



Nature Conservation Council

The voice for nature in NSW

9 June 2020

Dr Wendy Craik and Mr Greg Claydon
Independent Panel
NSW First Flush Assessment
c/o Department of Planning, Industry and Environment
Locked Bag 5022
Parramatta NSW 2124

Submitted via email: independentpanel.firstflush@dpie.nsw.gov.au

Dear Dr Craik and Mr Claydon,

Independent assessment for the Northern Basin ‘First Flush’ event

The Nature Conservation Council of New South Wales (NCC) is the state’s peak environment organisation. We represent over 150 environment groups across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW.

We appreciate the opportunity to provide a submission to the independent panel tasked with reviewing the Northern Basin ‘First Flush’ of earlier this year. By reviewing implementation issues and experiences, there is hope for improved water management across the state.

NCC welcomed the NSW Government’s response to the Vertessy and Natural Resources Commissioner’s (NRC) reports, published in September 2019. We note and were encouraged that:

“actions will go a long way to improving low flows, protecting environmental water as it moves downstream, and supporting the recovery of the river system following dry conditions... both Vertessy and the NRC have recommended limits on the water taken by irrigators to better protect low flows in the Barwon–Darling River”.^[1]



Regulatory and legislative issues with floodplain harvesting in NSW

The Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020 (the Regulation) was introduced on Friday 7 February 2020, with no prior notice, consultation or explanation of its purpose. By introducing the Regulation for a practice which has not yet been legislated, the not-yet-legal practice of floodplain harvesting was in-effect legitimised.

The Regulation was accompanied by a restriction on floodplain harvesting extraction that could occur without an exemption. Yet, this restriction was lifted only three days later, on Monday 10 February, providing permission to conduct floodplain harvesting. In effect the lifting of the restriction legalised a form of water extraction that impacts on other water users' shares and prevented important first flush flows reaching Ramsar listed wetlands in the Macquarie and Gwydir catchments. Flow connectivity with the Barwon-Darling was decreased. The Lower Darling was still dry at the time.

The amount of water taken through floodplain harvesting has not been measured, so there is no data around impact, no process of approval for works and no licensing framework.

The purpose of the Regulation was to restrict unlicensed, unmeasured extraction of water. Yet, it allows for unlicensed water taken from floodplain works that have not necessarily been through any form of approvals process. This is highly contentious. NCC is of the view that this form of water extraction (or 'take') should be permanently restricted until the assessment and licencing process is complete. Better yet, this form of take should be permanently illegal; it is unmeasured and may well exceed Baseline Diversion Limits (BDLs).

BDLs only calculate legal take under current NSW legislation. Floodplain Harvesting has not been included in NSW laws or regulations. Works since 2008 have not been subject to approvals, licenses, volumetric limit or measurement. Growth has not been counted in BDL at all.

There are several further challenges with the current state of floodplain harvesting regulation. First, Floodplain Management Plans don't identify existing floodplain works built without approval.

Second, floodplain harvesting in the north, once permitted, cannot be turned off. This is especially problematic in cases of cease to flow downstream. Floodplain harvesting decreases access for downstream water users and communities and creates considerable inequity, counter to the objects of the Water Act (Cth).



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Third, the wording of the Regulation is poor, appearing to give legality to floodplain structures that have never been through an assessment or approvals process. The definition of eligibility should only include supply works constructed with approval on or before 3 July 2008.

The current status of exemptions sets a very poor precedent, basically allowing illegal access to free, unmeasured, unmetered water extraction of ecologically and socially important flood flows. This is truly unacceptable while the end of the Barwon-Darling system remains an ecosystem in crisis.

Environmental and ecological impacts

Floodplain Harvesting in NSW has significant impacts on landscapes, downstream environmental assets and values.

The effective management of floodplain harvesting in the NSW Northern Basin is critical for the survival of the Darling River. This is a river system considered to be in ecological collapse by the Natural Resources Commission. Damage unfolding now may never be repaired. It is possible we have lost entire species endemic to the Darling River.

As it happened - First Flush and water restrictions

As has been revealed in the Guardian (“NSW water officials knew decades of unmeasured floodplain harvesting by irrigators was illegal” 29 May 2020), a “senior group meeting in January discussed the legal implications of practice that critics blame for preventing water flowing further down the Murray-Darling system”.^[2]

The article describes the purpose of the Regulation as shoring-up the practice of permissible floodplain harvesting. It identifies warnings by the Natural Resources Access Regulator to irrigators that such practices would be targeted in upcoming rain events and non-compliance would result in punitive measures.

On March 5, 2020 DPIE released a fact sheet which asserted “as at 4 March 2020 WaterNSW has forecast that if current access restrictions remain, 215 to 240 gigalitres (GL) could enter Lake Wetherell in the Menindee Lakes system.”^[3]



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It went on to say that “this forecast significantly exceeds our original target of 60 to 70GL, which was the minimum required to provide a single release down the Darling River and a small drought reserve in Lake Wetherell for Menindee town water supply and critical drought refuge in the Lake.”[4]

Stating that more than 200GL of water would make it to Lake Wetherell, and that amount would ensure critical needs along the Darling River for the next 12 months, the Department began to consider how soon restrictions could be lifted. The DPIE factsheet suggests that the protected flows would begin to reach Lake Wetherell from 7 March, but would not reach the target volume until several weeks later.

“It is anticipated that the pumping restriction could be lifted by around 15 March 2020 without compromising the new target.”[5]

At 12 noon on 6 March the restrictions were lifted with no notice or explanation.

Minister Pavey announced an independent assessment of the management of the Northern Basin restrictions on Tuesday March 10.

“A restriction still remains in place for floodplain harvesting access on the Barwon-Darling floodplain. This is being assessed regularly. The original flow target at Lake Wetherell was 60-70GL. This would have provided enough water for a single flow event down the lower Darling to top up the block banks. With additional flows from Queensland, this target was revised to 200GL to provide a 12-18 month supply for critical needs in the Lower Darling consistent with decisions made in the northern valleys.”[6]

First flush releases began from Lake Wetherell into the Lower Darling on Thursday 26 March, once the four block banks (two up- and two down-stream of Pooncarie) had been removed. The total volume of the first flush was 30GL. Estimated travel times were given as 12 days from Weir 32 to Pooncarie, 3-4 days from Pooncarie to Burtundy weir, 1-2 days from Burtundy to Wentworth – a total of 16-20 days from Lake Wetherell to Wentworth. As of 1 April 2020, a 30% allocation was granted to general security license holders.

Before water had arrived at Lake Wetherell, A B and C class license and floodplain harvesting extraction was underway. The consequences included:

- Limiting the potential water volumes that may have had lasting positive impacts on our dying river and native fish populations



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- 300% carryover allocation was taken before towns had physical access to flowing water, relying on hypersaline, undrinkable water or donated water for drinking, washing and brushing their teeth (it would be 500% for floodplain harvesting)

Chapter 1 Section 3 of the NSW Water Management Act (2000) sets out the objects of the legislation, including (e) to provide for the orderly, efficient and equitable sharing of water from water sources.

In the absence of evidence to the contrary, we fear that decisions have been made based on ill-considered, arbitrary numbers deemed sufficient to provide 12 or 18 months' worth of critical needs, rather than restoring health to devastated river ecosystems and native fish populations. Downstream communities, towns and industries continue to suffer. Yet more native fish have died waiting for the promised "target" water to finally find its way down the system.

Valley by valley, whole-of-system protection

Water Sharing Plans do not cover the entire length of the Darling river system through to the confluence with the Murray river. Consideration of whole-of-system flows becomes essential due to invisible borders articulated in Water Sharing Plans. We can't achieve longitudinal connectivity if a protected head of water is permitted to be diminished from the "tail" once it passes.

Decision makers should have taken into account the impacts of a record-breaking cease-to-flow, mass fish deaths and toxic, disconnected pools when considering practical targets for restarting an overly dry river. The river system still had remnant block banks to be removed and some refuge pools of struggling native fish to be nursed back to health.

Ultimately, far more care and planning must be done to ensure equitable sharing of water is upheld. More sensitivity must be taken in cases where communities have been starved of clean water and ecosystems identified as being in crisis wait to be resuscitated.

While it remains to be seen whether any native fish have survived the most recent and longest ever cease to flow, it is certain that many molluscs, mussels and native fish died waiting for water. While export crops were being watered and rainfall runoff was being herded around properties upstream, there is no measurable cost imperative for the resource we so highly value at the end of the system.

It would be a great national shame if nothing was learned and no change achieved out of this review.



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Recommendations

1. All extraction must be fully audited, including floodplain harvesting
2. Floodplain harvesting infrastructure must be assessed against environmental and downstream impacts.
3. Floodplain harvesting infrastructure must be approved or dismantled before being legislated
4. All works since 2009 which have not been approved must be dismantled/removed, as they take extraction over Baseline Diversion Limits and therefore exceed legal take
5. First flows following extended drought periods must be permitted protections through to the end of the system. Longitudinal connectivity and health must be restored to the entire river system before any extraction is allowed

We welcome the opportunity to discuss this submission further. Your key contact point for further questions and correspondence is Jane MacAllister available via jmacallister@nature.org.au and 02 9516 4888.

Yours sincerely,

Chris Gambian
Chief Executive
Nature Conservation Council NSW



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References

[1] NSW Government response to the Vertessy Report and the Natural Resources Commission's review of the Barwon-Darling Water Sharing Plan, September 2019, DPIE

[2] Brewster, K. 29 May 2020, NSW water officials knew decades of unmeasured floodplain harvesting by irrigators was illegal, The Guardian Australia. Available here: <https://www.theguardian.com/australia-news/2020/may/29/nsw-water-officials-knew-decades-of-unmeasured-floodplain-harvesting-by-irrigators-was-illegal>

[3] Northern Basin Temporary water restrictions Fact Sheet, 5 March 2020, NSW Department of Planning, Industry and Environment. Available here: https://www.industry.nsw.gov.au/_data/assets/pdf_file/0007/291652/river-and-overland-flows-fact-sheet-5-march-2020.pdf

[4] ibid

[5] ibid

[6] ibid



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