

SUBMISSION: COQUUN-HUNTER RIVER [April 2024]
Productivity Commission Inquiry - National Water Reform 2024
Submission on the Interim Report

ACKNOWLEDGEMENT OF COUNTRY

We acknowledge the Traditional Owners on the lands of which our homes and offices are based, Awabakal and Worimi Country, and extend our respects to Elders, past and present. We also acknowledge all those who advocate for the rights of First Nations people and those who have worked so hard to protect and nurture the health and spirit of Country.

INTRODUCTION

We are heartened by the prospect of a re-alignment of Western law and governance with First Law (Earth Law) and the redirection of practical efforts towards the collective care, restoration, long term wellbeing and sacredness of waterways across Australia. In this submission, we respectfully submit our views to support the National Water Reform 2024 and we particularly applaud the priority given to Integrity and to First Nations leadership in the Interim Report.

We wholly support a renewed and updated NWI to empower First Nations to undertake custodial responsibilities for Water and water management, and for the NWI to help us all address the changing nature of climate and water systems and to use our best co-operative skills and efforts to anticipate and act for the wellbeing of Country and future generations.

About the submitters

We are three close colleagues who work across urban strategic planning, academic research and teaching for the built and natural environment, and First Nations cultural engagement and enterprise. In particular, we have worked for the past year with ten First Nations people on Wonnarua, Awabakal and Worimi Country to understand differing world views between First Nations custodians and western trained strategic planners, and from there building a practical framework for planners to enable genuine partnerships.

- Susie Young – Placewise Planning and Urban Design, Newcastle NSW
- Megan Hills – The Creative Ingredient, Newcastle NSW
- Irene Perez Lopez – Senior Lecturer, College of Engineering, Science and Environment University of Newcastle, member UNESCO Chair of Intermediate Cities.

REFERENCE TO CLAUSE 23 OF THE INTERGOVERNMENTAL AGREEMENT NWI 2004

We note the scope of the current inquiry and consideration of the objectives established in Clause 23 of the Intergovernmental Agreement on a National Water Initiative 2004.

Clause 23 states ‘Full implementation of this Agreement will result in a nationally-compatible, market, regulatory and planning based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes’. It sets out ten means for implementation, nine of which are framed around resource management, security, extraction, entitlements, consumptive pools, expanding the market in water trading, efficiency, and future ‘adjustment issues’ for users. Only the last objective ‘recognition of the connectivity between surface and groundwater resources and connected systems managed as a single resource’ touches on a more interconnected wholistic view of water systems and land..

We see that the objectives of Clause 23 serve as an excellent reference point for the economic thinking and the extractive resource oriented initiatives of the time, and we wholeheartedly support the view that it’s well overdue for a refresh.

COQUUN-HUNTER RIVER: A PRIME GUIDE FOR NATIONAL REFORM

Our attention and efforts towards the future wellbeing of the Coquun-Hunter River (The River) on Wonnarua, Awabakal and Worimi Country has brought to light relevant recommendations for the National Water Reform. Since the beginnings of the colonial occupation in 1797 The River and its catchment and aquifers have been significantly and persistently subjected to massive 'resource' extraction (of water, coal and timber) and the return discharges of salt loads, toxic and heavy metals and excess nutrients and eroded soils. The River has been largely stripped of riparian protections, and suffers from bank erosion, turbidity and loss of multiple native species (Albrecht, 2000)

In many respects the Coquun-Hunter River Region exemplifies one of the most extensive and aggressive operations of global capitalist extractive industry in Australia, and we are well aware the ecosystem and climate damages are being exported in Scope 3 emissions. The current situation for The River is managed through multiple water and land statutes and complexities. Multiple and compartmentalised government departments administer approvals, licences and monitoring for coal mining, water extraction, water and salinity trading, toxic discharges, erosion and sediment control, and riparian management. Large mines exceeding their water allocation can readily offset fines against increased production revenue, and in the worst cases the legal, consultative and administrative processes have been overturned by political interventions.

In this sense, the Coquun-Hunter River country presents the perfect lesson book/wise teacher for how we might right-size the regional economy through a place-based custodial model, with a co-operative governance for water, land and ecosystems health, and the cultural practices that keep this learning alive (Drinan, 2022).

We are aware of numerous First Nations and non-Indigenous community alliances and initiatives as well as local government collaborations (such as the current Hunter Estuary Coastal Management Plan being undertaken by an alliance of five lower Hunter Councils) that would prosper under the auspices of the NWI ethic of Integrity and First Nations leadership.

COQUUN-HUNTER WELLBEING CHECK

- Coquun-Hunter classified as a highly disturbed waterway (heavy metals, salinity, nutrient load and high turbidity), under ANZECC guidelines,(2017 State of NSW and Office of Environment and Heritage Lower Hunter River Health Monitoring Program).
- Recent state-wide evaluation of river water quality ranked the Lower Hunter estuary 124 out of 160 and the Upper Estuary at 160/160 (NSW DPIE Water Quality Monitoring)

Hunter Mining Industry and Water Resource Management

- Water is a resource to be bought and sold.
- Water Sharing Plans apply on regulated sections of the Hunter River (governed by WaterNSW under NSW Water Management Act 2000).
- WSPs don't permit economic access to water for First Nation peoples.
- Largest share of high security water is allocated to mining interests (and power stations).
- Disadvantages other industries and users, the environment and First Nations custodial responsibilities (Winn, 2014)).
- Water extraction (often bores into hard rock aquifers/deep water) for farms and mines is licenced by DPIE under NSW Water Act 1912 on unregulated catchments, where water rights are attached to the land holding.
- Extraction of hard rock groundwater increases drought vulnerability. No apparent published data on monitoring of groundwater recharge for River catchments east of the Great Dividing Range.

Hunter River Salinity Trading Scheme

- Facilitates discharge of saline water to the Hunter (between Glenbawn Dam and Singleton).
- Mines, industry and power station own credits to discharge.

- Scheme also relies on industry self-regulated discharges in flood flow conditions.
- Demand for credits at last auction exceeded availability.
- General consensus that under drought conditions the legal avenues for discharge are highly restricted.

Distorted Market Economics

- Approved production exceeds actual by 90Mtpa – no market demand for more production. <https://australiainstitute.org.au/initiative/hunter-valley-mine-watch/>
- Mining subsidised via inadequate bonds to remediate voids – estimated at \$8b shortfall in total.
- Legacy of scarred landscape, saline filled pits, ongoing degradation of groundwater and adjacent streams after end of operations. (Drinan, 2022)
- Overstatement of the value of proposed coal projects, and understatement of external climate impacts, in reports by external consultants. <https://australiainstitute.org.au/report/submission-hunter-valley-operations-coal-mine-expansion/>

Solastalgia & Societal Distress

The concept of [Solastalgia](#) describes the distress produced by environmental change directly impacting on people while they are in their home environment and landscape (Albrecht, 2006; Albrecht et al., 2007). The research has particularly identified the impact of large-scale open-cut coal mining on individuals and communities in the Upper Hunter Valley, where people are exposed to negative environmental change exacerbated by a sense of powerlessness over the unfolding change process.

Albrecht writes about Indigenous and settler peoples sharing the same sense of a desolation of a landscape saying ‘people of European descent especially in the Upper Hunter Region finally began to understand what it was like to be aggressively colonised when massive scale open cut mining began terraforming the landscape from the 1980s to the present’ (Drinan 2022, p2).

APPROACH OF NSW WATER STRATEGY

In the Coquun-Hunter the prevailing western law mindset of water as a resource to be managed, extracted, traded and contested as necessary by the most powerful consumers, is pushing the River ecosystem to its limits, and many would say pushing humans to societal and psychological limits in the valley. The [NSW Water Strategy – toward 2050](#) acknowledges that Hunter water management is highly vulnerable. That industry and mining expansion is operating in the face of increasing climate variability. That future ‘Cease to Flow’ events are not improbable.

Thom *et al* (2023) make clear in their study of all NSW east coast estuaries ‘It is apparent that sufficient information now exists for these major estuary flood plains to inform the strategic planning that is required to address the multitude of vulnerabilities existing in these (large river) estuary systems. There are huge implications for existing land holders and local councils as to how to best adapt to the threats to livelihoods resulting from both degraded acid sulfate soil lands and inevitable progressive impacts of sea level rise on flood plains. In addition, all these flood plains will periodically experience extreme freshwater flooding of magnitude similar, if not greater, to that of February 2022 (in the Tweed, Richmond and other systems).

In the NSW Water Strategy ‘Increase resilience to changes in water availability (variability and climate change)’ is determined to be a Priority 4:

- 4.1 New actions to improve and apply our understanding of climate variability and change
- 4.2 Review water allocation and water sharing in response to new climate information
- 4.3 Improve drought planning, preparation and resilience
- 4.4 Better integrate land use planning and water management

It is a highly concerning that addressing climate variability is not of utmost priority given these patterns and changes are apparent, broadly researched and studied, and the consequences are predictable in present time.

ACKNOWLEDGING FIRST NATIONS VOICES SUBMITTED

We are also mindful of the many prior and current submissions to the National Water Initiative, and in particular acknowledge and support the clarity and perspective of First Nations voices in the three submissions following:

Interim First Nations Water Working Group – Submission 48

Key Issues/Recommendations (not excluding of other valuable content offered):

- *National water reform initiatives must highlight that First Peoples need a core, independent and enduring role in the governance of freshwater resources across Australia.*
- *National water reform initiatives must include, and be guided by, a nationally consistent set of principles and protocols for First Nations participation and decision-making.*
- *National water reform initiatives must provide for a legitimate mechanism to enable the participation of First Nations communities in planning and decision-making arrangements.*
- *National water reform initiatives must build First Nations community capacity and capability within the Australian water sector.*
- *National water reform initiatives must take account of the history of First Nations statements and declarations towards water equity and justice.*

Indigenous Land and Sea Corporation – Submission 52

Key Issues/Recommendations (not excluding of other valuable content offered):

- *The NWI should provide a clear and transparent nationally consistent framework for the involvement of First Nations peoples in water planning, management of decision-making, and reforms, consistent with principles embedded in the UNDRIP.*
- *The NWI should provide mechanisms which facilitate First Nations' participation in matters affecting their water rights and interests, consistent with principles embedded in the UNDRIP.*

Terri Janke and Company – Submission 18

Key Issues/Recommendations (not excluding of other valuable content offered):

- *1: That a renewed NWI commit jurisdictions to protecting ICIP rights around water. This can be done through protocols, policies and contracts with First Nations people.*
- *2: That a renewed NWI commit the Australian Government, states and territories to uphold standards of self-determination for First Nations people to be leaders in, and make decisions about, water as it affects their lives. Legislation should expressly protect this right.*
- *3: That a renewed NWI commit the Australian Government, states and territories to work towards Free, Prior and Informed Consent as a national standard for consultation, engagement, management and decision-making, for First Nations people regarding water as it affects their lives. This standard should be formalised in legislation.*
- *4: The First Nations people have a say and can influence the objectives of the NWI, rather than being potentially considered as 'other public benefit outcomes'.*
- *5: That a renewed NWI not only recognise the needs of First Nations people around water, but commits jurisdictions to take proactive steps to address those needs. A renewed NWI should be more specific in holding jurisdictions to account around criteria and reporting on cultural values and uses.*
- *6: That jurisdictions commit to securing the rights to cultural flows. However, it is necessary for jurisdictions to go further. Governments should commit to capacity building: through funding, supporting professional development, and investing in building strong organisations and governance. This supports representative First Nations voices in water management. First Nations leadership and representation should be embedded within all levels of water management, both inside and outside of government roles. First Nations people can be engaged as advisors.*

RECOMMENDATIONS

We have considered the National Water Initiatives and their necessary place-based applications. We have our practical experiences and connections with the Coquun-Hunter, our research, the valuable times spent with First Nations custodians, and the [stories of this region](#).

We speak for the future wellbeing of the Coquun-Hunter, and with some insight into Australian rivers suffering the impacts of insatiable resource industries, and from there make the following recommendations:

1. National recognition and consideration for the health status of a River system and the scale of impacts borne by a River, its local peoples and ecosystems, as a consequence of a national/global extractive or resource-based industry, and including provision for just reparations in future plans.
2. National recognition of the custodial responsibility and authority of local First Nations peoples for a River as a living ancestral being (as witnessed for the Whanganui, the Birrarung/Yarra and Martuwarra Rivers).
3. A National protocol to enable First Nations to participate in and guide a holistic approach along with government agencies and communities in planning for the wellbeing of land, water and biodiversity within a river system.
4. A National reform on water allocations to First Nations custodians to enable economic as well as cultural access to water in Water Sharing Plans (or their equivalent).
5. A National reform for elevating the priority and proportion of water allocations/reserves for environmental flows and seasonal groundwater recharge, backed by clear and robust water triggers for assessment of any proposed industry in the context of environmental flows and the cumulative impact of industry on environmental flows.
6. A National initiative to provide a public platform for whole of river system environmental data, that can provide a reliable predictive tool for First Nations, community, policy makers and operators alike (with data including groundwater levels and recharge, surface flows, salinity, toxicity and turbidity levels, dam storage levels, water allocations and usage, water and salinity trading)
7. A National initiative for large scale riparian protection and repair and revegetation programs.
8. A National initiative to embargo the water allocations recovered from large scale retiring operations (industrial facilities, power stations, fracking and mining operations etc) until such time as a whole of River catchment agreement is in place (as per the above steps).

CONCLUSION: NATIONAL WATER INITIATIVE AND SPHERES OF INTEGRATION

We note the significant inconsistencies, inequities and complexities in NSW and National legislation regarding water. We also note the exclusion of First Nations from economic access to water and more generally the separation of water and land entitlements, contrary to Indigenous cultural worldview and First Law. Our familiar stories of occupation and degradation in the Coquun-Hunter Region also puts paid to the notion that water reform and enabling First Nations custodial responsibility for Country, are in anyway divorced from other integration/integrity processes including:

- Bringing about just economic evaluation (that genuinely includes and accounts for the costs of environmental consumption, loss, despoiling and extinctions),
- Enabling a Western legal systems aligned with First Law (that allows for protection and reverence for the rights and life of a River) and,
- Providing a public platform for clear and comprehensive environmental data to enable broad and informed participation in dialogue and decision making

We anticipate positive and responsible changes emerging through the NWI and the key initiatives for Integrity and First Nations voices, as well as the proposed Nature Positive Legislation, Environment Information Australia, and a national EPA. We also anticipate that any potential harm to future generations becomes a real, relevant and essential consideration in public discourse, and in determining approvals under any new legislations.

We appreciate the opportunity to submit our observations and thoughts on reform.

With kind regards,
Susie, Megan and Irene

24 April 2024

ATTACHMENT 1 MAPS : COQUUN-HUNTER RIVER

REFERENCES

Albrecht, G. (2000, July 2000). Rediscovering the Coquun: towards an environmental history of the Hunter River River Forum 2000, Wyndham Estate, Hunter River. <https://go.exlibris.link/SFC1CJQZ>

Albrecht, G. (2006). Solastalgia. In: University of Waterloo, Faculty of Environmental Studies.

Albrecht, G., Sartore, G.-M., Connor, L., Higginbotham, N., Freeman, S., Kelly, B., Stain, H., Tonna, A., & Pollard, G. (2007). Solastalgia: the distress caused by environmental change. *Australasian psychiatry*, 15(sup1), S95-S98.

Australia Institute (2022) Mind the gaps Unused capacity and unfunded rehabilitation in Upper Hunter coal mines

Australia Institute (2023) Submission to DPIE: Hunter Valley Operations Continuation Proposals

Drinan, J. (2022). *The Sacrificial Valley: Coal's Legacy to the Hunter*. Bad Apple Press.

Hydrocology Consulting for Lock the Gate (2014), *Unfair Shares: How Coal Mines Bought the Hunter River*

Hunter Estuary Alliance (2023) *Hunter River Estuary Coastal Management Program Scoping Study*

Tom, B, Hudson, J, Dean-Jones, P (2023) Estuary contexts and governance models in the new climate era, New South Wales, Australia, *Front. Environ. Sci.* 11:1127839. doi: 10.3389/fenvs.2023.1127839

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