

Dharriwaa Elders Group Incorporated

Submission to NSW Parliament Legislative Council Select Committee on Floodplain Harvesting

13 August 2021



Photo taken September 2019 of the dry Namoi River at Walgett's then intake pump for its drinking water, Walgett golf course. The proof of poor water management during drought.

Inquiry into NSW Government's management of Floodplain Harvesting

TERMS OF REFERENCE

1. That a select committee be established to inquire into and report on the Government's management of floodplain harvesting, including:
 - (a) the legality of floodplain harvesting practices,
 - (b) the water regulations published on 30 April 2021
 - (c) how floodplain harvesting can be licensed, regulated, metered and monitored so that it is sustainable and meets the objectives of the Water Management Act 2000 and the Murray-Darling Basin Plan and,
 - (d) any other related matter.

The Dharriwaa Elders Group

The Dharriwaa Elders Group, an incorporated association of Walgett Aboriginal Elders operating since 1999, thanks the Select Committee and all those who voted for the Inquiry. Evidence of unlawful water management and use must be brought to the attention of the NSW public so that the NSW Government and its agencies can be brought to account.

Walgett is where the Baawan (Barwon) and Ngamaay (Namoi) Rivers meet, upstream of the towns of Brewarrina and Bourke. The Baawan and Ngamaay Rivers are part of the Northern Murray-Darling (Baaka) Basin. Walgett is in Gamilaraay Country, close to the borders of Ngiyambaa and Wayilwan Countries, and is now home to Gamilaraay, Yuwaalaraay, Ngiyambaa and Wayilwan Aboriginal Nations, as well other Aboriginal and non-Aboriginal people.

Walgett's climate is semi-arid, with mild winters and very hot summers. The Country is a floodplain rich with rivers, ephemeral streams and lakes. Groundwaters come from alluvial reservoirs and the deep Great Artesian Basin. Surface and groundwaters are the lifeblood of the Country, and once provided plentiful resources that supported thriving cultural lives.

Values and ethos of the Dharriwaa Elders Group (DEG) in relation to land and water management

The floodplains are complex systems of creeks, lakes, warrambuls, groundwaters, rivers and the rich black soil. Rivers aren't separate from the floodplain – they are one element of it. Water in the land is vital for our daily life; for food, drinking water and the deep history of the community in stories. No-one should take more than they need. This excludes all external parties such as water traders and speculators.

DEG supports the Objects¹ and Principles² of the NSW *Water Management Act 2000* and the Commonwealth *Water Act 2007*³ and is horrified to witness daily that they are being ignored. How can we think otherwise? We see what we see with our own eyes and taste the salty water from the groundwater we are forced to drink when the rivers are dry. Our nutrition suffers because we have

¹ <https://legislation.nsw.gov.au/view/html/inforce/current/act-2000-092#sec.3>

² <https://legislation.nsw.gov.au/view/html/inforce/current/act-2000-092#ch.2>

³ <https://www.agriculture.gov.au/water/policy/legislation>

lost our regular fish and river foods, and our wellbeing suffers when we can no longer revive our spirits down on the riverbanks.

Response to the Inquiry Terms of Reference

(a) the legality of floodplain harvesting practices

It is DEG's view is that floodplain harvesting is not legal in NSW. DEG is concerned that licensing the volumes proposed will:

- exceed the Murray-Darling Basin Cap,
- be inconsistent with the Objects and Principals of the *NSW Water Management Act 2000*; and
- result in a sustainable diversion limit that exceeds the environmentally sustainable level of take and be in breach of the *Water Act 2007*.

DEG is concerned about the legality of many of the structures associated with the interception and storage of water for floodplain harvesting.

When the river was dry at Walgett for so long in 2018 and 2019, we suspected that water was being taken illegally upstream. We saw storages being filled and we knew that something was wrong. We saw water on farms between Walgett and Wee Waa, Narrabri, Moree and Mungindi.

We felt that NSW DPIE was putting irrigators before the needs of the river and its people. We were not surprised to read, in the findings of the NSW Independent Commission Against Corruption, that the needs of irrigation were being put before the needs of everyone else.

The NSW Independent Commission Against Corruption released its report, *Investigation into complaints of corruption in the management of water in NSW and systemic non-compliance with the Water Management Act 2000*, in November 2020.

The Commission found instances where the *department's decisions and approach were manifestly partial towards irrigators and industry*.

The Commission formed the opinion that...the rights of productive water users [sic] were given priority over the rights of other stakeholders and that there was a clear alignment between the department's strategies and goals and those of the irrigation industry.

The Water Management Act 2000 is clear about firstly providing for the environment and secondly recognising basic landholder rights above other uses. These water sharing principles are found in section 5(3) of the Water Management Act 2000. It states that:

- a) sharing of water from a water source must protect the water source and its dependent ecosystems, and*
- b) sharing of water from a water source must protect basic landholder rights, and*
- c) sharing or extraction of water under any other right must not prejudice the principles set out in paragraphs (a) and (b).*

Further, section 9(1) of the Act provides that "It is the duty of all persons exercising functions under this Act:

- a) *to take all reasonable steps to do so in accordance with, and so as to promote, the water management principles of this Act, and*
- b) *as between the principles for water sharing set out in section 5(3), to give priority to those principles in the order in which they are set out in that subsection.*⁴

(b) the water regulations published on 30 April 2021

DEG was shocked by the tactic of introducing these regulations, using Parliamentary processes to give greater advantages to floodplain water harvesters in the Northern Basin. This makes us fearful of the way the NSW Government is trying to use Parliamentary processes.

We are pleased that the regulations published on 30 April 2021 were disallowed. We thank the vigilance of all those who worked to help protect our interests and the interests of the river, especially Cate Faerhmann and Justin Field. We are nevertheless concerned that we must remain alert. We agree with another conclusion in the ICAC report, that this behaviour by the NSW Government has:

*...had a detrimental effect on the public's confidence in the ecologically sustainable, equitable, transparent and efficient management of the water sources of the state and in the integrity and good repute of public administration...*⁵

The DEG believes that water management in NSW is unjust in the way that it places unequal burdens on communities such as Walgett.

(c) how floodplain harvesting can be licensed, regulated, metered and monitored so that it is sustainable and meets the objectives of the Water Management Act 2000 and the Murray-Darling Basin Plan and,

DEG does not agree with, and does not want, any floodplain harvesting. We don't believe that floodplain harvesting can be sustainable. Floodplain harvesting is, by definition, taking water from the ecosystems of the floodplains. It is not spare, unused or wasted water.

It goes against our understanding of the rivers and our lives that water can be taken this way. Our communities and ancestors are part of those ecosystems. We still find it hard to believe that this water can be taken from so many people for the benefit of so few. We don't understand this continuing colonisation of Country.

As a starting point for all water management DEG believes that:

1. All water use must be licensed and managed within legal limits.
2. The location, storage volume and contribution to diversions of all permanent and 'temporary' structures on floodplains must be identified and published.
3. All structures on floodplains, and their ownership, license conditions and approvals, must be included in the NSW Water Register.
4. Information regarding the number of unlawful structures and their location must be available to the public.

⁴ NSW Independent Commission Against Corruption, 2020. *Investigation into complaints of corruption in the management of water in NSW and systemic non-compliance with the Water Management Act 2000*, NSW ICAC, Sydney.

<https://www.icac.nsw.gov.au/investigations/past-investigations/2020/nsw-government>

⁵ *Ibid.*

5. Dates when all unlawful structures will be removed must be provided to the public.
6. A comprehensive Basin-wide water accounting framework must be developed.
7. The effects of climate change on river flows must be analysed and shared with communities.
8. All license conditions and water sharing plan rules must include downstream flow targets, stipulating the volume of water to pass defined points.
9. Local Aboriginal Community Controlled Organisations must be a central part of decision-making (consistent with internationally recognised Indigenous rights), rather than merely being 'consulted' after a policy and legal framework has been developed
10. Allocation of water must be made to Aboriginal communities with the method to be determined by Aboriginal people.
11. There must be greater penalties for non-compliance with water laws, including conditions and rules governing diversions from floodplains, to a level sufficient to serve as a deterrent to unlawful behaviour.

(d) any other related matter.

Since the early 1990s the NSW and Commonwealth governments have recognised floodplain water harvesting as a threat to the environment, downstream license holders, town water supplies, and communities. Governments have repeatedly pointed out that floodplain water harvesting should be licensed and measured, and the law enforced. Despite this, the statement below, in policy advice to River Management Committees (circa 2003), still applies.

The Water Act 1912 provided powers to license floodplain harvesting. However, this was never applied...Harvested floodplain water has been treated as a freely available bonus to a farmer's licensed entitlement.⁶

Matters of concern to DEG include:

- the poor quality of the hydrological models used in the Northern Basin.
- damage to the environment caused by the diversion of large volumes of water from floodplains,
- damage to the cultural values of floodplains, rivers and wetlands caused by floodplain harvesting.

DEG considers the following proposals for licensing floodplain harvesting particularly objectionable:

- an initial licence allocation of five times the licensed amount,
- accounts holding five times the face value of the licence at any time,
- trade of floodplain harvesting licences, and
- that environmental flows are not protected from take by floodplain harvesting.

DEG disputes the misleading and deceptive use of the term 'carryover' in relation to floodplain harvesting. The term has been adopted from regulated systems where it is applied to accounts with water held over from previous allocations from large public dams.

⁶ NSW Government (n.d. circa 2003). *Advice to Water Management Committees, No. 3 Floodplain Harvesting.*

It does not apply to floodplain harvesting as it is not carryover of unused water. It is a claim to take future river flows. In practice it will mean that the river will owe water to irrigators even when it has not flowed, or it doesn't flow enough to meet the demands of the irrigation industry, even if that lack of flow is caused by irrigation upstream.

Claiming the right to take future flows is inconsistent with the Principles of the *NSW Water Management Act 2000*, which places the needs of the river, and communities along the river, ahead of take by irrigation.

Consultation

The poor quality of consultation with Aboriginal communities in its area of concern is unacceptable to DEG. Community consultation is difficult and traumatising, and above all, time wasting. It has provided almost no information of use to an ordinary member of the community, despite the wasteful travel budgets incurred by departmental staff visiting us.

Despite the many years during which the NSW Government could have negotiated the proposals for floodplain harvesting, and what they mean for the river and communities, it has failed to do so.

DEG wants negotiation, not consultation. We refuse to let our time be wasted by expensive and seemingly cynical tick-the-box exercises that use our organisation's profile for dishonest purposes.

"Dishonesty and lies breed too much confusion – which opens the floodgates for more confusion and lies"⁷.

Conclusion

DEG wants clear, indisputable guidelines for water management. This is why DEG is preparing its Healthy Rivers plan which will describe the outcomes it requires for the management of water in its area of interest.

The condition of the river affects every part of life in the Walgett community. It affects water quality, drinking water, food security, social cohesion and wellbeing. Attached are links to other work that DEG has done over many years. This work is needed because of the poor management of water in the Murray-Darling Basin. We are forced to do this as a local leadership group because of the failings of governments.

We want this Inquiry into floodplain harvesting to provide clarity for the voters of NSW so they can see what is really happening and what needs to be done to manage water for the wellbeing of people and Country.

Attachments: Other recent work by Dharriwaa Elders Group

- Submission responding to a call by the UN Special Rapporteur on Human Rights and the Environment for input to a report on "Too Dirty, Too Little, Too Much: The Global Water Crisis and Human Rights" - Joint Submission by DEG, MLDRN and EDO November 2020.

<https://dharriwaaeldersgroup.org.au/images/downloads/Submission-to-UN-Special-Rapporteur-on-Human-Rights-and-the-Environment-101120.pdf>

⁷ Virginia Robinson DEG Secretary 30 July 2021

- Inquiry into food prices and food security in remote Indigenous communities - A submission to the House of Representatives Standing Committee on Indigenous Affairs from Dharriwaa Elders Group and Walgett Aboriginal Medical Service 15 July 2020.

<https://www.dharriwaaeldersgroup.org.au/images/downloads/FinalSubmissionDEGandWAMS15July2020.pdf>

- Recommendations for the Review of the National Water Initiative. A submission to the Productivity Commission Review of the National Water Initiative from Dharriwaa Elders Group and Walgett Aboriginal Medical Service 11 September 2020

https://dharriwaaeldersgroup.org.au/images/downloads/Productivity_Commission_Submission_-_SEPTEMBER_2020.pdf