

# RESPONSE TO FLOODPLAIN HARVESTING INQUIRY REPORT



2022

Critical Review



This review analyses recommendations from the NSW Upper House Select Committee Inquiry into Floodplain Harvesting, finding the recommendations would result in a weaker regulatory framework (with floodplain harvesting above sustainable limits and not metered for an extended time), while duplicating existing processes/structures. This review recommends urgent regulation, and support measures for impacted communities to transition.

# Response to Floodplain Harvesting Inquiry

## CRITICAL REVIEW

### BACKGROUND

The NSW Floodplain Harvesting Policy seeks to reduce and limit Floodplain Harvesting to Sustainable Diversion Limits, as required under the Murray-Darling Basin Plan, and impose mandatory metering requirements.

The Floodplain Harvesting Policy will require a significant reduction in the volume of floodplain harvesting – i.e. a more than 30% decrease in floodplain harvesting in the Gwydir valley alone.<sup>1</sup>

Floodplain harvesting in NSW currently uses 3% of the northern Basin's annual average inflows. Once the practice is subject to licensing and metering, this will be reduced to only 2%.

The reform, which is long overdue, will be one of the largest transfers of water (now freely utilised by irrigators) to the environment, not seen since similar processes occurred for other forms of water use in the early 2000s. The delays in realising the licensing of floodplain harvesting take in NSW, which is the final form of use to be transitioned into the Water Management Act, has come at a cost.

NSW DPIE-Water modelling finds the reform will meet the environmental water requirements of native vegetation, native fish and waterbirds more often, by an average of 82 per cent, 97 per cent and 142 per cent respectively in the Gwydir Valley alone under the new regulation.

An independent economic analysis for the NSW Government has found reduced access to floodplain harvesting will cut the value of on-farm production by between \$19 million in a dry sequence and \$273 million in a wet period. Under a median conditions scenario, **farmers face a \$126 million, or 14 per cent, loss** as a result of the Policy.<sup>2</sup> This will have significant flow-on or multiplier effects throughout communities, including 41 fewer jobs in the Gwydir valley (centered around the small community of Moree).

The industry accepts the reform, while acknowledging that regulating floodplain harvesting will be a significant adjustment for farmers who rely on storing floodwater when it is abundant to grow food and fibre, and their broader communities.

More information on the Floodplain Harvesting Policy, including numerous Fact Sheets and Reports, is available on the NSW DPIE-Water website.<sup>3</sup> The NSW Legislative Council Select Committee on Floodplain Harvesting provided its Final Report in December 2021, which included 25 recommendations.

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<sup>1</sup> [https://www.industry.nsw.gov.au/data/assets/pdf\\_file/0003/404661/why-is-reform-vital.pdf](https://www.industry.nsw.gov.au/data/assets/pdf_file/0003/404661/why-is-reform-vital.pdf)

<sup>2</sup> [https://www.industry.nsw.gov.au/data/assets/pdf\\_file/0008/479636/floodplain-harvesting-economic-analysis-report.pdf](https://www.industry.nsw.gov.au/data/assets/pdf_file/0008/479636/floodplain-harvesting-economic-analysis-report.pdf)

<sup>3</sup> <https://www.industry.nsw.gov.au/water/plans-programs/healthy-floodplains-project/harvesting/document-library>

## EXECUTIVE SUMMARY

### 1) Recommendations would result in a weaker regulatory framework:

#### - Urgent regulation is needed.

The Select Committee recommendations would result in a **weaker** regulatory framework, and significantly delay the reform. This is because it would leave floodplain harvesting outside of a regulatory framework with unlimited and un-metered diversions, for an unjustifiably prolonged period of time.

In fact, the recommendations would produce harmful results, due to:

- Government having **no mechanism to limit floodplain harvesting**;
- Water users having **no requirement to meter floodplain harvesting**;
- **Negative environmental outcomes**;
- Government having to **reduce other water licences** (supplementary water) in order to keep total water take within Sustainable Diversion Limits, with serious equity concerns;
- The **regulator having no means to enforce compliance**.

### 2) Report shows failure to understand reform objectives, and socio-economic impacts:

#### - Industry calls for timely support to mitigate socio-economic impacts in the affected communities in the five northern Basin valleys.

The Final Report **failed to realise the fundamental objectives** of the reform and its impacts on communities, including a **failure to acknowledge that the reform would lead to less floodplain harvesting**, and therefore a decrease in on-farm production value, with flow-on effects throughout the community such as job losses. This meant **the Select Committee missed a crucial opportunity to recommend pathways to support impacted communities in adapting to** the economic impacts of reduced agricultural production due to less water, and thereby fewer jobs throughout the community.

### 3) Recommendations are largely already in place and would be duplicating existing processes/functions

#### - NSW Parliament should receive briefings from NSW DPIE-Water, the Murray-Darling Basin Authority; and Office of the Inspector-General of Water Compliance to ensure informed future decision-making.

The recommendations are either:

1. **Already in existence**, or set to come into existence upon commencement of regulation (n = 68%);
2. **Contrary to best-practice water management**, or to the public interest, including negative environmental outcomes (n=20%);
3. **Not applicable**, including out of scope of this reform (n=12%).

The centerpiece recommendation to delay the reform, pending the establishment of new functions coordinated by NRC and other measures ignores that these functions already exist (in some form). This shows the committee had a limited understanding of key water management roles, responsibilities, processes and reform objectives.

For example, the Committee Report recommended: *“the NSW Government establish an independent expert panel coordinated by the Natural Resources Commission to, assess and accredit the models used in Water Sharing Plans... annually audit the Sustainable Diversion Limit and Murray-Darling Basin Plan Limit, publishing audit reports ...”*. This failed to understand the roles of the Inspector-General of Water Compliance and the MDBA, which assess compliance of Basin States with Sustainable Diversion Limits, have published Cap/SDL Compliance Reports since 1994-95<sup>4</sup>, and accredit the models used by Basin States.

Further, the recommendation that DPIE-Water *“only issue floodplain harvesting licences at such a time as it is satisfied that... there is clear evidence that water extractions are within legal limits”* shows a failure to understand the fundamental objective of regulation to limit floodplain harvesting to the Sustainable Diversion Limits. Without regulation, government has no means to limit or licence it. It also fails to understand that: (1) in the most recent SDL Compliance Report, NSW valleys are 17% below SDLs; and (2) in some valleys, supplementary water licences are having to be reduced in the absence of a mechanism for the government to limit floodplain harvesting instead so that total water extraction is within legal limits.

#### **4) Report shows lack of due diligence to ensure factual accuracy by adopting a low standard of evidence**

**- Parliament must take responsibility to address misinformation by improving processes and increasing standards of evidence.**

Significant misinformation presented to the Committee was repeated in the final report. Thus, the Committee failed to properly scrutinise the evidence presented to ensure its accuracy. Adopting a low standard of evidence has resulted in false and misleading claims (which were contrary to the evidence provided by agencies and official sources) being perpetuated.

This Review concludes that the Final Report finds **no legitimate reason to further delay the reform.**

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<sup>4</sup> <https://www.mdba.gov.au/publications/mdba-reports/water-take-reports-under-basin-plan-sustainable-diversion-limits>

## RECOMMENDATION

The **primary recommendation** of this Review is to progress regulation of floodplain harvesting as a matter of urgency, to limit floodplain harvesting to the Sustainable Diversion Limits as required under the Murray-Darling Basin Plan, and impose mandatory metering requirements.

This recommendation is consistent with the evidence given by Bret Walker SC (former SA Royal Commissioner on the Murray-Darling Basin), at the Inquiry hearing, who said:

*“You have got to pinch yourself to remember that it was in 2004 that by an intergovernmental agreement for the so-called national water initiative it was accepted that there needed to be, among other things, a close attention to floodplain harvesting. It was agreed in that that the States, including New South Wales, would implement such matters by 2011. That is 10 years ago.*

*The things that were required to be implemented certainly included the recording, that is the study and description; the licensing, that is the regulation by control with limits; and a robust compliance and monitoring system, and none of that has happened. My comment is: How terrible, what a great shame and I do wish you would hurry up.”*

*– Bret Walker SC*

The **second recommendation** of this Review is that Governments need to invest in supporting communities impacted by the FPH reform to adapt to reduced agricultural production due to less water availability, particularly the communities most reliant on floodwater and thereby hardest hit by this reform. Measures are needed to mitigate the multiplier effects throughout communities, such as: absorbing job losses with new employment opportunities; programs to attract and maintain professional services to towns (such as health workers, teachers, etc); counselling and mental health support; and increased social services as required.



Image: Darling River at Bourke 2021



## CRITICAL REVIEW OF RECOMMENDATIONS

Status Key		Sequencing Key	
Complete / already in place / set to commence upon regulation		Can occur alongside or after the regulation of FPH, and any subsequent changes can be made (i.e. not dependent)	
Contrary to best practice water management, or to public interest		Must occur prior to regulation of FPH (i.e. dependent).	
Support or support in-principle		N/A (inc. if marked with red status, or based on inaccuracies)	
Not required or outside of reform scope			

No.	Report Recommendation	Status	Commentary	Sequencing
1	That the NSW Government conduct a thorough review of low and cease-to-flow data, as well as an assessment of downstream economic, social, cultural and environmental impacts and needs prior to finalising the volume of floodplain harvesting entitlements in each valley identified in the NSW Floodplain Harvesting Policy, and this includes detailed locations of any proposed new river gauges and real time monitoring infrastructure.		<p>This has been conducted.<sup>5</sup></p> <p>Key findings include:  <i>“there is no evidence to support a proposition that floodplain harvesting is occurring during cease-to-flow events and could be considered to be contributing to either starting the cease-to-flow period sooner, or extending the event in a meaningful way”.</i></p> <p><i>“In a hypothetical scenario in which floodplain harvesting in the northern Basin were to cease completely and no other extractions were to take its place, preliminary modelling indicates that there would be less than 1% improvement in inflows to the River Murray on average.”</i></p> <p>The policy does not involve determining a volume for FPH, it simply requires it to be limited to meet Sustainable Diversion Limits under the Basin Plan.</p> <p>In December 2021, the Federal Water Minister announced that <i>“twenty new or upgraded gauging stations located in the Darling, Macquarie, Culgoa, Gwydir, Border Rivers, and Namoi catchments will be installed across New South Wales thanks to a joint Australian and NSW Government-funded project”</i>.<sup>6</sup> Detailed information on this is</p>	

<sup>5</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0011/404669/Floodplain-harvesting-and-cess-to-flow-events-in-the-Barwon-Darling.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0011/404669/Floodplain-harvesting-and-cess-to-flow-events-in-the-Barwon-Darling.pdf)

[https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0003/404670/Cease-to-flow-and-low-flow-events-in-the-BarwonDarling-River.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0003/404670/Cease-to-flow-and-low-flow-events-in-the-BarwonDarling-River.pdf)

[https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0018/470115/impacts-of-fph-on-the-southern-basin.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0018/470115/impacts-of-fph-on-the-southern-basin.pdf)

[https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0010/404668/river-flows-and-climate-over-time.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0010/404668/river-flows-and-climate-over-time.pdf)

<sup>6</sup> <https://minister.awe.gov.au/pitt/media-release/new-water-monitoring-stations-northern-basin>

			available online. <sup>7</sup> Real-time water information is available online via WaterInsights which is operated by WaterNSW. <sup>8</sup>
2	That the NSW Government urgently prioritise regular and genuine involvement of First Nations peoples in the management of floodplain harvesting, including cultural flows.		<p>First Nations have been involved in the development and implementation of the Floodplain Harvesting Policy.</p> <p>At the Parliamentary Hearing, representatives of the Northern Basin Aboriginal Nations (NBAN) said:</p> <p><i>“I would like to state that we have been contracted and involved with the New South Wales DPIE around delivering floodplain harvesting workshops with First Nations in the five valleys in the northern Basin.”<sup>9</sup></i></p> <p><i>“I think in fairness to New South Wales with the floodplain harvesting stuff, they have met with some of the native title groups through their agency and they deal with different agencies.”</i></p> <p><i>“I think in good faith New South Wales and NBAN, through their consultation process, have done really cutting edge co-design work to engage culturally appropriately with the nations to address some of our core business—which was to gather information from the department and take that out to the relevant people that speak for country, and for those areas, and for the other different interest groups, around the draft rules for floodplain harvesting licences. Also, to report and deliver that information into a cultural considerations report once the people had an opportunity to give their concerns around the floodplain harvesting reforms.”</i></p> <p>Further and continued engagement with First Nations peoples is certainly welcomed, but it must be clarified that this is an ongoing process.</p>
3	That the NSW Government's modelling of floodplain harvesting volumes use the best available projections to evaluate the impact of climate change on entitlement reliability,		DPIE–Water and the MDBA commissioned an independent peer review of the implementation of the NSW Floodplain Harvesting Policy, to assess the policy and the modelling undertaken. <sup>10</sup> This found:

<sup>7</sup> <https://www.industry.nsw.gov.au/water/science/data/hydrometric-network-review>

<sup>8</sup> <https://waterinsights.watnsw.com.au/>

<sup>9</sup> <https://www.parliament.nsw.gov.au/lcdocs/transcripts/2688/Transcript%20-%20Select%20Committee%20-%20Inquiry%20into%20Floodplain%20Harvesting%20-%2022%20September%202021%20-%20Virtual%20-%20CORRECTED.pdf>

<sup>10</sup> <https://www.industry.nsw.gov.au/water/plans-programs/healthy-floodplains-project/harvesting/policy-modelling-reports>



## Response to Floodplain Harvesting Inquiry

	<p>downstream outcomes and environmental impacts.</p>	<p><i>“The NSW Department of Industry modellers are to be generally congratulated for their efforts, diligence and application of numerical water resource models in the Border Rivers and Gwydir basins where the detailed application of floodplain harvesting modelling has been largely completed...”<sup>11</sup></i></p> <p>The department accepted these recommendations in full and responded to them in the Floodplain Harvesting Action Plan.<sup>12</sup></p> <p>A key pillar of the Action Plan is: <i>“Use the best available facts, data and scientific analysis to underpin the licensing framework, and explain this work to you.”<sup>13</sup></i></p> <p>Further, the Policy itself says:</p> <p><i>“It is also possible that once individual licences have been issued, estimates of the total long-term average annual take associated with floodplain harvesting could be recalculated due to better information or further improvements in model accuracy.</i></p> <p><i>In recognition of this possibility, water sharing plans will permit available water determinations for floodplain harvesting access licences to be adjusted.”<sup>14</sup></i></p> <p>This means that new knowledge and actual data can be incorporated on an ongoing basis (more than just projections).</p>
4	<p>That the NSW Government establish an independent expert panel coordinated by the Natural Resources Commission to:</p> <ul style="list-style-type: none"><li>• assess and accredit the models used in Water Sharing Plans and produce a public</li></ul>	<p>It is the role of the Inspector-General of Water Compliance (formerly the MDBA) to annually audit water diversions in each water source of each Basin State to ensure compliance with the limits. The Cap Compliance Reports/SDL Compliance Reports are produced at the end of every water year and are published online.<sup>15</sup> This has been a long-standing practice.</p>

<sup>11</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0004/272146/Final-floodplain-harvesting-independent-review.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0004/272146/Final-floodplain-harvesting-independent-review.pdf)

<sup>12</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0015/272301/floodplain-harvesting-action-plan.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0015/272301/floodplain-harvesting-action-plan.pdf)

<sup>13</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0015/272301/floodplain-harvesting-action-plan.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0015/272301/floodplain-harvesting-action-plan.pdf)

<sup>14</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0017/143441/NSW-Floodplain-harvesting-policy.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0017/143441/NSW-Floodplain-harvesting-policy.pdf)

<sup>15</sup> <https://www.mdba.gov.au/publications/mdba-reports/water-take-reports-under-basin-plan-sustainable-diversion-limits>

	<p>report on the accreditation that includes the standard and mean error of models</p> <ul style="list-style-type: none"> <li>• assess the floodplain harvesting ‘Cap Scenario’ reports for compliance with the Murray-Darling Basin Cap and publish assessment reports</li> <li>• annually audit the Sustainable Diversion Limit and Murray-Darling Basin Plan Limit, publishing audit reports that separately identifies the annual Cap or Sustainable Diversion Limit target, and diversions for licence and extraction type.</li> </ul>	<p>The most recent SDL Compliance Report found that, on average, NSW valleys were 17% below their SDLs.</p> <p>It is also the role of the MDBA to assess and accredit the models used, which is occurring as part of the Water Resource Plan accreditation process.<sup>16</sup></p>
5	<p>That the Department of Planning, Industry and Environment ensure that model run number and long-term average extraction limits for the Baseline Diversion Limit, the Murray-Darling Basin Cap, and the Plan Limits must be included in water sharing plans for each valley.</p>	<p>The Basin Plan says “A water resource plan must identify any significant method, model or tool that has been used to develop the water resource plan.”<sup>17</sup></p>
6	<p>That, if the NSW Government intends to amend the Sustainable Diversion Limits, the NSW Government must specify the legal pathway through which they intend to do so.</p>	<p>This has been explained by both DPIE-Water<sup>18</sup> and the MDBA<sup>19</sup>.</p> <p>The key point is that updating limits does not mean more or additional water can be taken. The MDBA explains:</p> <p><i>“Changes to the limits do not mean more water is available for use, this water is being used already – it is just bringing this use into the new system, ensuring it can be monitored, and water use does not grow over time.”<sup>20</sup></i></p>
7	<p>That the NSW Government ensure that any allocation of floodplain harvesting volumes and entitlements must be within existing Sustainable Diversion Limits.</p>	<p>The policy objective is to reduce and limit floodplain harvesting to the Basin Plan Sustainable Diversion Limit.</p> <p>The policy itself says:</p>

<sup>16</sup> <https://www.mdba.gov.au/water-management/river-operations/water-resource-modelling/reports>

<sup>17</sup> <https://www.legislation.gov.au/Details/F2017C00078>

<sup>18</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0009/404667/overview-of-legal-limits.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0009/404667/overview-of-legal-limits.pdf)

<sup>19</sup> <https://www.mdba.gov.au/basin-plan-roll-out/sustainable-diversion-limits/changing>

<sup>20</sup> <https://www.mdba.gov.au/basin-plan-roll-out/sustainable-diversion-limits/changing>

		<p><i>“Floodplain harvesting extractions will be managed within existing long-term average annual extraction limits. There will be no growth in overall extractions on a valley-wide basis as a result of the implementation of this policy.”<sup>21</sup></i></p> <p>DPIE-Water has said:  <i>“Floodplain harvesting will be licensed such that overall surface water take will be within legal limits. In valleys where floodplain harvesting has caused legal limits to be exceeded, licensed entitlements will reduce take. Licensing floodplain harvesting will not give out any ‘new water’.”<sup>22</sup></i></p>
<p>8</p>	<p>That, if Sustainable Diversion Limits are to be amended, the Minister for Water, Property and Housing make representations to the Murray-Darling Basin Authority to ensure that the Sustainable Diversion Limits are reflective of an environmentally sustainable level of take under the <i>Water Act 2007 (Cth)</i>, regardless of any adjustments to the Baseline Diversion Limits.</p>	<p>SDLs under the Basin Plan, as well as processes to make amendments, are the product of multijurisdictional agreement by Basin States. There are existing processes in place under law for review – being the 2026 Basin Plan review.</p> <p>The SA Government, in response to its Royal Commission, was of the view that:  <i>“Accordingly, new determinations of the ESLTs and SDLs or significant changes to either the Water Act or the Basin Plan before the Basin Plan review in 2026 are not supported. South Australia supports new determinations at the appropriate time, in 2026 as agreed by all jurisdictions. Significant changes at this stage would impede implementation, undermine achievement of real environmental outcomes and cause uncertainty for businesses and communities across the Basin.”</i></p> <p><i>“The South Australian Government is committed to continuing a bipartisan and collaborative approach to securing the future of this critical resource while the current Basin Plan is implemented to deliver healthy, thriving river system. Failure will be catastrophic for our State and our Nation. This matter is too important to allow petty disputes and delays to derail the return of water to the system.”<sup>23</sup></i></p> <p>It would thus not be in the interest of multijurisdictional water management for NSW to propose changes affecting all Basin States before the appropriate time.</p>

<sup>21</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0017/143441/NSW-Floodplain-harvesting-policy.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0017/143441/NSW-Floodplain-harvesting-policy.pdf)

<sup>22</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0009/404667/overview-of-legal-limits.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0009/404667/overview-of-legal-limits.pdf)

<sup>23</sup> <https://www.environment.sa.gov.au/topics/river-murray-new/basin-plan/murray-darling-basin-commission>

9	That the NSW Government urgently ensure all floodplain harvesting is metered and measured, including flows that enter and bypass storages, before issuing floodplain harvesting licences to ensure the accuracy of volumes and long-term extraction limits.	<p>The metering of floodplain harvesting is set to be a requirement once floodplain harvesting licenses are issued (more information in response to Recommendation 10). Requiring irrigators to install expensive metering equipment without licences is unreasonable. Installing meters without licences would also allow continued unlimited and uncontrolled take.</p> <p>Staggering implementation would therefore result in floodplain harvesting above limits for a prolonged period of time, and/or reductions to other water licence holders allocations (supplementary water licence holders) in the meantime in order to reduce total take to SDLs.</p> <p>Further, it is not necessary, as the policy is <u>not</u> based on how much floodplain harvesting is currently occurring, but how much can be included while keeping total water use within the existing SDLs.</p>	
10	That the NSW Water Reform Action Plan include a 'no meter, no pump' rule, as recommended by the Independent Investigation into NSW Water Management and Compliance.	<p>The NSW Non-Urban Water Metering Policy is a robust new metering framework, which was “a commitment under the NSW Government’s Water Reform Action Plan (WRAP), released in December 2017 in response to the Independent investigation into NSW water management and compliance”.<sup>24</sup></p> <p>The NSW Floodplain Harvesting Measurement Policy:  <i>“requires landholders receiving a floodplain harvesting access licence to contract a duly qualified person to install telemetry-enabled storage meters that meet the Minister’s minimum specifications outlined in the policy. The move to automated storage meters for floodplain harvesting measurement aligns with other water reforms such as the NSW Non-urban Water Metering Framework (2018).”</i></p>	
11	That the NSW Government ensure that the NSW Water Register includes information regarding structures on floodplains, including their location, volume, ownership, approvals and licence conditions.	This will occur once licences are issued.	

<sup>24</sup> [https://water.dpie.nsw.gov.au/data/assets/pdf\\_file/0017/312335/nsw-non-urban-water-metering-policy.pdf](https://water.dpie.nsw.gov.au/data/assets/pdf_file/0017/312335/nsw-non-urban-water-metering-policy.pdf)

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12	Excluding structures that have been assessed as protecting infrastructure, that the NSW government ensure floodplain structures do not alter the natural flood flows at times when extraction is not permitted.	See below (Recommendation 13 response).	
13	That the NSW Government decommission or remove unlawful structures and publish a time frame for this initiative within 6 months.	<p>DPPE-Water has said that:</p> <p><i>“Flood works that are inconsistent with these floodplain management plans will require modification or removal.</i></p> <p><i>Restoring flood-flow connections by removing or modifying high priority unapproved floodworks is crucial and has been identified as a regulatory priority by the Natural Resources Access Regulator.</i></p> <p><i>A business case has been submitted to the Commonwealth Government for approximately \$10.2 million to deliver an accelerated compliance program targeting unapproved flood works in the northern Basin.”<sup>25</sup></i></p>	
14	That the NSW Government ensure that no floodplain harvesting licences are granted on the basis of illegal works.	<p>The FPH Policy itself clarifies only eligible works may receive a licence:</p> <p><i>“Only works constructed on or before 3 July 2008 in accordance with an approval or that did not require an approval, or for which a valid application under Part 2 or Part 8 of the Water Act 1912 or the WM Act was made on or before that date, are eligible for assessment under this policy.</i></p> <p><i>Not all works that are capable of floodplain harvesting will necessarily be authorised for floodplain harvesting activities. For example, existing works for which an application was required and not made under Part 2 or Part 8 of the Water Act 1912 on or before the 3 July 2008 cut-off date, will not be authorised for floodplain harvesting. A floodplain harvesting access licence may not be issued for the full volume that a work is capable of harvesting or historically harvested as of the 3 July 2008 cut-off. Depending on the outcomes of the assessment process, works may require modification or decommissioning.”<sup>26</sup></i></p>	

<sup>25</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0006/404709/addressing-community-concerns.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0006/404709/addressing-community-concerns.pdf)

<sup>26</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0017/143441/NSW-Floodplain-harvesting-policy.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0017/143441/NSW-Floodplain-harvesting-policy.pdf)

15	<p>That the NSW Government ensures that any carry-over rule included in floodplain harvesting licences to provide flexibility in accessing floodplain harvesting entitlements does not allocate more than 100 per cent of entitlements in the first year of the accounting period.</p>	<p>DPIE has indicated that they will not be allocating more than 100% in the first year of the accounting period. This was communicated in ‘what we heard documents’ – for example, the Border Rivers says:</p> <p><i>“In the past, the department has given other licence categories an initial AWD of greater than 1 ML per unit share to reflect potential carryover<sup>1</sup> from the earlier management or licensing framework. As floodplain harvesting has grown above legal limits, the department cannot justify this carryover. The department will apply an initial AWD of 1 ML per unit share to floodplain harvesting (regulated river) access licences in the NSW Border Rivers Regulated River Water Source.”<sup>27</sup></i></p> <p>Regarding the carryover arrangements more broadly, DPIE-Water has said that:</p> <p><i>“Entitlement sizes will need to be three times larger under annual accounting than under five-year accounting to give the same long-term volume.</i></p> <p><i>Applying annual accounting and issuing large entitlements poses a risk to compliance with legal limits in the future.”<sup>28</sup></i></p> <p>Moving away from a 500% carryover arrangement would therefore pose serious risk of water extractions exceeding sustainable limits, and would have negative environmental impacts.</p>	
16	<p>That the NSW Government ensure that rainfall run-off is measured, metered and reported as part of extraction limits, and if exemptions are to be granted, they should be limited to landholders with less than 500 megalitres of storage capacity.</p>	<p>During a floodplain harvesting event, <i>“the volume of water collected in a tailwater drain must be measured and accounted for under a licence”<sup>29</sup></i>. Simply – the rainfall runoff exemption does not apply during a floodplain harvesting event.</p> <p>Outside of a floodplain harvesting event – DPIE-Water:</p> <p><i>“acknowledges that much of the run-off may be used irrigation water that has already been measured under an existing water access licence.”<sup>30</sup></i></p> <p>Additionally:</p> <ul style="list-style-type: none"> <li>• Without a licence exemption for rainfall runoff, there would be thousands of small on-farm works that would require a work approval. In many cases these works are not in close proximity of a waterway and involve farmers that have</li> </ul>	

<sup>27</sup> [https://www.industry.nsw.gov.au/data/assets/pdf\\_file/0020/350237/what-we-heard-report.pdf](https://www.industry.nsw.gov.au/data/assets/pdf_file/0020/350237/what-we-heard-report.pdf)

<sup>28</sup> [https://www.industry.nsw.gov.au/data/assets/pdf\\_file/0005/404663/account-management-rules.pdf](https://www.industry.nsw.gov.au/data/assets/pdf_file/0005/404663/account-management-rules.pdf)

<sup>29</sup> [https://www.industry.nsw.gov.au/data/assets/pdf\\_file/0020/368111/What-We-Heard-Tailwater-Drain-Exemption.pdf](https://www.industry.nsw.gov.au/data/assets/pdf_file/0020/368111/What-We-Heard-Tailwater-Drain-Exemption.pdf)

<sup>30</sup> [https://www.industry.nsw.gov.au/data/assets/pdf\\_file/0020/368111/What-We-Heard-Tailwater-Drain-Exemption.pdf](https://www.industry.nsw.gov.au/data/assets/pdf_file/0020/368111/What-We-Heard-Tailwater-Drain-Exemption.pdf)

		<p>no direct relationships with Government for surface water regulation (i.e. they are regulated by their Irrigation-Infrastructure Operator).</p> <ul style="list-style-type: none"> <li>• The cost associated with the measurement of rainfall run-off into tail water systems would be excessive on the thousands of farms with small irrigation tailwater and recycling systems - not just the capital but the ongoing administration.</li> <li>• The recommendation to support the exemption for storages of less than 500ML is likely to create perverse outcomes. It should also be understood that this would support increased extraction in the southern Basin.</li> </ul>
<p>17</p>	<p>That the NSW Government develop clearly defined and enforceable access rules based on within-valley and downstream flow triggers based on minimum flow targets needed to maintain or improve outcomes for environmental, cultural and basic landholder requirements, with floodplain harvesting take only permitted under the access rules when these targets are met, and that these access rules must be implemented before any floodplain harvesting licences or entitlements are allocated.</p>	<p>These are already in place.</p> <p>DPIE-Water has published a ‘<i>Stocktake of northern Basin connectivity water management rules</i>’.<sup>31</sup></p> <p>These existing connectivity rules include: end of system flow rules, long-term annual average flow (LTAAF), environmental water allowances (EWA) or release, held environmental water and active management, flow classes and cease/commence to pump rules, as well as supplementary water sharing rules.</p> <p>There have also been recent changes to the WSP in the Border Rivers so that: <i>“The Minister may amend Schedule 1 to add, modify or remove flow targets as reasonably necessary to ensure the taking of water under supplementary water access licences does not jeopardise the critical needs of the environment, basic landholder rights, domestic and stock access licence holders and local water utility access licence holders in the BarwonDarling River.”</i><sup>32</sup></p> <p>This also includes that the Minister will “<i>seek and consider recommendations from an independent expert panel</i>”<sup>33</sup> with a timeframe for the connectivity work to be completed by 1 July 2023.</p> <p>The Independent Panel in its Final Report on the First Flush in 2020 said (in regards to its recommendations on improving first flush management for connectivity): <i>“The work we have suggested can be carried out <b>alongside</b> current work programs to improve connectivity, complete rollout of the floodplain harvesting licensing reforms, undertake</i></p>

<sup>31</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0019/356032/stocktake-of-northern-Basin-connectivity-water-management-rules.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0019/356032/stocktake-of-northern-Basin-connectivity-water-management-rules.pdf)

<sup>32</sup> <https://legislation.nsw.gov.au/view/pdf/asmade/sl-2021-370>

<sup>33</sup> Ibid.

		<p><i>improved measurement and monitoring programs, and deliver regional water strategies.”<sup>34</sup></i></p> <p>The Independent Panel also said:  <i>“The <b>continued implementation</b> of NSW reforms regarding metering, <b>floodplain harvesting</b> and connectivity is crucial to improving first flush management. It is vital that reforms continue, not only for reasons of achieving better water management generally, but also because they will help improve management of future first flush events.”</i></p> <p>In summary, downstream flow targets are already in place, are undergoing review to ensure they are fit for purpose, and independent experts have recommended that the floodplain harvesting reform can and should occur alongside that work.</p>
18	That the NSW Government work urgently to engage First Nations communities to ensure that cultural flow targets are established and met as part of the regulatory framework on floodplain harvesting.	<p>See response to Recommendation 2.</p> <p>Cultural flows are important, and further work is needed in this regard.</p> <p>Subjecting floodplain harvesting to regulation, by reducing and limiting it to Sustainable Diversion Limits, is important to protect cultural values.</p>
19	That the Department of Planning, Industry and Environment only issue floodplain harvesting licences at such a time as it is satisfied that the recommendations of this report will be met so that floodplain harvesting is fully monitored and measured, there is clear evidence that water extractions are within legal limits, the independent oversight of the Natural Resources Commission has been established and that mandated environmental and other downstream outcomes are being achieved.	<p>Delays in implementing the regulation of floodplain harvesting means the practice will remain unlimited and unmetered in the meantime. This is particularly problematic given the current La Nina period.</p> <p>As this Report outlines, there is no legitimate reason established to justify delay any further; rather, further delays would be problematic.</p> <p>To the specific points:</p> <ul style="list-style-type: none"> <li>• The establishment of a separate oversight function within NRC is duplication of the authorities which already exist (Inspector General of Water Compliance and the MDBA), and their functions such as to ensure Basin states comply with limits, produce compliance reports, and accredit models (see response to Recommendation 4).</li> <li>• Cap/SDL Compliance Reports have been published by the MDBA since 1994-95. The most recent report found NSW is 17% below SDLs. This is the clear evidence that take in NSW is below the SDL. Floodplain harvesting cannot be</li> </ul>

<sup>34</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0007/321649/final-report.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0007/321649/final-report.pdf)



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			<p>limited until there is a mechanism in place to limit it (supplementary licenses have instead been limited in the meantime to achieve this).</p> <ul style="list-style-type: none"> <li>• Floodplain harvesting cannot be measured unless regulation requires it of those who floodplain harvest (see response to Recommendation 9).</li> <li>• Environmental and downstream outcomes – Menindee lakes is currently surcharged, with floodwater continuing to move through the system following heavy rainfall in the northern Basin.<sup>35</sup> This occurred with unlimited and unrestricted floodplain harvesting. All available evidence suggests environmental and downstream outcomes will improve under regulation.<sup>36</sup></li> </ul>	
20	<p>That, if the NSW Government grants floodplain harvesting licences or entitlements, these should be strictly non-compensable and subject to Parliamentary oversight.</p>		<p>Changes to the amount of water allocated to licenses is not compensable.</p> <p>DPIE-Water representatives at the parliamentary hearing said:  <i>“It is not clear to me why anybody thinks that there is a compensation risk here. Water sharing plans have a growth-in-use provision. If it turns out that we have issued too much licence, then the growth-in-use provisions will cut in. There is one for cap and there is also one for SDL compliance. Making an AWD adjustment for those rules is never compensatable.”<sup>37</sup></i></p> <p>This was confirmed by Bret Walker SC who said:  <i>“One of the difficulties about seeing it as property is it then tends to excite people’s indignation about it being taken away without compensation. That is very unfortunate because, as you all know better than anyone, so-called water rights are always adjustable according to whether it has rained or not.”<sup>38</sup></i></p>	
21	<p>That the NSW Government, through the National Federation Reform Council, make representations to remove the surface water trading requirement from the Murray-Darling Basin Plan.</p>		<p>Water trading requirements have their origins in the National Water Initiative (the blueprint to Australia’s water reform). Trading is considered best-practice as it facilitates the most efficient use of the resource. Removing allocation and entitlement trading would hit farmers’ confidence and capacity for risk management through droughts particularly hard in the southern Basin.</p> <p>Basin-wide water markets have an annual average value of more than \$1.8 billion per year.<sup>39</sup></p>	

<sup>35</sup> <https://waterinsights.waternsw.com.au/>

<sup>36</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0004/368140/summary-of-predicted-environmental-outcomes.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0004/368140/summary-of-predicted-environmental-outcomes.pdf)

<sup>37</sup> <https://www.parliament.nsw.gov.au/lcdocs/transcripts/2685/Transcript%20-%20Select%20Committee%20-%20Inquiry%20into%20Floodplain%20Harvesting%20-%2024%20September%202021%20-%20Virtual%20-%20CORRECTED.pdf>

<sup>38</sup> <https://www.parliament.nsw.gov.au/lcdocs/transcripts/2685/Transcript%20-%20Select%20Committee%20-%20Inquiry%20into%20Floodplain%20Harvesting%20-%2024%20September%202021%20-%20Virtual%20-%20CORRECTED.pdf>

<sup>39</sup> [https://www.accc.gov.au/system/files/Murray-Darling%20Basin%20-%20water%20markets%20inquiry%20-%20Final%20report\\_0.pdf](https://www.accc.gov.au/system/files/Murray-Darling%20Basin%20-%20water%20markets%20inquiry%20-%20Final%20report_0.pdf)

		<p>The ACCC in its review of water markets identified many benefits of water markets and trading.</p> <p><i>“Tradeable water rights are now a significant asset for many farmers. The value of water entitlements on issue across Australia in 2019–20, held by active and retired farmers and others, including environmental water holders, is estimated at \$26.3 billion.”<sup>40</sup></i></p> <p>Changing this requirement would need to consider the potential serious market implications, particularly in the southern-connected systems.</p> <p>On floodplain harvesting – there will be no trade of floodplain harvesting allocations under the NSW Government policy, and trade in floodplain harvesting licences (or ‘share components’) is heavily restricted:</p> <p><i>“Buying and selling of allocations (temporary trade) will not be permitted.”</i></p> <p><i>“Buying and selling of share components (permanent trade) will be permitted within an extraction management unit, water source, management zone or trading zone.”</i></p> <p><i>“Every trade application is assessed against the general principles outlined in the Access Licence Dealing Principles Order 2004, such as the potential effects on other water users and the environment.”<sup>41</sup></i></p>	
22	<p>That, in the absence of the surface water trading requirement being removed from the Murray-Darling Basin Plan, the Minister for Water, Property and Housing ensure that water trading be restricted and subject to a robust environmental and social impact assessment process prior to each trade, and that trading is restricted to within catchment trading only.</p>	<p>As above – this is the current requirement:</p> <p><i>“Buying and selling of share components (permanent trade) will be permitted within an extraction management unit, water source, management zone or trading zone.”</i></p> <p><i>“Every trade application is assessed against the general principles outlined in the Access Licence Dealing Principles Order 2004, such as the potential effects on other water users and the environment.”<sup>42</sup></i></p>	
23	<p>That the NSW Government:</p> <ul style="list-style-type: none"> <li>• institute a clearly defined enforcement and compliance regime for floodplain harvesting take and floodplain harvesting works</li> </ul>	<p>This reform is a compliance and enforcement regime to limit floodplain harvesting by imposing licence conditions and requiring metering. Without this regulation introducing this compliance framework, there would be nothing to comply with.</p>	

<sup>40</sup> [https://www.accc.gov.au/system/files/Murray-Darling%20Basin%20-%20water%20markets%20inquiry%20-%20Final%20report\\_0.pdf](https://www.accc.gov.au/system/files/Murray-Darling%20Basin%20-%20water%20markets%20inquiry%20-%20Final%20report_0.pdf)

<sup>41</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0007/272338/guideline-for-implementation.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0007/272338/guideline-for-implementation.pdf)

<sup>42</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0007/272338/guideline-for-implementation.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0007/272338/guideline-for-implementation.pdf)

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	<ul style="list-style-type: none"> <li>ensure that the Natural Resources Access Regulator [NRAR] is sufficiently funded to undertake its enforcement and compliance functions.</li> </ul>	<p>The Floodplain Harvesting Measurement Policy states:  <i>“This will create a foundation for delivering a strong compliance and enforcement framework for water taken in NSW.”</i><sup>43</sup></p> <p>The Chief Regulatory Officer of NRAR described the lack of regulation as problematic for the regulator:  <i>“As a regulatory professional, the absence of the licensing framework for floodplain harvesting, as was envisaged by government policy from 2013, is problematic. It is problematic for water users and it is problematic for the regulator because the critical element of the licensing framework is the imposition of clear and enforceable conditions on the activity. The framework also proposes metering requirements that enable adherence to those licence conditions to be monitored and enforced”</i></p> <p>In the most recent IPART Pricing Determination, WAMC charges (which includes for NRAR), significantly increased. IPART said in its Final Report:  <i>“our recommendation also ensures NRAR obtains sufficient funding to perform its compliance and enforcement functions”</i><sup>44</sup></p>	
<p><b>24</b></p>	<p>That the NSW Government abolish the NSW Healthy Floodplains Review Committee and future appeals be dealt with by the proposed independent expert panel, referred to in Recommendation 4, and the outcomes be reported publicly.</p>	<p>The Review Committee is similar to the anomalies committees that operated in 2000 for the volumetric conversion of unregulated water licences. It is precedented and can be considered standard practice.</p> <p>It is not a decision-making body – the Terms of Reference outlines the function is to analyse issues, ensure procedural fairness of registrants, and provide advice to DPIE-Water.</p> <p>The Terms of Reference says:</p> <p><i>“It is not a forum for policy making or policy review. For example, the NSW Floodplain Harvesting Policy prescribes a methodology for determining unregulated river floodplain harvesting entitlements. The committee’s role is to ensure that that methodology has been implemented fairly and consistently for all floodplain harvesting registrants who are affected by this methodology. It is not the committee’s role to advocate for changes to the methodology.”</i><sup>45</sup></p>	

<sup>43</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0006/317859/floodplain-harvesting-measurement-policy.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0006/317859/floodplain-harvesting-measurement-policy.pdf)

<sup>44</sup> [https://www.ipart.nsw.gov.au/sites/default/files/cm9\\_documents/Final-report-Review-of-prices-for-the-Water-Administration-Ministerial-Corporation-September-2021.PDF](https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Final-report-Review-of-prices-for-the-Water-Administration-Ministerial-Corporation-September-2021.PDF)

<sup>45</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0005/308336/terms-of-reference.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0005/308336/terms-of-reference.pdf)

			It would be a concern for procedural fairness to have future reviews undergo a different process to previous reviews.	
25	That the Department of Planning, Industry and Environment ensure that all decisions made by the NSW Healthy Floodplains Review Committee be audited by the proposed independent expert panel, referred to in Recommendation 4.		As above, the Healthy Floodplains Review Committee is not a decision-making body.	



Image: near Wee Waa 2021

## CONCLUSION

This Review concludes that the Final Report finds **no legitimate reason to further delay the reform**, and contrarily, that further delays would be harmful.

This Review finds:

1. Parliamentary Committee recommendations would result in a **weaker regulatory framework**, including **forgone environmental outcomes**, and **floodplain harvesting remaining unlimited and unmetered** for a prolonged period of time;
2. The Parliamentary Committee Report shows a **failure to understand reform objectives**, including that reform means **less floodplain harvesting**, with **major socio-economic impacts** from reduced water access for communities;
3. Parliamentary Committee **recommendations** (including the centerpiece recommendation) **are largely already in place** (68%) and would be duplicating processes/functions. The remaining recommendations are contrary to best-practice water management or to the public interest, including negative environmental outcomes (20%); or out of scope of this reform (12%).
4. Report shows **lack of due diligence** to ensure factual accuracy by adopting **low standards of evidence**.

This review therefore recommends:

1. **Urgent regulation is needed** to reduce and limit Floodplain Harvesting to Sustainable Diversion Limits, as required under the Murray-Darling Basin Plan, and impose mandatory metering requirements, as required under the NSW Government regulation.
2. **Immediate support to mitigate socio-economic impacts** in the communities of the 5 northern Basin valley communities impacted by reduced water access under this reform.
3. NSW Parliament to receive briefings from NSW DPIE-Water, the Murray-Darling Basin Authority; and Office of the Inspector-General of Water Compliance prior to any future decision making on floodplain harvesting or water management more broadly, to **ensure informed decision making**.
4. **Parliament must take responsibility to address misinformation** by improving fact-checking processes and increasing the standards of evidence.

Future water management inquiries should be cautioned regarding the prevalence of misinformation on complex water reform and urged to seek expert advice from authorities. Failure to do so risks jeopardising public interest reform. It may also be necessary to refer matters to the Inspector-General of Water Compliance regarding any intentional spreading of false or misleading information to a Parliamentary Inquiry.

The Committee Report, unfortunately, misunderstood the purpose of the Floodplain Harvesting reform to reduce and limit Floodplain Harvesting to the Sustainable Diversion Limits required under the Basin Plan. It is telling that out of the 9 members<sup>46</sup> of the Select Committee there were 4 dissenting reports. That means just under half of the Committee dissented from the Final Report, including the Deputy Chair whose dissenting report spelt out inconsistencies, duplications and misinformation informing the Committee's report.

Parliament is urged to seek expert advice from authorities, and progress regulation as a matter of urgency, in the public interest.

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<sup>46</sup> 3 Government, 4 ALP, 1 Greens – Chair, 1 SFF – Deputy Chair.



*Image sourced from Border Rivers Food & Fibre – Floods Dec 2021*



*Image sourced from Border Rivers Food & Fibre – Floods Dec 2021*