adjustment to volumes after licences are issued will mean compensation is payable.

There must be no carryover allowance in the policy. Take must be limited to 100% of share allocation a year. Carry over allowances (up to 500% in the 2010 draft policy) will mean in dry times accounts can accumulate up to 5 times the total licence volume. When a drought breaks, the need for water in the environment is extreme. This will coincide with empty farm dams and access accounts several times larger than the licence allowance. To assist the protection of first flush flows, there must be no carryover allowance.

There should be no exemption for rainfall run off capture in a developed area. Rainfall captured on irrigation fields should either be the 10% harvestable right that all landholders have access to, or be included in a water access licence.

The Long Term Annual Average Extraction Limit must not be increased to accommodate new floodplain harvesting access licence shares. The new volumes must be included in the current volume of shares in each water source.

The irrigation industry has expanded to the large scale it is by benefiting from free access to vast volumes of floodwater, sometimes using unapproved illegal structures. To rectify this enormous imbalance, the volumes of take need to be rationalised under current limits. Bringing floodplain harvesting volumes under the current levels of take will have a big impact on the scale of the irrigation industry in the Northern Basin. The main crop that would be impacted happens to be cotton. Employment in cotton has decreased significantly

in recent years due to advances in labour saving technology and genetic modification, despite crop sizes and water extraction increasing. Investment in regional communities is required to build resilience in our rural economies facing a future with less water. Reports show investing in human services in Basin communities is the most efficient and secure way to encourage economies to diversify.<sup>2</sup>

In January 2020 with flooding rain forecast to fall in just weeks, one department director at a meeting of senior NSW water officials is quoted in the media as saying "If you don't have basic rights or an exemption, there is no ability to legally take water,"<sup>3</sup>.

On the 7<sup>th</sup> February 2020 the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020 ("the Regulation") came in, with no notice or explanation. The effect of the regulation was to give retrospective approval to works that had not been approved.

The Government explained that the regulation mentioned above was required so that an embargo could be placed to limit take by floodplain harvesting, but that is not the case. Take could have been restricted without it. The regulation must be repealed.

## **Conclusion**

Floods bring life. That is not merely a cheap platitude. Floods have, and continue to, form and feed our landscapes, rivers, wetlands, billabongs, aquifers, rich fertile floodplains, estuaries and oceans.

Since the 1990's, the floods in the Basin have been taken. Massive volumes, entire flood events have been withheld and kept for free, to be used to create personal and corporate profit. The irrigation industry has had free access to unmeasured water from the floodplains for the past 30 years, at astounding cost to the environment, communities and economies downstream.

The injustice of this situation is intolerable.

Melissa Gray

Dubbo

---

<sup>2</sup> Modelling variants of the Murray-Darling Basin Plan in the context of adverse conditions in the Basin, Glyn Wittwer March 2020.

<sup>3</sup> The Guardian Friday 29 May 2020, Kerry Brewster. NSW Officials knew decades of unmeasured floodplain harvesting by irrigators was illegal.