

Submission
No 227

INQUIRY INTO FLOODPLAIN HARVESTING

Name: Name suppressed

Date Received: 11 August 2021

Partially
Confidential

Submission to the Select Committee on Floodplain Harvesting

I am member of the NSW NPA Landscape Conservation Committee, a member of the Inland Rivers Network, and the Lifeblood Alliance. I have also had a considerable history of continued involvement in the basin through Ministerial appointments to various water reform committees, the Murray Catchment Management Committee and its successors: The Catchment Management Authority. I make this submission as a concerned individual.

My understanding is that the select committee will inquire into and report on the Government's management of floodplain harvesting, including:

- the legality of floodplain harvesting practices,
- the water regulations published on 30 April 2021
- 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,
- any other related matter

Addressing these issues:

Floodplain harvesting is when the water that flows across the floodplains during a flood is collected and used later. Overland flow as defined in the 2000 Act in WMA Section 4A1: "overland flow water" means water (including floodwater, rainfall runoff and urban stormwater) that is flowing over or lying on the ground as a result of-- (a) rain or any other kinds of precipitation....<other types are then listed>.."

There continues to be serious concerns, about the legality of harvesting. Even the Government's own legal advice has made it clear there are serious questions about the legal status of flood plain harvesting that need to be resolved. My understanding is that unless basic landholder rights or an exemption applies, it is generally an offence to take water without an access licence, and to use a water supply work (e.g. a structure used for flood plain harvesting) without a water supply work approval (sections 60A and 91B of the Water Management Act 2000, respectively). Indeed, the attempt by the NSW Government to establish a regulation to exempt FPH extraction until such time as it is licenced, appears to provide evidence that the current practices are not legal.

A key problem area/ambiguity being where landscape works are not primarily aimed at capturing water (e.g. raised road works) but can intercept or capture overland flow, yet it results in a significant change in drainage.

This means that the current situation is that the definition of floodplain harvesting arguably covers a very broad range of structures and storages. It is clear there are several floodplain structures that have been constructed without the necessary approvals because it is argued that 'diversion' does not equal a 'take'. This prevents us from getting accurate assessment of floodplain harvesting. This cannot continue as the practice means there is a significant volume of 'unspecified take' across a vast area that is experiencing increasing dryness under climate change. To fix up this 'cloudy' situation, the change must involve:

- having licence conditions and water sharing plan rules that have ‘downstream flow targets’ which state the volumes of water that must be recorded at downstream river gauges before floodplain harvesting is triggered.
- Identify all illegal floodplain works and remove them from the landscape
- Create a publicly available register that provides a spatially explicit database of floodplain harvesting structures with an estimate of diversion/take; and
- Have this register of structures and take not allow water to be tradable or ‘carried over’
- Reinstate the idea in the 2010 draft policy that any new proposed floodplain work requires an environmental assessment including consideration of impact on the neighbouring and downstream environments
- Departments act as ‘honest brokers’. That is, that consultation means ‘consultation’ under the IAP2 framework and that NSW Water: *“keep us informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision”* rather than keep providing sequences of revised drafts and undertaking policy creep without clear explanation.

Although it is relatively easy to state a recommend solution, the situation is compounded by the NSW FPH Policy 2018 which now does not make protecting the environment a priority (as per the *Water Management Act 2000* (WMA) but has instead focussed on recognising and locking in history of use.

This makes the current situation increasingly unjust and unfair to the wider basin community and the natural environments that we value. It is important we recognise such justice issues in any change. Specifically:

Wider Community

- It reduces flows into rivers, which in turn affects the volumes of water available for downstream ecosystems and other town and farm communities.
- Due to the landscape and precipitation patterns, there is a significantly great opportunity to capture and undertake floodplain harvesting in the northern basin than in the south. Development of the floodplain therefore creates inequity between southern and northern water users especially in terms of wider basin water commitments to S.A.

Indigenous Community

- It is clear from the recent drought that most Aboriginal people in the northern MDB do not support floodplain harvesting. This is because the floodplain is of great cultural significance to Aboriginal people, and floodplain harvesting has a detrimental impact on the various elements that make up that whole, including by disconnecting plains from rivers.
- Related to the point above, the current system perpetuates a European centric systems of water rights that does not facilitate a more collective governance model that recognises and maintains the importance of spiritual, cultural, and environmental health of the catchment to indigenous peoples.

Wildlife and the Environment

- Diverting large volumes of water from floodplains has significant, cumulative impacts on the environment including downstream river ecosystems and ecosystem services. There are some 'environmental assets' of national significance such as Toorale National Park, Paroo-Darling National Park and State Conservation Area, Narriearra Caryapundy Swamp National Park, and Sturt National Park Nocolche Nature Reserve that provide periodic refugia to migratory wetland birds
- Related to the point above, these components of the nature reserve system have plans of management that do not consider environmental water needs, nor do they have specific environmental water allocations – yet they contain significant wetland communities that depend on these overland flows to maintain their ecological character and have species that depend on these wetlands for habitat.
- Work by Dr Lee Baumgartner and Dr Martin Mallen-Cooper has begun to outline the significant impact that floodplain works and structures not only isolate adult fish species that seem to spawn on the floodplain, but also in trapping and isolating the next generation of recruits
- Similarly, work by Dr Darren Baldwin (ex MDFRC) has outlined the importance of floodplain connectivity to rivers in wider carbon cycling and the flushing of toxins- which these floodplain structures inhibit.

Yours faithfully