

INQUIRY INTO FLOODPLAIN HARVESTING

Name: Name suppressed

Date Received: 13 August 2021

Partially
Confidential

Dear committee Members and parliamentary staff,

Thank you for the opportunity to comment on the important issue of regulating access to water by floodplain harvesting (FPH). This submission may be published.

I have been interested in this issue since I worked in a consultancy team on a state-wide wetlands project for the then Department of Water Resources in the late 1980s. I flew over some of the floodplain harvesting works and heard how this was having a cumulative effect with other water diversions on flows to the Gwydir wetlands and Macquarie Marshes. From 1990 to mid-1995 I worked as a volunteer for environmental groups on river management issues. This included being an environmental representative on committees with water user and agency representatives, including a committee advising on management of flows into the Barwon-Darling River. I worked for NSW government agency on water reform issues until the end of the 1990s and have maintained my interest in river management issues.

(a) legality of floodplain harvesting practices

Others are better placed to comment on many aspects of this important question. Among the issues that the Committee should consider are

- Whether granting of access licences will impinge on any Native Title rights.
- Whether it is necessary for access licences to confer access rights that could be compensable if there was a need to reduce them. It is my view that ecosystems and the people who live downstream of the floodplain harvesting, particularly Aboriginal people, should have a greater right to compensation than people who have been taking publicly owned water for free without formalised authorisation for many years at the expense of those downstream. It would be preferable to regulate FPH by a process that allows for adaptive management without having to define limits on volumes licenced and pay compensation in future if those limits prove inadequate.
- Whether the licences to be granted, or the process of doing so, directly or indirectly contravenes agreements such as the 1994 cap on diversions, the Ramsar Convention and EPBC Act or the Murray Darling Basin Plan legislation
- Whether the duty to consider environmental impacts conferred by the Environmental Planning and Assessment Act has been properly complied with

5.5 Duty to consider environmental impact

(1) For the purpose of attaining the objects of this Act relating to the protection and enhancement of the environment, a determining authority in its consideration of an activity shall, notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any other Act, examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity. Many, probably most, of the works used to for FPH have not been subject to any environmental assessment (e.g. were any of those approved under the Water Act 2012 subjected to the environmental assessment that the above duty required? Approval under the Water Management Act 2000 of some works may have involved environmental assessment but the 2013 FPH policy removed environmental assessment from procedures). The activity of using those works has very significant impacts, notably as part of the cumulative impacts with other FPH works and other water diversions and dams. Given that use of a very large number of works to access water is proposed to be authorised by licensing, an environmental impact statement should be prepared for this whole process.

(b) the water regulations 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

The concept of what is sustainable needs to be seen in the context of ecological sustainability, particularly downstream, and cumulative impacts with other changes (including but not limited to other water diversions). Principles for ecologically sustainable development as defined in NSW legislation provide some guidance. Historical rainfall and flow patterns that ecosystems evolved to survive and thrive in, and predictions of significantly reduced inflows and increased evaporation with climate change, are key considerations.

I hope the committee and government will heed scientific advice on what will happen to aquatic, wetland and floodplain ecosystems with the proposed or alternative levels of FPH diversion. The number of native fish or water birds are not simply reduced in proportion to the average flow through or into their habitats – they have been reduced far more than simplistic average figures suggest so scientific understanding of the productivity and resilience of ecosystems needs to be headed.

The Darling/Baaka River used to have much more continuous flow than it has now and used to be connected laterally to the many wetlands in its floodplain – billabongs, anabranches, lakes and other wetlands. Evidence of this should be sought by the committee – some was provided by Dr Martin Mallen-Cooper to the recent inquiry into the Rationale for, and impacts of, proposed new dams and other water infrastructure. Ecosystems need a more natural flow regime with sustained high flows as well as low flows.

There was an attempt to define an appropriate flow regime for the Barwon-Darling River in the mid 1990s. The Interim Unregulated Flow Management Plan for the North West (1992) from which the current targets in water sharing plans for the Darling and its tributaries come, was intended to be replaced by a more complete set of targets or rules for determining when ‘off-allocation’ pumping could be permitted (now called ‘supplementary’ access). An expert scientific panel was engaged to inspect the river together then propose rules or targets for various sections of the river that would ensure that habitats for aquatic species in the Barwon Darling can be productive – for example, ensuring that flows would be sufficient to cover natural benches in the river channel for some time. Unfortunately the failure to set and implement such targets for both supplementary access and floodplain harvesting has permitted an unsustainable level of diversions.

Now the procedure for approving FPH should be halted until the issue of what is sustainable has been properly determined using all of the scientific knowledge that can be applied to this very important matter.

Yours faithfully

Bachelor of Science, Diploma of Natural Resources