

## **INQUIRY INTO FLOODPLAIN HARVESTING**

**Organisation:** Murray Lower Darling Rivers Indigenous Nations (MLDRIN)  
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## **Submission to the New South Wales (NSW) Select Committee on Floodplain Harvesting**

### **Introduction**

Murray Lower Darling Rivers Indigenous Nations (MLDRIN) welcomes the opportunity to provide a submission to the NSW Select Committee on Floodplain Harvesting. MLDRIN is a peak body of Sovereign First Nations in the lower part of the Murray-Darling Basin, which includes many Nations across southern NSW.

First Nations have never ceded our inherent rights as guardians and caretakers of rivers and waters. Our lore provides a holistic, interconnected management system, where all elements contribute to the good of the whole. The floodplain harvesting practices and legal mechanisms which are the subject of this Inquiry are of the utmost concern to MLDRIN and our members Nations. Principally, this is because of the significant downstream implications they present to Country and people. We hold grave concerns about the devastation and trauma this practice afflicts on Country and the First Nations people that depend on and care for it. MLDRIN represents Nations affected by the downstream impacts of these destructive practices and so we add our voice to strengthen, not replace, the voices of the Traditional Owners of Country directly impacted by floodplain harvesting.

We remind the Inquiry that the objects of the NSW *Water Management Act 2000* include to recognise and foster the “benefits to the State that result from the sustainable and efficient use of water, including...(iii) benefits to culture and heritage, and...(iv) benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water.” We are concerned that floodplain harvesting contradicts and makes achieving these objects near impossible.

### **Connectivity**

It is undeniable that the Murray-Darling Basin is one, interconnected system. Rivers and Country should be connected from the mountains, across the floodplains, and to the sea. Therefore, healthy water must be allowed to flow in, through, and around Country; we all have a responsibility to make sure that the water we pass on downstream is of good quality so that it can support, restore and sustain Country and people.

MLDRIN is concerned that floodplain harvesting does not leave enough water in the system to sustain rivers’ survival or meet our cultural needs. Harvesting waters from floodplains and reducing downstream flows are compounding poor water quality, algal blooms, and salinity issues that are far too common in our river systems today. These issues are impacting the health of our riverine

ecosystems, including flora and fauna that are culturally significant to us. This is, in turn, impacting the health and wellbeing of our communities all along river systems.

It perplexes us that the NSW Government is permitting floodplain harvesting when flows downstream are dire. Setting appropriate and informed downstream flow targets, that are underpinned by First Nations-led research and assessment and cultural knowledge, must be a priority in order to protect native title and cultural values.

We are deeply opposed to water infrastructure and management rules that allow the current disconnection and damage to our River Country to continue and worsen. Illegal infrastructure that enables floodplain harvesting to happen must be removed. It is of the utmost importance that water management regulations and policies, including floodplain harvesting policies and regulations, reflect and support the connectivity that our Country, our cultural sustainability, and our people (and communities more broadly) depend on.

### **First Nations' priorities and voices in water policy and decision making**

First Nations' water values, objectives and priorities are essential inputs to all water planning and decision making in the Basin, including floodplain harvesting. Water policy makers and planners must prioritise the principles, knowledges, rights and responsibilities that underpin traditional custodians' practices of holistically caring for Country. They must also respect the rights of rivers, which are sacred, living entities, with rights to flow, flourish and sustain. Doing so would see legal, policy and governance frameworks that concern rivers, floodplains and Country be equitable and sustainable – not only for humanity, but also for Country, rivers, and landscapes.

By contrast, we have not witnessed strong engagement with downstream First Nations on the issue of floodplain harvesting. Additionally, MLDRIN has major concerns about the current legal, policy and governance arrangements for floodplain harvesting as well as those that have been developed and proposed by the NSW Government over recent years. It appears that water policy makers and decision makers continue to ignore the inherent rights of rivers and of First Nations, who are the first and original waterway managers. While this may be the way things were done in the past, this colonial legacy needs to radically change now for the sake of our Country and the future generations of all people. The NSW Government (and governments more broadly) must transform its approach to managing water to see and govern waterway systems as the holistic and interconnected systems that they are.

First Nations are willing to share and collaborate with Government agencies to improve and restore Country and river health. We want policy makers and planners to work with us, to listen deeply to us, and to share decision making authority with us. We implore the NSW Government – and indeed, all Basin jurisdictions – to actively seek and appropriately resource opportunities to engage, support and empower Nations to be involved in decision making. Give First Nations control and we will show you how to heal Country and, in doing so, we will maintain intergenerational transfer of knowledge.

### **Transparency and justice**

Finally, we insist that the NSW Government be transparent in regard to water policy and legal frameworks including floodplain harvesting. We also demand that NSW do better to address

historical and enduring colonial injustices borne specifically by First Nations peoples in reviewing and reforming all water frameworks.

First, MLDRIN is concerned that allowing floodplain harvesting to continue will disrupt important progress towards securing the environments' water needs. Our river Country and ecosystems desperately need greater water recovery and for flow regimes to better reflect natural cycles. Creating a legal framework that more clearly permits the harvesting of water flowing across floodplains will therefore also contribute to, and legitimise, the significant declines in natural flows downstream at current unsustainable levels. This is the antithesis of what Country needs. The NSW Government must address these concerns. This includes, at an absolute minimum, ensuring that its floodplain harvesting modelling is fit-for-purpose, rigorous, based on the best and most up-to-date science and information, and peer-reviewed.

Second, MLDRIN is concerned that the NSW Government has not accommodated climate change and associated impacts into its decision making about floodplain harvesting. Climate change is a reality, and its impacts are only going to further dry out our Basin, compounding the disastrous effects of over extraction such as from floodplain harvesting that we are already seeing. As First Nations significantly populate the towns and communities adjacent to floodplain harvesting areas and are less likely to move away than non-Indigenous people,<sup>1</sup> our People and our future generations are the ones that will inevitably face the brunt of this reality. All water management policies and planning *must* reflect climate change impacts and risks including, especially, reduced water availability.

Third, the injustices of proposed floodplain harvesting regulations remain unacknowledged and unaddressed by the NSW Government. That is, as a result of colonisation and a lack of state reparative action, First Nations remain deprived of the right to access water and to participate in the water economy, should they wish. Creating and distributing new, compensable water property rights to a public good for private landholders only further entrenches these water injustices.<sup>2</sup> Adjustments to permitted floodplain harvesting volumes must not be compensable while First Nations are still dispossessed of their water rights.

Fourth, MLDRIN is of the view that First Nations people are entitled to compensation from the NSW Government for how it has permitted floodplain harvesting practices to continue unchecked for so long. Reparations should not only compensate for the theft of water that has occurred through these practices, but also for the significant and widespread damage to Country and the likely destruction of cultural heritage that has resulted from illegally constructed infrastructure and works that underpin floodplain harvesting. The NSW Government must be honest and transparent about the extent and severity of this damage, the unjust associated impacts inflicted on First Nations

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<sup>1</sup> Hartwig, LD, Jackson, S, Markham, F, & Osborne, N. (2021). Water colonialism and Indigenous water justice in south-eastern Australia. *International Journal of Water Resources Development*, Early view. doi: 10.1080/07900627.2020.1868980.

<sup>2</sup> Hartwig, LD, Jackson, S, & Osborne, N. (2020). Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession. *Land Use Policy*, 99, Article 104869. doi: 10.1016/j.landusepol.2020.104869; O'Donnell, E, Godden, L, & O'Bryan, K. (2021). *Cultural Water for Cultural Economies*. University of Melbourne. Retrieved from: [https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0008/3628637/Final-Water-REPORT-spreads.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0008/3628637/Final-Water-REPORT-spreads.pdf).

people for multiple generations, and the moral, legal and ethical responsibility it has to rectify and compensate for these injustices.

### **Conclusion**

We want healthy water to flow out of Country to all mobs downstream. We want the nutrition and healthy water from upstream to replenish Country. We want to build back biodiversity and Traditional Owner management to improve water quality. We want to collaborate with all mobs to ensure a healthy system, renewing cultural connections between Nations. We strongly oppose the continued legitimisation of floodplain harvesting, as it includes an inequitable transfer of an important and public resource for private benefit.