

INQUIRY INTO FLOODPLAIN HARVESTING

Organisation: Australian Floodplain Association

Date Received: 13 August 2021



AUSTRALIAN FLOODPLAIN ASSOCIATION

Healthy Rivers - Healthy Communities

**Sarah Moles,
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Select Committee on Floodplain Harvesting,
NSW Parliament House,
Macquarie St,
Sydney, NSW 2000

By email to floodplainharvesting@parliament.nsw.gov.au

Friday 13 August 2021

Background

1. The Australian Floodplain Association (AFA) is a non-government organisation representing floodplain and wetland landowners and their communities who depend on healthy rivers, floodplains and wetlands. Its membership resides predominantly within the Northern Murray-Darling Basin and includes floodplain graziers, community groups and shire councils. We thus represent a wider range of interests and our members manage a far greater area of land within the MDB than the Basin's irrigation sector.
2. The AFA arose from a conference held in Dubbo in 2005 by floodplain graziers from the Murray Darling and Lake Eyre Basins. They shared concerns about the impact of the expanding irrigation industry in the Northern MDB (especially unchecked floodplain harvesting) and an irrigation proposal on Coopers Creek near Windorah. This led to the formal registration of the Australian Floodplain Association in 2006.
3. From 2006 to 2012 the AFA lobbied the Queensland, New South Wales, and Commonwealth governments during the development of the MDB Plan.
4. For 16 years, the AFA has been advising decision-makers that the practice of floodplain harvesting is inequitable, is diverting steadily increasing volumes of water from our rivers and floodplains; and warning of dire social, economic and ecological consequences if this – and the complete failure of governments to assess the cumulative impacts of FPH – are not addressed. There is now abundant evidence that our concerns have been realised.
5. This Inquiry is long overdue, and we thank those responsible for its existence.

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Comment and Recommendations

6. We draw the committee's attention to 2 reports that prove the problem and causes were raised from as early as 2003. Cullen et al (2003) warned of damage to the floodplains of the upper Darling if all the then existing infrastructure was used to the full extent permissible; while Webb McKeown (2007) quantified the extent of FPH in most northern tributaries at that time and commented on the increasing periods between flows crucial to native fish breeding. Much more recently, Slattery & Johnson (2021) have shown that the FPH storage

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capacity in NSW has significantly increased since the commencement of the so-called “Healthy Floodplains Project” in 2008.

7. Slattery & Johnson mapped on-farm storages and calculated their capacity in the five northern NSW valleys where floodplain water harvesting licences are proposed to be issued (Macquarie, Namoi, Gwydir, Border Rivers & Barwon Darling). Between 1994 when the MDB Cap was set, the capacity of on-farm storages in these valleys increased by a factor of 2.4 or 142%. i.e. from 574 gigalitres in 1993/94 to 1,395 gigalitres in 2020. The number of on-farm storages has increased from 400 in 1988, to 1,833 in 2020.
8. It is important that this significant overuse of water for irrigation and excessive storage capacity be addressed before any licensing of new FPH works. We recommend a maximum 1 ML unit share in the first year to provide the Darling River and its tributaries an opportunity to recover from decades of over-allocation; to re-establish connectivity and rebuild much-needed resilience, and to enable a greater level of equity between water users across all northern NSW valleys.
9. Actual take must be bought under Cap, and under no circumstances should the SDL be increased to cover historic take. It should be remembered that the ‘S’ in SDL represents ‘sustainable’. Retro-fitting ‘sustainable’ or re-defining it not an option.
10. The AFA’s legal advice is that it is likely to be unlawful to take water via FPH without an access licence; and that it is also unlawful to construct an on-farm storage without approvals to do so. In our view this means many of the works installed since 2008 are illegal as was taking water by FPH above the 10% runoff rule.
11. We ask the Committee to note that water taken by FPH is not only free, but its take has also been prioritised over all other users including the environment, First Nations cultural and social needs, and river communities’ town water supplies. This is not only unconscionable but also inconsistent with the priority of water use set out in s5(3) of the NSW *Water Management Act 2000*.
12. This point was strongly made by the NSW ICAC report published in November 2020. It found that *over the last decade the NSW Government systematically failed to uphold elements of the Water Management Act 2000 notably the Act’s objects and Sections 5 and 9, which inter alia relate to the protection of ecosystems, cultural values and ‘priority of use’*. ICAC found, contrary to the Act, that *“the rights of productive water users were given priority over the rights of other stakeholders”* and that *“there was a clear alignment between the department’s strategies and goals and those of the irrigation industry.”*
13. In terms of the recent Regulations relevant to FPH, the AFA **supports** *The Water Management (General) Amendment (Floodplain Harvesting) Regulation 2020* that FPH be licenced, with these important caveats:
 - Take must be bought under Cap, and SDLs must not be increased to cover historic take.
 - The Murray Darling Basin Authority must revise the Baseline Diversion Limits (BDL) on the basis of updated floodplain harvesting data and re-evaluate the Sustainable Diversion Limits (SDL) to ensure it reflects an Environmentally Level of Take (ESLT).
 - FPH licencing must address illegal FPH works.
 - Modelling must be updated with the best science, including the most recent climate record and be fit for water planning purposes for at least the next 10 years.
 - That no licences be issued until the models are accredited by the Murray Darling Basin Authority in terms of its compliance with extraction limits and other legislative requirements.
 - Modelling must be updated with the most recent climate record and be fit for water planning purposes for the next 10 years.
 - Downstream flow targets must be introduced based on environmental, cultural and basic landholder needs, and in strict compliance with the priority of water use principles as set out in the NSW *Water Management Act 2000*.
 - The AFA **supports** the *Water Management (General) Amendment (Floodplain Harvesting Exemption) Regulation 2020*. FPH should **not** be exempt from requiring a works approval.

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- FPH works must be fitted with compliant metering. However, the Minister should not have discretion to issue exemptions. We strongly support Mr Ken Matthews view of 'no meter, no pump'.
14. The AFA **objects** to the exemption of rainfall runoff to be licenced in the *Water Management (General) Amendment (Exemption for Rainfall Run-off Collection) Regulation 2020*. All rainfall runoff over the 10% harvestable right must be licenced.
 15. To ensure FPH is licensed, regulated, metered and monitored and consistent with the objectives of the NSW Water Management Act 2000 and the MDB Plan:
 - Downstream flows must be protected so that irrigation take isn't prioritised over other uses and values.
 - All illegal floodplain works that have been capturing floodwaters must be removed. Those legal structures that remain must not alter natural flood flows at times when extraction is not permitted. This means that these structures must be capable of being opened to allow flows to pass through.
 - The SDL in the Macquarie Valley must be reviewed to ensure it reflects the environmentally sustainable level of take.
 - The AFA vigorously **opposes** the historical FPH take in the Macquarie being licenced.
 - There should be no compensation for any required adjustments to FPH volumes
 - It is critical that FPH is accurately measured and robust monitoring in place before new licenses are granted. This is needed to improve input data for all models.
 16. Regarding Water Sharing Plan Rules, the AFA:
 17. Vigorously **opposes** a first year allocation of 500%
 18. **Supports** annual accounting with less than 1ML unit share and no carryover. We strongly oppose the 500% 'carry over' rules. This would effectively mean that the rivers are permanently in debt to FPH irrigators.
 19. **Opposes** trading of floodplain harvesting licences.
 20. **Supports** an assessment of environmental impacts where permanent trading is to be considered.
 21. **Opposes** rules allowing FPH to be restricted only by Ministerial order tied to supplementary access. We would **support** FPH being managed through announcements, as is currently the case regarding supplementary access.
 22. There must be strong and clear rules to protect environmental water backed up by realistic penalties for non-compliance.
 23. Until there is adequate rigorous and robust data on FPH, an adaptive management approach is required. After each FPH event, whether it be in a valley, several valleys or the whole Northern Basin, a review must be undertaken and adjustments made to policy and management. In our view and depending on the frequency of flow events as well as the completion of meter installation process, it could take many years to establish actual take with the required precision.
 24. We **support** a transparent and independent reviews of modeling underpinning FPH by the Natural Resources Commission
 25. Retrospective approval of works is not acceptable without transparent environmental assessment and consideration of impacts on critical flow paths.
 26. Reining-in unacceptably high levels of FPH requires strong compliance and enforcement.
 27. The AFA **supports** secure on-going funding for NRAR and harsh penalties for illegal water diversions. Penalties should be sufficient to act as effective deterrents, rather than acceptable costs to an irrigation business. In our view, penalties to date have not matched the severity of the offences of water theft.

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28. The AFA **supports** the issuing of temporary FPH licences until there is evidence that expected, legally mandated environmental and other downstream outcomes are being achieved under the licensing framework.

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29. The AFA has made dozens of submissions on FPH over the past 10-15 years and our membership includes landholders and others with a high level of expertise in many aspects of FPH policy and implementation. We look forward to making more detailed, personal presentations to members of the Inquiry.

We thank you for the opportunity to comment and contribute to better water management in NSW.

There is nothing confidential in our submission and we consent to any part of it being made public.

Yours sincerely,

References

Cullen, Marchant, Mein (2003) *A Review of Science Underpinning the Assessment of the Ecological Condition of the Lower Balonne System*. Report to the Queensland Government

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Slattery & Johnson (February 2021) *Floodplain water harvesting in the Northern New South Wales Murray-Darling Basin*

The Australia Institute (2020) <https://australiainstitute.org.au/wp-content/uploads/2020/12/P684-Submission-on-FPH-draft-strategy-WEB.pdf>

ICAC REPORT (November 2020) *Investigation into complaints of corruption in the management of water in NSW and systemic non-compliance with the Water Management Act 2000*

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