

**Submission
No 283**

INQUIRY INTO FLOODPLAIN HARVESTING

Organisation: Friends of Nyah Vinifera Park Inc.

Date Received: 31 August 2021



18 JULY 2021

Select Committee on Floodplain Harvesting,

NSW Parliament House,

Macquarie St, Sydney, NSW 2000

by email: floodplainharvesting@parliament.nsw.gov.au

Friends of Nyah Vinifera Park Inc. (FONVP) welcomes the opportunity to make a submission to the NSW Legislative Council's inquiry into floodplain harvesting.

BACKGROUND

1. Our group has been working together for the protection and enhancement of Nyah Vinifera Park and other floodplain ecosystems of the Lower Murray Basin for over twenty four years. We formed in 1996 as a grassroots community organisation and immediately fought for our forests protection from planned logging operations. Later, we engaged intensely in the Victorian Environment Assessment Council study of Red Gum Ecological Vegetation Class, which eventually recommended a new level of protection for floodplain ecosystems in Victoria, which were found to be underrepresented in the reserve system. Soon after the Red Gum Parks were proclaimed, the Murray Darling Basin Plan was enacted and our group engaged with the initial community consultation processes and have continued to advocate for a strong Basin Plan that holds true to its objectives and delivers a healthy river system for our nation. At the heart of our work and from the very beginning has been our shared vision and work with Traditional Owners and First Nations people to protect the cultural heritage value of these special places.
2. Our region, between Swan Hill and Robinvale is a region of great environmental significance - a very special part of the River Murray. It is characterised by arid Mallee landscapes encroaching on productive floodplain areas and boasts the Little Murray, the Wakool, and the Murrumbidgee Junctions. The Junction of the Loddon River is not too far to the east. It must have been an impressive and incredibly vibrant delta prior to European settlement. Through the heart of this region around Boundary Bend, many rare and threatened species occur and others that are significantly at the southern most extent of their range (Wilga, Northern Sandalwood). Unspoilt areas of Mallee also provide habitat for the unique and wonderful Mallee Fowl. It is a relatively unregulated stretch of the river and is narrower and has a more natural feel to the big weir pools at Echuca, Robinvale and Mildura. The smaller river does not lend itself to water sports like ski boating

and jet ski's so fishing is the cherished activity on the water and therefore we depend on a healthy river system and good fish populations to a greater extent. Through the 70's and up to the early 90's, the river spilt over into our forests and lakes most years. We learnt, respected and enjoyed nature's important cycle. Through the early years of water trading and beyond through the Millennium Drought, we have not witnessed any recovery of those natural hydrological rhythms that had kept the local ecosystems relatively intact. Our floodplain forests, woodlands and lakes continue to suffer and decline to a large extent, despite considerable investment via the Basin Plan.

3. We regard the Water Act and the Murray Darling Basin Plan as a progressive and critical piece of legislation/policy for our nation and care deeply about the ongoing health of the Basins' rivers and wetlands for their provision of ecosystems and social services and clean water, for their recreation value and for their natural and cultural heritage. The extraction of these waters for irrigated agriculture in Basin communities is also clearly of immense economic importance both now and into the future.
4. As we race toward the end of the Basin Plan 1 in 2024, our group maintains that the management of floodplain harvesting to date has been inequitable, unsustainable and harmful to floodplain ecosystems. Addressing these issues will be a critical component of delivering the Basin Plans outcomes.

UNSUSTAINABLE

1. Water spreading periodically (or flooding) across vast shallow floodplains of northern NSW is vitally important for river health, both in the Darling Barka system and the Murray. Local First Nations elders tell us that floodplains are considered to be "the lungs" of the river and that plentiful, clean water should be protected for downstream communities, in a connected system that flows from source to sea. Water over floodplains purifies water, enriches soil health, and provides natural flood and erosion control. Water flowing across floodplains sustains floodplain vegetation and aquatic communities, recharges shallow groundwater aquifers, contributing to regional water storage, or flowing back into rivers, contributing to water supply, wildlife health and water security in downstream river valleys. Floodplain wetlands are vibrant, diverse and unique ecosystems. Flows on floodplains underpin the health of freshwater species including migratory birds, other waterbirds, native fish, frogs and many flood dependent aquatic plants. The very nature and the current estimated extent of floodplain harvesting has harmful and unsustainable impacts on our rivers and floodplains.
2. The health of the Darling River and the Lower Darling River in particular, is well understood by the wider Basin community and the nation. It has been a shameful reality for our country to recognise, whilst attempting to rebalance over allocation through the Water Act 2007 and the Murray Darling Basin Plan.
3. Algal blooms in the Darling River in the 1990's were one of the drivers of water reform in the beginning and yet the condition of the river has gone from bad to worse. During this period, floodplain harvesting was recognised as an issue of Basin wide concern. Whilst the rest of the Basin was grappling with massive

changes in how water is shared, fighting over water rights and recovery (causing incredible angst in communities), floodplain harvesting was allowed to continue and expand. Slattery and Johnson have estimated the capacity of on farm storage in five northern NSW valleys in work released earlier this year in an attempt to ascertain the level of take via floodplain harvesting. Between 1994 when the MDB Cap was set, the capacity of on-farm storages in these valleys increased by a factor of 2.4 or 142%. i.e. from 574 gigalitres in 1993/94 to 1,395 gigalitres in 2020. The number of on-farm storages has increased from 400 in 1988, to 1,833 in 2020. This represents a major failure of democracy and public administration.

4. Initially through investigative journalism and then through the environmental catastrophe of the Menindee fish kills, there are now few who are ignorant of the issue. Additionally, there are few who do not recognise the blatant and outright desiccation and destruction of a whole region to favour those in the upper catchment.
5. The Ken Matthews report, the Academy of Science Report into the Menindee Fish Kills, the Vertessy Report into the Menindee Fish Kills and countless other studies recognise that over extraction is an enduring problem, (particularly in the northern Basin) with unmeasured floodplain harvesting a huge contributor.

INEQUITABLE

1. First Nations people, since colonisation have been fighting for land and water justice. Since Native Title was recognised by the Mabo decision, communities have been going through the incredibly arduous and oppressive process to have their various rights recognised. It is abhorrent that others are able to access these resources for free and without licences or rights and that they will be inevitably be gifted a huge asset through this licencing process. This process is shameless in its racism. There are many articles and research projects that highlight this inequity (ref. 6 and 7)
2. All irrigators and water users who pay for water are being unfairly disadvantaged by this form of take. In our current climate and culture, free take of water is impolite and no longer maintains social licence. Southern Basin irrigators are additionally discriminated against through the process of floodplain harvesting , having to deliver water resources that were once contributed by the Darling River.
3. The wider nation, who has paid for the Basin Plan in good faith and with assumed integrity, should be appalled by the lack of attention to this inequity. Floodplain harvesting was recognised as an issue of “Basin wide concern” by MINCO as early as 1995. The Water Act 2007 demands that an Ecologically Sustainable Level of Take be determined and reflected in a Sustainable Diversion Limit, and that this all be resolved by the best available science. Actual take must be bought under Cap. Redefining the SDL is not a lawful or fair option.

Friends of Nyah Vinifera Park inc. do not support the recent Regulations relevant to FPH, The Water Management (General) Amendment (Floodplain Harvesting) Regulation (2020) because creating and distributing new, compensable water property rights to others further entrenches the dispossession and deprivation of water rights to First Nations

people of the Basin. Further, with climate change impacts now recognised as having a major impact on our rivers and water availability, continued take of water through floodplain harvesting will only impede the progress we have made toward addressing over allocation and its undisputed impact on our rivers and floodplains.

In the event that the licencing and legal framework is rolled out, The Friends of Nyah Vinifera Park inc maintain that in the interests of fairness and sustainability, the following caveats must apply:

1. Floodplain harvesting must be consistent both NSW and Federal legislation. It must be licenced, metered and kept within the Cap of 94-95 take. There must be no extension/enlargement of the SDL.
2. That floodplain harvesting modelling is fit-for-purpose, rigorous, based on the best and most up-to-date science and information, and peer-reviewed. And includes climate change as a reality!
3. Floodplain harvesting must cease in extended dry/drought periods and only recommenced when downstream flow targets are met. First flows following dry periods must be protected.
4. Floodplain harvesting structures must not deny water to neighbours or downstream communities and must not cause unnatural flooding on neighbouring properties.
5. No carryover. Absolutely. Floodplain harvesting should only be opportunistic once environmental, cultural and critical human needs have been met.
6. Licences should not be tradeable and should be tied to land.
7. The licencing process must address illegal structures and ensure they are removed and those responsible are appropriately reprimanded.

Finally, we would like to draw attention to our absolute distaste for the lack of transparency and the ill-mannered way in which the NSW Water Minister tabled this regulation in parliament, apparently to legalise this practice retrospectively. Our communities need integrity and the highest level of political representation in order to move forward with water policy and deal with the ongoing challenges we have in the Basin. We would like to heartily thank those responsible for enacting this Inquiry.

Yours sincerely,

Dr Jacquie Kelly BAppSci(Chiro)

Chairperson

Friends of Nyah Vinifera Park Inc.

References:

1. Slattery & Johnson (February 2021) Floodplain water harvesting in the Northern New South Wales Murray-Darling Basin
2. https://www.industry.nsw.gov.au/_data/assets/pdf_file/0019/131905/Matthews-final-report-NSW-water-management-and-compliance.pdf
3. https://www.mdba.gov.au/sites/default/files/pubs/Final-Report-Independent-Panel-fish-deaths-lower%20Darling_4.pdf
4. <https://www.science.org.au/academy-newsletter/february-2019-124/academy-produces-scientific-report-darling-river-fish-kills>
5. <https://www.theguardian.com/australia-news/2021/aug/30/traditional-owners-in-murray-darling-basin-take-fight-for-water-rights-to-governments?fbclid=IwAR2jJWU9b6-yRksQvNfZCr9vklqlxmPBUIrfM0Qqv7V6koGSU5ly5SPZEcg>
6. Hartwig, LD, Jackson, S, Markham, F, & Osborne, N. (2021). Water colonialism and Indigenous water justice in southeastern Australia. *International Journal of Water Resources Development*, Early view. doi: 10.1080/07900627.2020.1868980.
7. 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.