

SUBMISSION: DRAFT RULES FOR FLOODPLAIN HARVESTING ACCESS LICENCES IN THE BARWON-DARLING WATER SHARING PLAN



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8 July 2022

DPE – Water
Locked Bag 5022
Parramatta NSW 2124

By Email: floodplain.harvesting@dpi.nsw.gov.au

Dear Dr. Bentley,

Submission: Draft rules for floodplain harvesting access licences in the Barwon-Darling Water Sharing Plan

The Nature Conservation Council of New South Wales (NCC) is the state's peak environment organisation. We represent over 170 environment groups across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW.

The rules and volumes being proposed to manage floodplain harvesting in the Barwon-Darling Water Sharing Plan do not support the water management principles of the Water Management Act 2000.

NCC supports the licencing, metering and monitoring of floodplain harvesting in NSW. However, the cumulative environmental and cultural impacts of 40 years of uncapped floodplain harvesting development have not been assessed.

No more than 16.5 GL (1 gigalitre = 1 billion litres) of floodplain harvesting entitlements should be licenced in the Barwon-Darling. This figure is cited as an estimate of average annual floodplain harvesting diversions in the 2012 Barwon-Darling Water Sharing Plan and was used in the development of the Murray-Darling Basin Plan.

NCC recommends that the draft Water Sharing Plan be amended to include:

- flow targets to manage floodplain harvesting diversions that are based on science
- floodplain harvesting licencing that is consistent with 2020 National Agreement on Closing the Gap



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- no more than 16.5 GL of entitlements and no rainfall runoff exemption are issued for the Barwon-Darling water source
- accounting rules and annual allocations that are a maximum of 1 ML unit share
- ruling out of trading of floodplain harvesting entitlements
- the removal or modification of unapproved works, including 'hotspot' floodplain works before access licences are issued
- the protection of held environmental water flowing from Queensland from diversion
- clear resolution of issues raised in NCC's non-consensus report as a member of the Healthy Floodplain Review

Thank you for the opportunity to participate in the consultation.

Your key contact point for further questions and correspondence is Melissa Gray, Water Campaigner, available via mgray@nature.org.au and 0431 471 310. We welcome further conversation on this matter.

Yours sincerely,

Jacqui Mumford
Acting Chief Executive
Nature Conservation Council



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Submission on the draft rules for floodplain harvesting access licences in the Barwon-Darling Water Sharing Plan

1. Background

The Barwon-Darling/Baaka River is not ephemeral.

It slows down sometimes, and sometimes it stops flowing in parts during a big drought, but there has always been enough resilience in the system to support life. The river has deep holes to provide refugia, functioning groundwater connectivity and healthy wetlands in upstream tributaries mean the Barwon-Darling/Baaka has always been able to support long-lived fresh water mussel populations.

Before the 2017-2020 drought, the Barwon Darling/Baaka never dried up into the series of green disconnected pools from Bourke to the Murray River. The unprecedented mass fish kills at Menindee in 2019 were so horrible they received international attention.

The Natural Resources Commission referred to the Barwon Darling/Baaka as an ecosystem in crisis in its review of the 2012 Barwon Darling water sharing plan and pointed to uncapped growth in floodplain harvesting diversions as a contributing factor.

The culture of overextraction and water theft was exposed in July 2017 with ABC's Four Corners 'Pumped' program. The program sparked a spate of inquiries, including one by NSW Independent Commission Against Corruption (ICAC). The ICAC report fell short of finding corruption but did find a culture in DPE Water of favouring the irrigation industry, and considering First Nations interests and the environment as the enemy.

Extraction in the Barwon-Darling has exceeded the Sustainable Diversion Limit by over 20% every year since the limit was introduced at the start of the 2020 water year. Each year, the reasoning given is that the metering and modelling are failing, and efforts focus on re-jigging the models rather than reducing extraction. Moves towards metering and protecting some types of environmental water are progress, but that progress is slow and the cultural change required to meet the principles of the *Water Management Act* is significant.

2. Flow Targets used as Access Rules

NCC supports flow targets being used in Water Sharing Plans to trigger access to unregulated flows by floodplain harvesting. Flow targets are not just flow volumes, rather they represent the flow conditions that must be present to trigger the take of unregulated flows.

The flow targets presented in the draft Water Sharing Plan are too low to protect key environmental assets. They do not adequately consider the long-term environmental health of the Barwon-Darling/Baaka river. Therefore, the proposed flow targets cannot be aligned with the water management principles of the Water Management Act 2000.

NCC supports the flow targets shown below in [Appendix A](#) that are scientifically founded and based on environmental watering requirements used in the Barwon-Darling Water Sharing plan.

3. Closing The Gap

First Nations inherent right to access water has been undermined through colonisation and displacement. At the time that water access licences were being handed out, the vast majority of First Nations Peoples were dispossessed of their traditional lands. With the granting of Native Title, some land has been returned, but not access to their water.

In the Murray Darling Basin, First Nations Peoples own just 0.17% of the Basin's water.¹

First Nations People have inherent rights, recognised through United Nations Declaration on the Rights of Indigenous Peoples and articulated through the Echuca Declaration², to enjoy the benefits of water access on their Country.

The Echuca Declaration states that “cultural flows are water rights that we hold in our own name and are not held in trust by Government AND provide us with enough clean water to improve all parts of our lives.”³

All governments have a responsibility to re-activate First Nations water rights within the context of ‘water justice’. Allocating brand new water access licences at such a large scale before addressing the lack of Cultural Water provision is a clear abrogation of First Nations inherent rights relating to water and is inconsistent with the 2020 National Agreement on Closing the Gap.⁴

4. Volumes to be licenced

The proposed volume for licencing, 51.32 GL or unit shares, will not keep extraction below the Plan Limit. The total of licenced entitlement should not exceed a total of 16.5 GL, in line with the

estimated floodplain harvesting diversions in the 2012 Water Sharing Plan. This estimated figure was used in the development of the Murray-Darling Basin Plan.

NCC is concerned that the volumes proposed by DPE Water to licence are based on historic take, as opposed to an environmentally sustainable level of take.

The proposed volume of 51.32 GL is considerably different from the figures used in the modelling scenarios. With no clarity on the source of the proposed volumes, and a reference to a particular accounting rule *'in order to achieve the same level of historical diversions'*⁵ in the Community Assistance report, it is difficult for NCC to have confidence in the robustness of the information provided.

NCC does not support any rainfall runoff exemption. All rainfall runoff captured must be licenced, metered and monitored.

5. Accounting Rules

NCC supports:

- No carry over at all on any unregulated water access, including floodplain harvesting. Climate change predictions (presented in NSW Government's Regional Water Strategies) show that floods will become less frequent. Generous 500% carry over allowances would allow very large volumes of water to be taken, as account balances would have time to grow annually to a maximum of five times the licenced entitlement.
- An initial allocation of no more than 1 ML unit share, depending on antecedent conditions.
- Annual allocation is 1 ML unit share or less, depending on antecedent conditions.
- Amendment provisions for all floodplain harvesting management rules to enable rule changes without triggering compensation.

6. Trading

NCC does not support the trading of floodplain harvesting entitlements. Trading is likely to lead to a concentration of floodplain harvesting diversions, most likely upstream. The impact of floodplain harvesting on downstream environmental and cultural assets could be exacerbated further by trading activities.



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7. Floodplain Works

No lagoon or natural drought refugia in the landscape should be assessed for, licenced or used for floodplain harvesting. Floodplain Management Zone A and D are areas of high flood flow connectivity and ecological and cultural significance on the Barwon Darling floodplain.

The Community Assistance report states that ‘approximately 90% of properties that will receive a floodplain harvesting (unregulated river) access licence have a work located within management zones A or D’⁶.

The proposed policy that there be no growth in floodplain diversions in zones A and D, and the wording referenced above states that the floodplain harvesting properties in these zones *will* receive floodplain harvesting access licences. **NCC strongly opposes the issue of any floodplain harvesting licences in these zones, and is troubled by the consequences of such a level of high proportion of floodplain harvesting activities.**

No floodplain harvesting access licences should be issued for works that are unapproved and have never been assessed for their environmental impact. This is especially the case for ‘hotspot’ floodplain works, which are works that have changed flow distribution patterns. ‘Hotspot’ floodplain works have been tagged for assessment for many years, yet they remain on the landscape and some may receive validation through floodplain harvesting access licences.

No floodplain harvesting access licences should be issued until all unapproved floodplain works have been removed from the landscape or modified.

8. Protection of Environmental Water

NCC supports the inclusion of rules that protect environmental water from diversion.

Commonwealth taxpayer owned ‘Held’ environmental water that is released in Queensland to perform environmental functions must be protected from diversion by floodplain harvesting activities once it crosses the NSW border.

The draft policy argues that there isn’t enough environmental water in the accounts of the Commonwealth Environmental Water Holder to achieve overbank flows in the Barwon Darling and therefore none of it needs protection. As such, DPE Water is not proposing rules to protect Held environmental water.

This approach assumes that the Commonwealth Environmental Water Holder will never obtain enough water to achieve overbank flows. It also neglects the opportunities to ‘piggy back’ Held environmental water on large natural flows to create over bank flows.

9. NCC Non-Consensus Report – Healthy Floodplain Committee

NCC as a member of the Healthy Floodplain Review Committee raised a number of issues with the assessment of FPH entitlements in the Barwon-Darling. Because of the issues with the Barwon-Darling model outlined below, NCC has no confidence in the results on exhibition for community comment. A non-consensus report submitted to the Deputy Secretary DPE- Water identified the following concerns:

Independence of the Committee Chairperson: The Chair declared a conflict of interest in the decision-making for the Barwon-Darling. He supported all the Department advice that was contested by the NSW Farmers Association and NCC through non-consensus reports.

The modelling process for the Barwon-Darling: Observed inflows from the Border Rivers at Mungindi and modelled inflows from the other major regulated tributaries, the Gwydir, Namoi and Macquarie Rivers are used in the current model. The use of observed flows from the Border Rivers increases the availability of water for FPH by 5 GL but does not allow for future growth in use in Queensland.

Discrepancies in rainfall runoff modelling: for one property, discrepancies in rainfall runoff modelling provided 5 times the volume compared to the low average percentage runoff used across the catchment. This decision was based on history of use and not on fair distribution of water entitlements. This issue was not addressed in the Government response to consensus decisions.

It has been noted that further analysis and work is needed because of the lack of data on rainfall runoff in the arid regions to the west of the Barwon-Darling. NCC has recommended a precautionary approach to this key modelling parameter for determining FPH entitlements.

Changes made to flows identified in the hydraulic model developed for the Barwon-Darling Floodplain Management Plan: Several properties were modelled with lower access flows than those in the hydraulic model. This has enabled larger entitlements and assessment based on history of use.

The lack of consistency across all properties through the modelling process regarding Border Rivers inflows, rainfall runoff modelling and use of the hydraulic model means that a fair and equitable distribution of FPH shares will not occur in the Barwon-Darling, that history of use has been prioritised and that the approach to assessing entitlements has not been precautionary.



Appendix A

Proposed flow targets for inclusion in the Barwon-Darling Water Sharing Plan

Intent

To restrict floodplain harvesting until flows of sufficient magnitude to meet valley and downstream environmental and community needs are forecast to occur with a high degree of certainty.

Rule

No floodplain harvesting in the Barwon-Darling Valley until:

- flows at Barwon River at Mungindi in the last 730 days has exceeded 7,900 ML/day for 5 consecutive unless the Minister is confident that there are sufficient forecast gauge flows to achieve this flow rate and duration; or
- flows at Barwon River at Mungindi in the last 1,825 days has exceeded 13,000 ML/day for 5 consecutive unless the Minister is confident that there are sufficient forecast gauge flows to achieve this flow rate and duration; or
- flows at Barwon River at Brewarrina in the last 365 days has exceeded 1,000 ML/day for 10 consecutive unless the Minister is confident that there are sufficient forecast gauge flows to achieve this flow rate and duration; or
- flows at Barwon River at Brewarrina in the last 485 days has exceeded 9,000 ML/day for 15 consecutive days unless the Minister is confident that there are sufficient forecast gauge flows to achieve this flow rate and duration; or
- flows at Darling River at Bourke in the last 365 days has exceeded 1,550 ML/day for 10 consecutive unless the Minister is confident that there are sufficient forecast gauge flows to achieve this flow rate and duration; or
- flows at Darling River at Bourke in the last 485 days has exceeded 15,000 ML/day for 15 consecutive unless the Minister is confident that there are sufficient forecast gauge flows to achieve this flow rate and duration; or
- flows at Darling River at Bourke in the last 1,200 days has exceeded 50,000 ML/day for 15 consecutive unless the Minister is confident that there are sufficient forecast gauge flows to achieve this flow rate and duration; or
- flows at Darling River at Louth in the last 365 days has exceeded 1,500 ML/day for 10 consecutive unless the Minister is confident that there are sufficient forecast gauge flows to achieve this flow rate and duration; or
- flows at Darling River at Louth in the last 485 days has exceeded 15,000 ML/day for 15 consecutive unless the Minister is confident that there are sufficient forecast gauge flows to achieve this flow rate and duration; or



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- flows at Darling River at Louth in the last 1,200 days has exceeded 44,000 ML/day for 15 consecutive unless the Minister is confident that there are sufficient forecast gauge flows to achieve this flow rate and duration; or
- flows at Darling River at Tilpa in the last 365 days has exceeded 1,450 ML/day for 10 consecutive unless the Minister is confident that there are sufficient forecast gauge flows to achieve this flow rate and duration; or
- flows at Darling River at Tilpa in the last 485 days has exceeded 14,500 ML/day for 15 consecutive unless the Minister is confident that there are sufficient forecast gauge flows to achieve this flow rate and duration; or
- flows at Darling River at Louth in the last 1,200 days has exceeded 41,000 ML/day for 15 consecutive unless the Minister is confident that there are sufficient forecast gauge flows to achieve this flow rate and duration; or
- flows at Darling River at Wilcannia in the last 365 days has exceeded 1,400 ML/day for 10 consecutive days unless the Minister is confident that there are sufficient forecast gauge flows to achieve this flow rate and duration; or
- flows at Darling River at Wilcannia in the last 485 days has exceeded 14,000 ML/day for 15 consecutive days unless the Minister is confident that there are sufficient forecast gauge flows to achieve this flow rate and duration; or
- flows at Darling River at Wilcannia in the last 1,200 days has exceeded 30,000 ML/day for 15 consecutive days unless the Minister is confident that there are sufficient forecast gauge flows to achieve this flow rate and duration; or
- there is less than 450 GL stored in the Menindee Lakes System unless the Minister is confident that there are sufficient forecast gauge flows to achieve this volume.

Floodplain harvesting is not permitted if flows are determined by the Minister to require protection under the *Active Management Procedures Manual*.

¹ [26 May 2021 ABC Indigenous Groups in Murray-Darling Basin fight to have their voices heard over water rights - Ella Archibald-Binge](#)

² <https://www.mldrin.org.au/echuca-declaration-final-pdf/>

³ *ibid*

⁴ <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap>

⁵ DPE-Water May 2022. Barwon-Darling: Floodplain harvesting in water sharing plans. Report to assist community consultation p 13

⁶ *ibid*, page 18