

**Submission
No 67**

INQUIRY INTO FLOODPLAIN HARVESTING

Organisation: Lachlan Valley Water Inc

Date Received: 13 August 2021



ABN 38 597 032 631

Lachlan Valley Water Inc

Representing and Uniting Lachlan Valley Water Users

Submission to Select Committee on Floodplain Harvesting

Inquiry into Floodplain Harvesting

August 2021

SUBMISSION TO INQUIRY INTO FLOODPLAIN HARVESTING

1. Introduction

Lachlan Valley Water (LVW) welcomes the opportunity to make a submission to this inquiry. Lachlan Valley Water is an industry organisation representing more than 500 surface water and groundwater entitlement holders in the Lachlan and Belubula valleys. Irrigated agriculture is an important component of the regional economy, and LVW supports sustainable, productive and efficient water use.

Membership of LVW is voluntary and our members represent all categories of licences except for those held by environmental water managers. This submission is made on behalf of all members, but individual members also reserve the right to make their own submissions.

2. Terms of Reference

The Select Committee on Floodplain Harvesting is inquiring into and reporting on the Government's management of floodplain harvesting, including:

- a) The legality of floodplain harvesting practices
- b) The water regulation published on 30 April 2021
- c) How floodplain harvesting can be licensed, regulated, metered and monitored so that it is sustainable and meets the objectives of the Water Management Act 2000 and the Murray-Darling Basin Plan, and
- d) Any other related matter

Lachlan Valley Water is a member of NSW Irrigators Council and supports their submission.

Our submission provides additional comment on how the floodplain harvesting issues affect the Lachlan catchment, and in particular the inconsistency between the requirement that an irrigator should not allow irrigation tailwater or drainage water to discharge from their farm onto adjoining land or waterways, and the definition under the Water Management Act 2000 of overland flow water as including rainfall runoff, which would therefore require a licence, exemption or right to be captured.

3. The legality of floodplain harvesting practices

Floodplain harvesting in NSW was originally regulated under the *Water Act 1912* by way of approved structures. The *Water Management Act 2000* defined floodplain harvesting as a form of legitimate take, and in July 2008 the NSW Government declared that those taking water from floodplains would require a licence and water supply works approval, and determined that only works constructed on or before 3 July 2008 were defined as 'eligible work' for assessment as works storing flood water.

In 2013 the NSW Government introduced the Floodplain Harvesting Policy to implement licensing, measuring and regulating floodplain harvesting.

Floodplain harvesting has been occurring for more than 30 years and the intent of the regulations published on 30 April 2021 was to restrict floodplain harvesting to within legal

limits, not to provide irrigators with access to additional water. Licensing floodplain harvesting is about regulating a long-standing practice which currently is not regulated, and Lachlan Valley Water therefore supports that floodplain harvesting should be licenced, metered and measured, and that volumes taken must comply with the legal limits for take under the Water Sharing Plan and Basin Plan.

We also note that while the current floodplain harvesting implementation process is focused on the northern part of the state, it must be recognised that the legislation applies to the whole state and there are ten designated floodplains in the southern part of the state, including three in the Lachlan. There are a small number of on-farm storages in the Lachlan, some of which were constructed prior to July 2008, and others subsequently, which are used for a range of purposes including the capture and recirculation of irrigation tailwater, and the storage and management of allocated water.

While DPIE has formally indicated they assess that floodplain harvesting in the southern part of the Basin does not exceed legal limits, it is currently unclear how the legislation will be managed in the southern Basin, and Lachlan Valley Water therefore considers it is necessary to establish a procedure to gather information and assess what regulatory framework is needed.

4. The water regulations published on 30 April 2021

The major issue for the Lachlan is the Water Management (General) Amendment (Exemption for Rainfall Run-off Collection).

As noted under section 2, our concern is the legal ambiguity between the requirement under a water supply works approval or use approval that an irrigator must not allow any tailwater or drainage water within an irrigation development to discharge onto adjoining land or into waterways, wetlands, sites of cultural or Aboriginal significance due to the provision under the *Protection of the Environment Operations Act 1997* that a person who pollutes water is guilty of an offence, and the definition under section 4A of the *Water Management Act 2000* of overland flow water as including rainfall runoff, which would therefore require a licence, exemption or right to be captured.

There also appears to be some misunderstanding that rainfall runoff can be captured as a harvestable right, however, this is only allowable if the storage is on a minor stream (defined under the Harvestable Rights Order as a first-order or second-order stream that does not permanently flow).

In addition to the uncertainty around these requirements, a proportion of the tailwater or drainage water from irrigated land that is captured by an irrigator will have already been accounted for as licensed take, and it will be difficult to measure accurately how much of the water captured under such conditions is tailwater compared with how much is rainfall runoff.

In order to deal with the ambiguity and enable an irrigator to comply with best management practices, Lachlan Valley Water supports the following Statewide Exemption for Rainfall Run-off Collection, which was originally adopted in April 2021, but then disallowed, as an effective way to manage this:

Clause 39B Exemption relating to use of tailwater drain

- (1) *A landholder is exempt from section 91B (1) of the Act in relation to the use of a tailwater drain for the purpose of collecting rainfall run-off from an irrigated field that is part of the land*

Schedule 4 Exemptions

17B Rainfall run-off

- (1) Any landholder - in relation to the taking of water from a tailwater drain for the purpose of collecting rainfall run-off from an irrigated field that is part of the land.
- (2) The exemption conferred by this clause does not apply during a period in which a work on the land, other than a tailwater drain, takes overland flow water.

This Schedule 4 exemption 4 is also clear that it does not apply during a floodplain harvesting event.

5. How floodplain harvesting can be licensed, regulated, metered and monitored so that it is sustainable and meets the requirements of the Water Management Act 2000 and the Murray-Darling Basin Plan.

The disallowance of the Water Management (General) Amendment (Floodplain Harvesting) Regulations effectively mean that floodplain harvesting is able to continue, which is not an outcome that benefits the environment or sound water management.

The Healthy Floodplains Project involved extensive studies to better understand floodplain harvesting. Detailed analysis was undertaken, and the regulations were consulted on very widely, with the aim of moving floodplain harvesting into the same management and metering framework as other forms of water take.

The regulations would have modernised the management of floodplain harvesting and reduced floodplain take so that total water take from all sources was compliant with the Long Term Average Annual Extraction Limit or 1994 Cap. They would also have required accurate measurement and metering.

Lachlan Valley Water submits that the regulations that were disallowed will deliver the licensing, metering and monitoring conditions that meet the requirements of the Water Management Act 2000 and the Basin Plan. We support the detailed submission made by NSW Irrigators Council and that the reform should progress without delay.

Yours faithfully

Mary Ewing
Executive Officer