

Natural Resources Commission review of the Gwydir Regulated River Water Sharing Plan



Photo taken on the Ngamaay (Namoi River) 19 September 2023 by Dharriwaa Elders Group's Senior River Ranger Ernest Sands at location -30.01936 148.12243. It was included in a report sent to environmental water managers, NSW DPI Fisheries and others in DEG's science network. Blooming blue-green algae can clearly be seen. The rivers at Walgett have consistently been a soupy green colour since the 2022 floodwaters receded.

Submission from Dharriwaa Elders Group
Walgett 25 September 2023

Introduction

Thank you for the opportunity to make a submission to the review of the Water Sharing Plan for the Gwydir Regulated River Water Source 2016.

Dharriwaa Elders Group is an association of Aboriginal Elders who live in Walgett, a river town of about 2,100 people, the majority Aboriginal.

Walgett is where the Baawan (Barwon) and Ngamaay (Namoi) Rivers meet, upstream of the town of Bourke. Walgett is in Gamilaraay Country, close to the borders of Yuwaalaraay, Ngiyambaa and Wayilwan Countries, and is now home to Gamilaraay, Yuwaalaraay, Ngiyambaa and Wayilwan Aboriginal Nations, as well other Aboriginal and non-Aboriginal people.

Rivers have always been, and remain central, to Walgett culture and life. Rivers provide drinking water and food (particularly regular fish meals), healing activities, water for birds and animals, gardens and food security. For Aboriginal people the health of the river and the wellbeing of people come first.

In recent times Walgett's Aboriginal community has suffered from drought, climate change and the river drying up. The lack of water and food security is of great concern to Elders. With the Walgett Aboriginal Medical Service and our Yuwaya Ngarrali partners UNSW, we have undertaken rigorous research to provide evidence of the extent of our community's water and food insecurity¹ and are in regular correspondence with regular ministers to advocate for solutions².

It's our belief that Walgett's current situation is due to the way water is managed, and that irrigators upstream of Walgett have been favoured, over people downstream. It is a failure of a system that is required by law to manage the rivers in the interests of all Australians.

Dharriwaa Elders Group acknowledges that the Gwydir River Valley lies outside our specific Area of Interest. However, we are concerned that this water sharing plan contributes to the degraded condition of the Baawan-Baaka River and its communities.

In this submission, we address:

- Findings from the Chief Scientist's review into the 2023 Menindee fish deaths
- Floodplain harvesting
- Prioritising extraction above all other water users
- No numeric extraction limit

Chief Scientist's review into 2023 fish deaths at Menindee

Selected recommendations of particular importance to DEG are listed at **Annexure A**.

The Chief Scientist states that:

Our findings and recommendations reflect an understanding of this event as symptomatic of broader degradation to ecosystem health and consequential long-term risks to the Darling-Baaka river system.

The review found that:

¹ https://dharriwaaeldersgroup.org.au/images/downloads/WalgettReport_A130223b_web.pdf

² https://dharriwaaeldersgroup.org.au/images/downloads/130423_MEDIA_RELEASE_Walgett_Water.pdf
<https://dharriwaaeldersgroup.org.au/images/FinalDEGNSWWaterManagementStatementApril2023.pdf>

...explicit environmental protections in water management legislation are neither enforced nor reflected in current policy and operations”, which was found to be the root cause of the environmental degradation and subsequent fish kill.

Our experience reflects findings of the NSW Chief Scientist’s review into the 2023 fish deaths at Menindee, in particular that:

- Trusted voices within specific communities and Aboriginal groups were not engaged. Local and traditional knowledge and experience was rarely used by agencies to inform management actions.
- Changes to flow regimes and fish passage from water infrastructure and altered water use in the Northern Basin are likely key factors in decreasing water quality and the decline of native species, and explicit environmental protections in water management legislation are neither enforced nor reflected in current policy and operations, are the root cause of the environmental degradation and subsequent fish kill.
- The health and wellbeing of the local community is inherently linked to the health of the river. Consecutive mass fish deaths have had a profound, ongoing community impact: social, cultural, mental health, and economic.

Floodplain harvesting

Floodplain harvesting is a significant form of take in the Gwydir valley. DEG made a submission³ to the Select Committee on Floodplain Harvesting (enclosed at **Annexure B**). Selected recommendations of particular importance to DEG are listed at **Annexure C**.

DEG is concerned that floodplain harvesting licences issued, and the associated accounting rules, in the Gwydir valley will:

- allow take to exceed the Murray-Darling Basin Cap,
- be inconsistent with the objects and principles of the Water Management Act (2000),
- Result in a Sustainable Diversion Limit that exceeds the Environmentally Sustainable, and Level of Take and therefore in breach of the Water Act (2007).

Recommendation: Refer to the selected findings and recommendations from the NSW Parliament Select Committee on Floodplain Harvesting attached.

Giving irrigation extractions higher priority than other uses and values of water

Clause 80(1) of the Gwydir Water Sharing Plan states that it may be amended in response to:

- a) the need to protect overland flow for environmental purposes,
- b) monitoring, evaluation and reporting outcomes,
- c) an improved understanding of the influence of floodplain harvesting on downstream flows,
- d) a review that assesses the potential benefits and impacts of new access provisions for floodplain harvesting (regulated river) access licences,
- e) a review of dealing rules in the Water Sharing Plan for the Gwydir Unregulated River Water Sources 2012,
- f) other circumstances as determined by the Minister.

³

<https://dharriwaaeldersgroup.org.au/images/downloads/SubmissiontoFloodplainharvestingInquiry13August2021.pdf>

Clause 80(6) of the Gwydir Water Sharing Plan may also be amended in relation to the end-of-system flow targets at Menindee Lakes.

However, Clause 80 (5) states that:

Actions under subclause (1) or subclause (6) must not substantially alter the long-term average annual total amount of water able to be extracted under floodplain harvesting (regulated river) access licences in the water source.

This clause seems to limit the reduction of floodplain harvesting even if floodplain harvesting is adversely affecting the environment and downstream towns, users and economies.

Clause 79 (4) has a similar provision that states that an action under subclause (2) must not substantially alter the long-term average annual total amount of water able to be extracted under supplementary water access licences.

Therefore, clauses 79(4) and 80 (5) undermine, and are inconsistent with, the water management principles in section 5 of the Water Management Act⁴ and the objectives of the Water Sharing Plan (clauses 8-9, 11-12).

Recommendation: Remove Clauses 79 (4) and 80 (5) from the Water Sharing Plan.

No numeric extraction limit

The Natural Resource Commissioner's review of seven unregulated water sharing plans identified that the plans do not include numeric long-term average extraction limits. The identical circumstance applies to the Gwydir Regulated Water Sharing Plan, which does not have a numeric limit on extractions.

We are concerned that the absence of a concrete number on the limit of take will result in more water being extracted in the Gwydir Valley, which will reduce end-of-system flows and reduce the amount of water in the Baawan-Baaka river system.

Recommendation: Include numeric limits in the Water Sharing Plan.

Conclusion

The compartmentalised, fragmented management and planning of the rivers has allowed the social, ecological and cultural disaster we in Walgett are experiencing, referred to in Finding Four by the Chief Scientist, to unfold. More plans like the Gwydir Regulated River Water Sharing Plan shows us that this disaster will continue. So, there needs to be a completely different approach taken by our elected governments and public servants to stop the carnage, starting with abiding by legislation, and obeying the law.

The Gwydir Regulated River Water Sharing Plan has not contributed beneficially to the people in DEG's Area of Interest – in fact its contribution has been harmful. This harm will be increased by the licensing of large volumes of floodplain harvesting, and prioritising and privileging irrigation above all other uses and values of water and rivers, in particular by limiting the capacity to amend the plan if it is found to be inadequate and removing numeric limits to take.

Because of the fragmentation of water and land management this Plan deals only with water in the Gwydir Valley. It does not deal with land management, especially the big growth of industrial agriculture upstream of Walgett. The harm that this is doing has been pointed out by the Chief Scientist and Engineer, and is observed daily by members of the Walgett community. On the 19th

⁴ <https://legislation.nsw.gov.au/view/html/inforce/current/act-2000-092#sec.5>

September 2023 Walgett River Rangers alerted the local community and NSW Government Departments of a concerning bloom of Blue-green Algae in the river at Walgett.

Not only has the Gwydir Water Sharing Plan contributed very little to the community of Walgett, the actions that it enables and encourages have done and continue to do great damage.

Annexure A

Selected findings and recommendations of the Chief Scientist and Engineer's Executive Summary of the review into the 2023 fish deaths at Menindee

Finding Three: Mass fish deaths are symptomatic of degradation of the broader river ecosystem over many years. Changes to flow regime and fish passage from water infrastructure and altered water use in the Northern Basin are likely key factors in decreasing water quality and the decline of native species.

Finding Four: The health and wellbeing of the local community is inherently linked to the health of the river. Consecutive mass fish deaths have had a profound, ongoing community impact: social, cultural, mental health, and economic.

Finding Five: Explicit environmental protections in existing water management legislation are neither enforced nor reflected in current policy and operations. Water policy and operations focus largely on water volume, not water quality. This failure in policy implementation is the root cause of the decline in the river ecosystem and the consequent fish deaths.

Finding 10: Communication of ongoing river operations and during the emergency are/were inconsistent, not timely and did not always consider local/regional accessibility. Trusted voices within specific communities and Aboriginal groups were not engaged. Local and Traditional knowledge and experience was rarely used by agencies to inform management actions.

Finding 11: The local community feel that their knowledge, insights and experience of the river, lakes and broader environment are not given appropriate consideration in water policy, operations, environmental protection, and emergency management.

Recommendations

Recommendation 1: Regulatory environmental protections must be enforced

The regulatory framework must be upgraded to include legally enforceable obligations and powers to give effect to environmental protections and whole of catchment ecosystem health, as expressed in the objects of water, environmental and biodiversity legislation. Changes should:

- a. draw on scientific, cultural and local community insights and be developed in partnership with these knowledge communities
- b. address risks to the Lower Darling-Baaka and its water-dependent ecosystems
- c. Be informed by an independent review of existing water rights, water accounting systems, exercise of rules and operational parameters, and their impact on riverine catchment health. This includes provisions in Water Sharing Plans to improve water flow across the system
- d. be based on much improved real-time data and monitoring of the whole river system

Recommendation 4: Long-term, ongoing strategies including “coordinated and systemic ecosystem regeneration strategies, inclusion of Aboriginal people’s knowledge, including R&D and scale up of refugia for fish, invertebrate and other species”.

Annexure C

Selected findings and recommendations of the Select Committee on Floodplain Harvesting

Finding 4: That floodplain harvesting has had a significant impact on downstream flows and river health, particularly to the Darling Baaka River, Menindee Lakes and Ramsar listed wetlands, leading to numerous economic, social, cultural and environmental impacts, and that to properly understand any and all impacts improvement in real time monitoring through increased river gauges is required.

Finding 5: That there has been insufficient assessment of the cumulative impacts of floodplain harvesting to date, and that the only way to further improve assessments of the cumulative impacts of floodplain harvesting is through accurate metering of take during floodplain harvesting events.

Finding 6: Floodplain harvesting has contributed to a reduction in downstream flows which has had a profound impact on the culture and traditions of First Nations peoples.

Finding 7: That engagement with First Nations peoples on the development of floodplain harvesting policy has been inadequate and, at times, culturally inappropriate.

Finding 10: That the process the NSW Government is undertaking to amend the Sustainable Diversion Limit as described by the NSW Department of Planning, Industry and Environment has the potential to be unlawful.

Finding 11: That the NSW Government has failed to meet its obligations under the Murray-Darling Basin Agreement by allowing the unchecked growth of unregulated floodplain harvesting extraction to volumes well in excess of the 1994 Murray-Darling Basin Cap.

Recommendation 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.

Recommendation 2: That the NSW Government urgently prioritise regular and genuine involvement of First Nations peoples in the management of floodplain harvesting, including cultural flows.

Recommendation 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, downstream outcomes and environmental impacts.

Recommendation 4: That 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 and produce a public report on the accreditation that includes the standard and mean error of models
- assess the floodplain harvesting 'Cap Scenario' reports for compliance with the Murray-Darling Basin Cap and publish assessment reports
- 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.

Recommendation 5: 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.

Recommendation 6: 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.

Recommendation 7: That the NSW Government ensure that any allocation of floodplain harvesting volumes and entitlements must be within existing Sustainable Diversion Limits.

Recommendation 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.

Recommendation 17: 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.

Recommendation 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.