

## **INQUIRY INTO FLOODPLAIN HARVESTING**

**Organisation:** MenindeeLakes Stakeholder Advisory Group

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To Whom It May Concern.

I take this opportunity to make a submission to the NSW Legislative Council's Select Committee inquiry into Floodplain Harvesting, I am a fifth generation Grazier from the Menindee area and was raised on the Darling River south of Menindee and now reside on a property 40km North West of the Menindee Lakes System. In 2019 I was elected as chair of the Menindee Lakes Stakeholder advisory Group (Appendix A) which was created to advise NSW DPIE (water) on issues surrounding the proposed reconfiguration of the Menindee Lakes system to achieve Sustainable Diversion Limit Adjustment Mechanism water savings of around 106 gigalitres.

The Stakeholder Advisory Group consists of 25 peer selected representatives from community groups that represent Indigenous nations, environmentalists, irrigators, pastoralists, stock and domestic water users, townships and local government. There are representatives from the Menindee Lakes, the Great Darling Anabranch and along the Darling River from Wilcannia to Wentworth, an estimated 1100 kilometres of river.

The stakeholder group has rejected proposals put forward thus far by DPIE (Water) as these proposals do not adequately address the main issue at Menindee which is whole of river connectivity. A list of actions required from DPIE (water) to address community concerns are outlined in (Appendix B). Current arrangements can allow extraction of water in unregulated valleys regardless of what is happening in the rest of the system, to the detriment of downstream valleys.

Existing extraction rules and flow management contributed a great deal to the massive fish kill events at Menindee in late 2018 and early 2019, subsequent reports into the fish kills state the river is over allocated and over extracted. Findings 11, 12 and 13 of the "Independent Assessment of the 2018-19 fish Deaths in the Lower Darling" by Rob Vertessey, ([https://www.mdba.gov.au/sites/default/files/pubs/Final-Report-Independent-Panel-fish-deaths-lower%20Darling\\_4.pdf](https://www.mdba.gov.au/sites/default/files/pubs/Final-Report-Independent-Panel-fish-deaths-lower%20Darling_4.pdf)) clearly outline how increased development in the northern basin has been to the detriment of the Menindee Lakes. Indeed similar findings have been evident in several other reports into fish deaths and river health, including the Academy of Science report and the South Australian Royal Commission Report.

The legalisation and licensing of Flood Plain Harvesting in the Northern Basin of NSW can only add further stress to what is an already over allocated system. During Stakeholder meetings with DPIE (Water) staff a presentation was made by Shagofta Ali - Director Regional Water Strategies Far West, DPIE Water, it was stated that due to climate change runoff in the northern tributaries may be reduced by up to thirty percent in the coming five decades. Allowing for additional extraction or licensing what may already be illegal under these projected conditions would be disastrous for the Menindee Lakes and Lower Darling from Bourke to Wentworth.

Under no circumstances should there be any allowance for Flood Plain Harvesting entitlement to be carried over, traded, or be a compensable asset, if any entitlement are to be issued they must not be able to be parked to allow a 500% extraction in one year, that is unnatural manipulation of the environment, as a dry land grazier I can only use the rainfall I get in any period of time, I can't call on next year's rain or last year's rain to alleviate any current dry cycle, and to do so would eventually cause a failure of my environment. Any new license must be attached to a lot number or DP number and not be transferrable to any other location. Any new license that is issued a no cost to the new license holder must also be able to be limited, reduced or redeemed at any time in the future by the Issuing Authority at no cost to said Issuing Authority

Furthermore a recent report stated the only twenty five percent of water users required to meet new metering guideline in the Northern Basin had done so, with the recalcitrant operators being issued with fines so miniscule that they would not be any incentive to change existing practises for large operators. The proposed measurement of take for Flood Plain Harvesting also leaves much to be desired and is not trusted as being a clear and concise method by the general public.

In closing I would present a local observation as someone who has spent the last forty five years along the Lower Darling River, on the property that I grew up on there are flood plains that have not seen overbank floods now since 1976, the year I was born. Down Stream of Menindee there are tens of thousands of hectares of Black Box and Coolabah flood plain that is in a constant state of stress from one rain event to the next as there has been no "Big Floods", the fact that the decline in "Big Floods" in the South directly corresponds to development of broad scale irrigation and Flood Plain Harvesting infrastructure in the north which has gone on unimpeded over this time is more than a coincidence (Appendix C.)

Thank you for the opportunity to make a submission to the NSW Legislative Council's Select Committee inquiry into Floodplain Harvesting; I give my permission for this submission to be published in full on the website including my name.

Regards

Terry Smith

## **Appendix A**

### **Menindee Lakes Stakeholder Advisory Group Report**

The Menindee Lakes Sustainable Diversion Limit Adjustment Mechanism project was first raised by DPIE (water) NSW in late 2018. The main focus of this original proposal was to save 106 gigalitres (G/L) of water per year via reduced evaporation of the water in the Menindee Lakes System (MLS) by increasing the rate of draw down through infrastructure improvements that would have seen the MLS reduced to a drought reserve of just 80 G/L (or about six month's supply for the Lower Darling).

The 106 G/L was to contribute to a commitment made by Basin States to return 605G/L to the environment via various water saving measures under the SDL projects, the SDL savings allow for more extraction for irrigation. The idea is to achieve the same environmental outcomes with less water, (no-one from DPIE (Water) has been able to adequately explain this). One complicating factor here is the water savings in Menindee were to contribute to the 605 G/L of savings in the Southern basin, while all the water in Menindee comes from the Northern Basin, the Basin boundary is the high water mark of Lake Wetherell.

The proposed 2018 Business Case that was promoted by DPIE (Water) was widely criticised and almost unanimously rejected by members of the public at eight meetings held from Wentworth to Wilcannia. The 2018 Business Case took a lot away from Menindee and the MLS and left very little in way of drought reserve. The community opposition caused a rethink of the project and process within DPIE.

In July 2019 a small meeting was held in Menindee to discuss the way forward, and the Stakeholder Advisory Group process was put forward by then Land and Water Commissioner Mr Jock Laurie. The process was based on a model that had been used in mineral exploration in eastern NSW. The initial group of stakeholders was 26 peer selected members of Indigenous, irrigation, farming, grazing, tourism and local council background. After two meeting of the Stakeholder Group Mr Laurie was inexplicably sacked in November 2020 as Commissioner, and the role of Land and Water Commissioner was abandoned by NSW Government. Many on the Stakeholder Group felt that the direct and somewhat independent link the Group had, via Mr Laurie, to the NSW Water Minister had been severed.

In March 2020 NSW Water Minister the Hon. Melinda Pavey was in Western NSW, and toured the Lower Darling on an itinerary organised by the Stakeholder Group. A meeting was convened in Menindee at the end of the tour, where the Group outlined its main concerns regarding connectivity of the entire Darling River system and tributaries.

In order for the Menindee community to support the SDL project there needed to be some guarantee that changes would made to existing NSW water sharing plans, which were under review in early 2020. The stakeholders were asking for a re-instatement of storage targets in the MLS that were removed around the time of the Murray to Broken Hill pipeline build, and some

river operating rule changes that would better protect first flush and low flow events in the Northern Basin, as well as end of valley flow targets for Northern Basin Tributaries.

Meeting number five of the Stakeholder Group was held 20 June, 2020. At this meeting the Group was presented with twelve options, Options A to L, by the consulting team over a two hour presentation. One of the options was the reworked original business case that the Group was told was “off the table” on more than one occasion.

The available information on the options was extremely limited and included no costings, no water savings outcomes and no operational rules. The Stakeholder Group was given two weeks to submit feedback to the project team on our preferred option/s. This was an abysmal failure - DPIE (Water) received no feedback due to a complete lack of suitable information.

On June 30, 2020 DPIE (Water) submitted its Water Sharing Plans to the Murray Darling Basin Authority (MDBA). These Plans were mostly unchanged on the previous Plans, and all of the recommendations from the Stakeholder Group had been ignored.

In August, 2020 the stakeholders held a meeting where no DPIE or Agency staff were invited. It was at this meeting that the Group decided to suspend talks with DPIE (Water) staff on any proposed water saving project at MLS until the issue around connectivity were adequately addressed by DPIE. It should be noted that in order for any SDL project to be acceptable for funding by MDBA it must have community support, and the Menindee community did not support the current projects put forward by DPIE (Water).

The stakeholders also felt that the community message was not being delivered clearly back up chain of command via the Project Team to the Minister, and that a continuation of meetings would be a “tick the box” affair that would allow DPIE to say that they had consulted with community.

In November 2020 the stakeholders were advised that DPIE (Water) now had a shortlist of 2 options. These options were chosen with no community input whatsoever. Option 1 was a reworked version of the original business case that the community had consistently rejected in 2018 and that the Stakeholder Group had been told was “off the table” on numerous occasions. Option 2 was a completely new option which included raising the levee height of Lake Wetherell by up to three meters and Lake Pamamaroo by up to four meters, and the installation of 3 new gated regulator structures. This option also stated that Lakes Menindee and Cawndilla would see longer periods of no water than currently experienced. Neither of these options in their current form were acceptable to the Stakeholder Group, or the wider community.

The Stakeholder Group returned to the table with DPIE (Water) on 24 February 2021. The main agenda item was the issue of river connectivity; the meeting was interfaced with video calls from agency staff that could not make it to Menindee on that day. There were several issues with technology during the course of the day which did little to ease the tension and frustration of the stakeholders in the room. An undertaking was given by Anissa Levy (CEO Water infrastructure NSW) that a face to face meeting would be convened in Menindee in the near future, with a list of required attendees put forward by the Stakeholder Group.

A short presentation was also given on the two proposed options now being put forward by the Government. This presentation was made by the new Project Manager. It was totally inadequate with a complete lack of required information to base any informed decision on, including no costings, no budget, no operational rules and no estimated water savings.

A further meeting was held in Menindee on May 7, 2021, as per the undertaking given in February by Ms Levy with the following people in attendance from DPIE Water;

Jim Bentley - CEO NSW Water Sector, DPIE Water

Anissa Levy - CEO Water Infrastructure NSW, DPIE Water

Amanda Jones - Chief Strategy Officer, DPIE Water

Allan Raine - Director Water Planning Implementation, DPIE Water

Kaia Hodges - Executive Director Regional Water Strategies, DPIE Water

Shagofta Ali - Director Regional Water Strategies Far West, DPIE Water

Lisa Chikarovski - Director Community and Stakeholder Engagement, Water Infrastructure, DPIE Water

Jeff McCarthy - Executive Director SDLAM Delivery, Water infrastructure, DPIE Water

Vanessa O'Keefe - Executive Director, Policy and Planning, DPIE Water

Adrian Langdon - Executive Manager, water operations, Water NSW

The Stakeholder Group also requested that Justin McClure and Graeme McCrabb, from the Australian Floodplain Association, attend as guests.

The sole focus of the May 7 meeting was to discuss the connectivity issues in the river that this Stakeholder Group had been raising since its first meeting in July 2019. The conversation around the table was honest and, at times very forthright. The outlook from this meeting from the stakeholders' point of view is that the right people were in the room to hear our concerns. Whether they choose to listen this time remains to be seen. The stakeholders made it very clear that no SDL projects will be discussed until these issues are addressed.

DPIE (Water) NSW is in possession of seven different reports that all state the river is over allocated or the environment is under protected. The NSW ICAC inquiry found that preference had been given to extraction for irrigation in the Northern Basin in NSW in direct contravention of the Water Act. The issue around connectivity of the Darling to Wentworth has been pushed back from the Water Sharing Plan review, to the SDL project, to the Western Weirs Project, the Regional Water Strategy which is still under development to the Water resource plan review in 2023. The operational rules that led to the fish kills in Menindee in the summer of 2018/19 have not been changed adequately to stop a repeat of that event.

Currently, NSW Minister for Water the Hon. Melinda Pavey has stated that the proposed projects in Menindee will not go ahead. There is still scoping going on for projects at Menindee

and DPIE (Water) now has a two month window to look at viable projects in the MLS. NSW has told the MDBA that the 106 G/L from Menindee cannot be recovered in time for the 2024 deadline. Regardless, NSW still need to find 106 G/L in water savings before 2024, otherwise the Basin Plan is in jeopardy and will have failed.

What happens to the MLS has implications for the entire Basin and indeed the Basin Plan. It is not acceptable that this part of the system and the communities it supports are sacrificed to benefit other parts of the system.

Compiled by Terry Smith

## **Appendix B.**

Actions list following Menindee Stakeholder Group Meeting held Friday 7 May 2021

### **Connectivity**

All water sharing plans must provide real connectivity with end of valley flow targets to the downstream plan etched in law.

18 month supply for Lower Darling

- Minimum 18 month supply for Lower Darling

- Clear rules to manage FPH take consistent with Supplementary water access rules.
- All northern valley licences be linked to storage levels at Menindee as were Barwon Darling C class licenses prior to the changes to the 2012 plan
- Restrictions on carry over extraction if Menindee is below 18 months. This can be a condition of all licenses linked to the above dot point
- Clear rules on releases from MLS in order to preserve 18 month storages.
- Defined flow targets at Burtundy weir and at other strategic locations across the basin to provide real connectivity.

Review of currently submitted WSP's, stronger emphasis on end of valley flow targets for all northern Valleys, review of current low flow rules threshold in particular 30,000 megs at Bourke being a single event total not consecutive event total and flow triggers at Wilcannia, 90 day rule, 10 day rule.

Detail further action to address current failings of Anabranch Environmental flow regimes.

Going forward release more information on why rules are changed (risk benefit analysis science based etc.)

Commitment from DPIE to increase consultation in Menindee on Northern Basin rule changes that will affect flow such as Flood Plain Harvesting and carryover rules.

Define how future Water Sharing Plans's will address climate change and reduce extraction for irrigation to ensure the environment doesn't get short changed.

Clearly outline what NSW see as NSW issue that can be fixed by NSW, what will require other states to work together, or is federal responsibility. Time line on who is doing what and when.

Provide information on Regional Water Strategies, especially the western RWS

NRC whole of Basin Review. When will it start, timeline to completion.

Clear and workable rules on delivery and storage of cultural water.

Define and clarify cease to flow definition, how long before a cease to flow does any valley lose connectivity. (200 megs a day over Wilcannia does not ensure connectivity) what is acceptable to community as cease to flow and connectivity.

Address the failings of having Northern and Southern Basin boundary in the middle of a river system not at its lowest confluence.

Provide definition of what is critical human need and how that will be protected.

Provide definition of what is critical environmental need and how that will be protected.

Provide definition of cultural water needs and how it will be delivered.



Provide definition of what is acceptable quality for cultural, environmental and critical human needs.

Investigate introduction of conveyance license to better protect Basic Landholder Rights.

Circulate proposed changes to current WSP's that will address connectivity under the current round of WSP reviews.

Provide details on how inflow data and modelling will be improved to enable smarter decisions.

Provide details on annexation Warrego River/Toorale/Boera regulator water management from NPWS to Water NSW.

Toorale management is not consistent with the priority of water use per the water management act 2007 or 1902 Are NRAR looking into this

Provide details on progress to redefine the 640/480 rule as active water under the Murray Darling Agreement.

### **SDL**

Highlight benefits of any project for Menindee/Barka Communities. These benefits need to be real and achievable and not Department spin.

If no target (i.e. 106 gigs) is to be achieved, any proposed project outcomes need to be clear.

More information on any project, risk benefit analysis, science based, local wisdom included.

Outline what are the base line flows that the department accept and how would that measure up to community expectations for any project at Menindee.

Update on the status and costing of the Menindee Old Town Weir project and timeline for completion.

Develop and circulate costing and location of fish ladders to improve fish passage along the Baaka. Include redesign Pooncarie, Main weir/Block Dam, Wilcannia elsewhere there is a choke.

### **General**

Community consultation has been substandard, Outline what will that be changed into the future and how local wisdom can be better applied to management.

Consultation should result in real change. Community feel consultation to date is only "ticking the box".

Update on progress on Wilcannia weir and timeline to completion.

## **Appendix C.**

### **Floodplain Harvesting**

Floodplain water is a significant part of drylands river hydrology, and is critically important to ecosystems in-channel, downstream, and laterally.

Australian drylands river systems have extremely variable flow regimes. Unlike the European rivers that our society views as ‘normal’ rivers, in Australian drylands rivers the floodplain can be just as important as the channel for downstream transmission of water. Floodwaters aren’t “extra”, they are an important part of river hydrology.

For Australia’s longest rivers, it is the floods upstream that permit volumes of water to penetrate across the dry interior. Capturing floodwaters upstream, or reducing flood peak volumes or frequency, ensures that the users downstream get less than they should.

Floodwaters water the wider parts of the floodplain, inundating terrestrial ecosystems that need occasional flooding to survive. Typically these are the patches further away from the channels, or of slightly higher elevation than the rest of the floodplain. If a tree type needs a good soaking once every, say, ten years, then reducing upstream flood peak volumes or frequencies will starve those ecosystems – trees, understory, insects, birds, mammals.

Floodplains can be an important part of migratory fish habitat, and are a source for in-channel organic material. Because the highly-variable flow regime inundates floodplains then some of the water drains back into the channel, floodplain ecosystems contribute nutrients to aquatic ecosystems. Reducing upstream flood peak volume or frequency diminishes aquatic ecosystems and disrupts biological continuity.

Floodplains can be important in recharging local groundwater. Trees usually use groundwater as well as rainfall to sustain them, especially during dry spells. Reducing floods so that most river flow is in-channel denies local groundwater a chance to recharge.

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