

**Submission
No 186**

INQUIRY INTO FLOODPLAIN HARVESTING

Organisation: Watershed AllianceAU

Date Received: 24 August 2021

Select Committee on Floodplain Harvesting - Inquiry

Submission by Kylie Lawrence, upon behalf of Watershed AllianceAU.



Date: 24/August/2021

To the Committee,

Watershed AllianceAU is a Broken Hill-based water news-sharing community group focussed on the health of the Darling-Baaka, Menindee Lakes System and related river communities across the Murray-Darling Basin. In 2018 with a community delegation brought a petition to NSW Parliament (supported by NSW Greens and NSW Labor), calling for a moratorium on the Wentworth-to-Broken Hill pipeline.

TERMS OF REFERENCE

1. That a select committee be established to inquire into and report on the Government's management of floodplain harvesting, including:

(a) the legality of floodplain harvesting practices,

(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 MurrayDarling Basin Plan and,

(d) any other related matter.

OUR RESPONSE

Floodplain water harvested illegally has been difficult to calculate, with significant variances in the Northern Basin alone, ranging from less than 254 GLs to almost 395GLs.ⁱ Floodplain harvested water creates inequity, least of which because it is free water, and necessarily is prioritised at the expense of the environment, communities, including First Nations cultural and social values, and even other licenced irrigators.

One example is the iconic Menindee Lakes System in Far West NSW. The Darling-Baaka feeds into the Menindee Lakes System which is the nursery of the Murray-Darling Basin for numerous native species including waterbirds and fish.ⁱⁱ Two recommendations from the Independent Inquiry into the devastating three mass fish kills on the Darling-Baaka through Menindee (Dec 2018-Jan 2019) emphasised the necessity of monitoring floodplain harvesting in the Murray-Darling Basin:

‘Recommendation 20: NSW and QLD should improve the reliability and transparency of the assessment of the hydrologic impacts of floodplain harvesting.

Recommendation 21: The MDBA should continuously update pre-development model runs developed for the Basin Plan with recent climate information to enable more rapid assessment of the effects of diversions and environmental water releases.’ⁱⁱⁱ

The South Australian Murray-Darling Royal Commission found that the practice of illegal diversions (floodplain harvesting) had significant environmental^{iv}, cultural, and socio-economic^v impacts. The witness statement by Mr William Bates describes the cultural and environmental importance of floodplain waters to the Barkandji Nation ^{vi}.

a). The legality of floodplain harvesting practices

In the Northern Basin alone, on-farm storage capacity has increased by 142 percent in the sixteen-year period between 1994 and 2000. In terms of gigalitres, from 574 to 1395.^{vii} **This exceeds the 1994/5 extractions cap.**

Floodplain harvested water creates inequity, least of which because it is free water, and necessarily is prioritised at the expense of the environment, communities, including First Nations cultural and social values, and even other licenced irrigators.

b). The water regulations published on 30 April 2021

1. Support that Water Management (General) Amendment) Regulation 2020 was not included in the regulations published in April 2021. Floodplain harvesting works should require a works approval.
2. Recommend that floodplain harvesting licencing clearly address all floodplain harvesting works found to be illegal.
3. Recommend that all data modelling be accurate, fit for purpose, and subject to independent audit by the Natural Resources Access Regulator.
4. Object to rules that allow floodplain harvesting to be restricted under Ministerial order tied to supplementary access. Support floodplain harvesting being managed via announcements akin to supplementary access.^{viii}

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.

1. Ensure that downstream flows and regulations meet the requirements of downstream water stakeholders and their values including environmental flows, cultural, community, and stock and irrigation.

2. Recommend removal of all illegal floodplain harvesting works and remediation of those works sites.
3. It is vital that floodplain harvesting is monitored and measured before issuing new water access licences. This will benefit modelling data, and contribute to transparency for all water stakeholders.
4. Ensure that NSW climate modelling is factored into floodplain harvesting assessment.
5. Water Sharing Plan Rules –
 - a. Support annual water accounting with less than 1 megalitre unit share and no carry-over.
 - b. This will benefit river connectivity, benefitting flows from tributaries in to the Darling-Baaka, the Menindee Lakes System, Lower Darling and beyond. This will contribute to repair from over-allocation of over-bank flows upstream, and support increased equity between water stakeholders across valleys.
 - c. Strongly object to one year 500 percent carry-over rules, that puts the Murray-Darling river system in debt to irrigators, ahead of the environment, and other water stakeholders.
6. Support ensuring secure funding for NSW Natural Resources Access Regulator, including to review standardised meter installation/upgrade progress across Murray-Darling Basin and support compliance measures.
7. Increase floodplain harvesting breach penalties and sanctions so that they are a quantifiable deterrent.
8. Suggest that repeat offenders who do not show willing to reform:
 - a. Remove the breached water licence for a period of no less than one year.
 - b. Audit any other water access licence/s under their name for the same duration.
 - c. Disallow them from purchasing any further water licences for the same duration.
9. In addition to applicable regulatory and legal penalties, where water access licenses in breach of extraction limits are owned by foreign nationals or entities, suggest removing their water access licences for a period of no less than one year, ban them from trading water access licenses in NSW water markets for the same duration, and audit any other water access licence/s held under their name for the same duration.
 - a. Where foreign nationals or entities are in repeated breach of their water access licences, suggest removing their (and that of any foreign-owned subsidiary commercial holdings) water access licences (including breached water access licenses), and ban them (and any subsidiary foreign-owned commercial holdings) from trading water access licences in the Australian water market for a period of no less than five years.

(d) Any other related matter.

1. Some water access licences are administered under 1912 Water Act.

Water Act 1912 No. 44 Division 5: Miscellaneous:

“25 Conditions relating to environmental protection *The conditions subject to which a licence, permit, authority or group licence is granted or renewed under this Part may include conditions relating to the protection of the environment.”^{ix}*

Suggest amending this to replace “may” with “will”, as per: *The conditions subject to which a licence, permit, authority or group licence is granted or renewed under this Part will include conditions relating to the protection of the environment.*

ⁱ P15, ‘Table 2: Estimates of floodplain harvesting extractions in the northern NSW Murray-Darling Basin’, ‘Floodplain water harvesting in the Northern New South Wales Murray-Darling Basin: February 2021’ (Slattery & Johnson, February 2021)

ⁱⁱ [Menindee Lakes, the Lower Darling River and Darling Anabranch](https://mdba.gov.au) (mdba.gov.au)

ⁱⁱⁱ P14, [Final-Report-Independent-Panel-fish-deaths-lower-Darling_4.pdf](#) (mdba.gov.au)

^{iv} Pp593-598, ‘Treatment of floodplain diversions’ (South Australian Murray-Darling Royal Commission Final Report, January 2019)

^v Ibid, 598-599, CaseL Lamey ‘Treatment of floodplain diversions’ (South Australian Murray-Darling Royal Commission Final Report, January 2019).

^{vi} P5 Witness Statement Mr William Bates: [Department for Environment and Water | Summary of submissions](#)

^{vii} P1 1, ‘Floodplain water harvesting in the Northern New South Wales Murray-Darling Basin: February 2021’ (Slattery & Johnson, February 2021)

^{viii} [Water Management \(General\) Amendment \(Floodplain Harvesting Access Licences\) Regulation 2021](#) (nsw.gov.au)

^{ix} [Water Act 1912 No 44 - NSW Legislation](#) (Division 5 – Miscellaneous, Section 25)