

# Consultation summary 2023

Draft Surface water take - wet season flows policy

Draft Interference with a waterway guideline

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1.0	1 August 2023	Office of Water Security	Review responses and prepare draft
1.1	24 January 2024	Water Resources Division	Administrative amendments for public release

Acronyms	Full form
NT	Northern Territory

### Acknowledgement of Country

The Northern Territory Government respectfully and proudly acknowledges the Northern Territory's Aboriginal people and their rich cultures. We pay respect to Elders past and present. We acknowledge Aboriginal peoples as the traditional owners and custodians of the lands and waters that we rely on for our livelihoods. We recognise the intrinsic connection of traditional owners to Country and value their ongoing contribution to managing the lands and waters. We support the need for genuine and lasting partnerships with traditional owners to better understand cultural connections, and we will work to establish lasting partnerships to manage water together, now and into the future.

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# 1. Introduction

This report provides a summary of the public consultation on the draft Surface water take - wet season flows policy (policy) and the draft Interference with a waterway guideline (guideline). The draft policy and guideline were released for public comment through [Have Your Say](#) on 8 November 2022, with submissions closing on 9 January 2023.

The draft policy was drafted to:

- provide guidance on determining the amount of surface water available to take during the wet season flows from river basins in the Top End (the wet season consumptive pool)
- establish allocation rules for determining the wet season consumptive pool and
- set rules for allocations that protect flows and associated cultural and environment values.

The draft guideline relates to permits to interfere with a waterway. It was released with the draft policy because taking wet season flows is likely to require significant extraction and storage infrastructure that may require an Interference with a Waterway permit under the *Water Act 1992* (Act). The guideline takes a risk-based approach to outline considerations for determining the level of information required to support an application and/or set conditions in a permit.

The aim of the policy and guideline is to provide specific and transparent guidance and rules to inform proponents of the conditions for surface water extraction licence applications to take water during the wet season in the Top End and permits to interfere with a waterway.

## 1.1. Policy and guideline development

Historically, surface water extraction licences in the Top End of the Territory have primarily used water during the dry season. As a result water allocation policy (such as the [Northern Territory Water allocation planning framework](#)) sets allocation rules to ensure sustainable extraction relative to dry season flows. It is recognised that surface water extraction during the wet season (October to April) has different environmental impacts to taking water in the dry season. To address these impacts the draft policy was developed to set new allocation rules to ensure that environmental and cultural values are maintained when surface water in top end river basins is taken during the wet season.

The installation of infrastructure for the take and store large quantities of water may require a permit to interfere with a waterway under section 41 of the Act. The draft guideline was developed to inform proponents on the level of information required to support an application for a permit to interfere with a waterway.

The draft policy and guidelines are informed by water policy, hydrogeologists and modelling experts who consulted robust observational data and modelling of top end river basins collected as part of the Department of Environment, Parks and Water Security (department) long standing monitoring program.

Principles which underpin the draft policy were developed by a Surface Water Steering Committee. Chaired by the department, the group met 7 times and had representation from: Amateur Fishing Association NT, Environment Centre NT, NT Farmers Association, NT Cattleman's Association, Northern Land Council, Northern Australia Indigenous Land and Sea Management Alliance, Power Water Corporation; and received independent scientific advice from Charles Darwin University and fisheries advice from the Department of Trade and Tourism. The consultation report on the steering group is available by following this [link](#).

## 2. Consultation approach

The draft policy and guideline were released for public consultation on the [Have Your Say NT](#) website for 2 months from 8 November 2022 to 9 January 2023. A suite of supporting documents and fact sheets were available on the website to provide further explanation of the policy and guideline. A survey was provided to assist people who visited the site to make a submission by submitting a survey. The questions asked in the survey and a summary of responses are in section 5 of this document.

On 9 November 2022, emails were sent to key stakeholders and the Surface Water Steering Committee advising the draft policy and guideline were available for public comment on Have Your Say and that the department was available to talk to stakeholder groups if they required further information.

There were 3 Facebook posts announcing the policy and guideline were available for public consultation, reminding people to make a submission, providing extra information and advising that the consultation period was going to close soon.

Presentations on the draft policy and guideline were made to the Amateur Fisherman's Association of the NT, Northern Land Council, Recreational Fishing Industry Advisory Committee, Minerals Council of Australia NT Branch, NT Farmers and the Surface Water Steering Committee. The draft policy was presented at the Voices from the Bush conference in August 2022 at Alice Springs and Water in the Bush conference in October 2022 in Darwin before the public consultation period began.

## 3. Feedback received

The department received 24 survey responses and 28 written submissions, and more than 800 template campaign letters supported by the Environment Centre for the NT and Territory Rivers Keep'em Flowing received during the consultation period.

The Have Your Say website was visited 1,400 times and documents downloaded 1,200 times. Have Your Say provided a summary report for this project.

Feedback on the draft policy and draft guideline is summarised below and includes a response to feedback relevant to the scope of the policy and guideline.

### 3.1. Surface water take – wet season flows

All the submissions considered the draft policy to some degree. Many of the comments were considered to be out of scope or operational matters. For example requiring Aboriginal sacred site clearance before approving a licence. Sacred sites clearances are regulated by the Aboriginal Areas Protection Authority under the *Sacred Sites Act 1989*. It is a proponent's responsibility to ensure they satisfy the requirements of that legislation. Other submissions requested more information about the method for monitoring surface water flows, which is a technical and operational issue.

The relevant issues and how they were addressed are summarised below.

#### 3.1.1. Protecting rivers for their cultural and environmental values

Several submissions were concerned that development and surface water extraction could adversely affect a range of environmental, cultural and social values like Aboriginal sacred sites, important wetlands, refugia, rare or threatened species and communities, recreational and commercial fishing. There was concern that these values and their water requirements are not well understood. Poor wet season flows need to be protected.

Most submissions supported important environmental and cultural values should be protected.

The policy takes an approach based on allowing an amount of take that protects poor wet season flows by basing the amount of take on the 25<sup>th</sup> percentile and limiting the amount of take to 5% of this amount. Flows below the 25<sup>th</sup> percentile are usually considered dry years. International studies consider taking more than 10% of flow as a significant amount of take and the policy proposes take 5% as a precautionary approach. The policy recommends that low flow licence conditions are specific to the point of take and are greater transition flows.

The amount of water that can be taken is 5% of the 25<sup>th</sup> percentile of total flows for the three highest flow months of the year based on the previous 50 years flow or modelled rainfall data. The draft policy referred to this as a contingent allocation, this reference has been dropped and the term 'allocation rule' is now used. The final policy has removed the option to use science relevant to the point of take to support taking more than 5% of the 25<sup>th</sup> percentile of total flows for the three highest flow months are being taken. Some submissions were concerned that the policy was not prescriptive enough about what science relevant to the point of take looks like.

### **3.1.2. Water should be only allocated once a water allocation plan is declared**

Several submissions suggested that water only be allocated once a water allocation plan had been declared for the waterway. The policy sets a small amount that can be allocated without a water allocation plan. Water allocation plans are most effective when significant amounts of water are likely to be taken (more than 10% of flow) so they are not necessary when small amounts based on 5% of the 25<sup>th</sup> percentile of total flows for the three highest flow months are being taken. The policy is specific about limiting take to 5% of the 25<sup>th</sup> percentile of total flows for the three highest flow months are being taken and provides a sustainable option in the absence of a water allocation plan.

### **3.1.3. Concern over increasing water extraction and having impact on cultural, environmental and social values associated with surface water**

There was also some confusion about the intention and extent of the draft policy. Some submissions indicated concern over the draft policy allowing more water to be taken than currently permissible. There was also concern about allowing water to be taken in all wet seasons even when there are low river flows. This is not the case and the policy has been developed to ensure conditions for water extraction licences are based on science supporting the consumptive pool of the whole river basin calculated as 5% of the 25<sup>th</sup> percentile of total flows for the three highest flow months of the year. This is well below the current volume of water that can be taken if applying the contingent rule for surface water in the Top End set out in the Water allocation planning framework, which is currently 20% of river flow.

### **3.1.4. Science and monitoring to inform good decision making**

Some submissions were concerned about the science that supports water allocation decisions, its relevance and independence. The policy has removed the option to use scientific research relevant to the point of take to determine the amount of water that can be taken. This reflects the position that science to inform take above 5% of the 25<sup>th</sup> percentile of total flows for the three highest flow months is best done at the catchment level, and combined with a consultation process through a water allocation plan.

Several submissions wanted the science behind making 5% of the 25<sup>th</sup> percentile of total flows for the three highest flow months of the year available to be better explained. This is not required in the policy but is addressed in the Q and A document that accompanies the policy.

### **3.1.5. Licencing conditions and process**

Some submissions wanted more detail about the licence conditions and process. These are operational issues guided by existing policy for processing a water extraction licence application or the factors the Controller of Water Resources considers when making a water licencing decision.

### 3.1.6. Compliance and regulation

Some submissions wanted more detail about compliance and regulation. These are operational issues guided by the annual compliance program.

### 3.1.7. More water should be able to be taken

Making 5% of the 25<sup>th</sup> percentile of total flows for the three highest flow months of the year available for use provides a large amount of water for growth and development over the next 5 to 10 years. Based on catchment yield data provided by CSIRO in 2009 taking 2% of the total annual flow (an approximation of the 5% of the 25<sup>th</sup> percentile of the three wettest months) there is enough water to support nearly tripling the volume of current licence entitlements across the entire Northern Territory (the majority of these entitlements are groundwater based). There is no need to increase the amount that can be taken under the proposed policy for most river basins. In river basins where there is more demand, there is the option to set a sustainable level of take through a water allocation plan.

## 3.2. Interference with a waterway guideline

There were 20 submissions received that provided feedback on the guideline. Feedback received and how it has been addressed is summarized below.

- The majority of comments are considered out of scope, as they are either process-orientated or make suggestions that go beyond the boundaries of existing legislation.
- Some of the process orientated suggestions included: ensuring greater consultation with traditional owners, identification and protection of key ecological locations, publically advertising permit applications and maintaining a register of permits similar to the water extraction licence register, and substantially more detail regarding the information required for a permit application and the level of risk-mitigation a granted permit would require.
- Some stakeholders raised concern with the concept of self-assessment, suggesting that it was highly technical and would result in a large number of dams being constructed across the Territory. However, the standard for referral is appropriately precautionary, requiring any activity that may withhold flow, or impact on the functioning of a waterway, to obtain a permit.
- Suggestions that were unable to be included because they went beyond the boundaries of the existing legislation included: mandating an Aboriginal Areas Procreation Authority certificate, new legislation, stipulating environmental and cultural values in assessment, legacy infrastructure management, Ramsar Wetlands, and requiring an environmental impact assessment for all water extraction licence applications.
- Where possible the guideline has been amended to take into accounts of concerns raised by commenters. This includes providing clarification:
  - that the definition for an interference is not cumulative: meeting any one of the three criteria means an activity would be considered an interference, and must obtain a permit to lawfully continue
  - regarding the application of the guideline to wetlands, floodplains, lakes and other non-flowing rivers
  - that a Strahler stream order does not reflect the ecological or cultural importance of a site and
  - that the matrix in Attachment A of the guideline is only to assist people in understanding whether a permit is required to lawfully conduct the activity, and the type of information they may be required to provide. Applicants do not determining their regulatory status.

The final policy also notes that where a licence is granted allowing wet season take, the scope of that licence may include conditions that address interference activities.

## 4. Feedback response

The Surface water take - wet season flows policy and the Interference with a waterway guideline have now been finalised.

The policy and guideline are available in the policy section on the department's website:

<https://depws.nt.gov.au/water>

### 4.1. Changes to the draft policy

The following changes were made to the draft policy in response to the feedback received:

- updated terms are now used that refer to the Act where possible
- the purpose and scope has been simplified
- allocation rules are now based on available scientific information using 5% of the 25<sup>th</sup> percentile for the three highest flow months of the year unless there is a water allocation plan; removing the option to use relevant science if more than 5% is requested
- a new section has been added on water allocation plans
- references to determining reliability of flows have been removed and
- factsheets, Q and As and other related documents have been updated to reflect changes to the policy.

### 4.2. Changes to the draft guideline

The following changes were made to the draft guideline in response to the feedback received:

- updated terms are now used that refer to the Act where possible and
- factsheets, Q and As and other related documents have been updated to reflect changes to the guideline.

## 5. Feedback in detail

### 5.1. Have Your Say Survey responses

When the draft policy was released, a survey was provided on Have Your Say to provide a structured response to the policy and guideline. The following questions were asked and responses received.

Survey questions	Response
<b>1 Where do you live? (Question type: radio button)</b>	
Darwin or Palmerston Urban	29%
Darwin Rural area	25%
Katherine	4%
Victoria River Region	4%
Daly River Region	4%
Roper River Region	4%
West Arnhem Region	0
East Arnhem Region	0
Tiwi Islands	4%



Survey questions	Response
Another part (southern) of the Northern Territory	0
Interstate	25%
Overseas	0
<b>2. What statement below best describes your interest in the policy? (Question type: check box)</b>	
I would like to use surface water during the wet season in the future	1
I am an existing water user whose business depends on surface water	1
I am an interested community member in the social and economic wellbeing in the NT	1
Other (please specify)	1
<b>3. Do you think a Surface water take – wet season flows policy is needed? (Question type: radio button)</b>	
Strongly agree	75%
Partly agree	8%
Not sure	0%
Partly disagree	4%
Strongly disagree	8%
I'm not interested in the policy	4%
<b>4. How well do you think you understood the policy? (Question type: radio button)</b>	
I didn't read it	0%
I didn't understand most of it	0%
I understood some of it	0%
I understood most of it	42%
I understood all of it	52%
<b>5. If there are parts of the policy you don't understand, which parts and how could they be improved? (Question type: essay)</b>	
<b>6. What do you think is the best way to work out how much surface water can be allocated? (Question type: radio button)</b>	
Using the best available science for the river basin	46%
Using the contingent allocation rule	17%
Another way (Tell us in question 9 another way if you chose this option)	8%
I don't think any surface water should be taken	29%
<b>7. For the contingent allocation rule what do you think about the 5% cap the policy will allow to be taken? (Question type: radio button)</b>	
I think it is too much water	29%
I think it is too little water	8%
I think it is about the right amount of water	42%
I'm unsure what the sustainable amount of water should be	21%
<b>8. Did you understand how the contingent allocation rule is worked out? (Question type: radio button)</b>	
Yes	92%
No	8%
<b>9. Do you have any comments on how the policy could be improved? (Question type: essay)</b>	

Survey questions	Response
<b>10. Do you think an Interference with a Waterway guideline is needed for the Northern Territory? (Question type: radio button)</b>	
Strongly agree	71%
Partly agree	21%
Not sure	0%
Partly disagree	4%
Strongly disagree	0%
I'm not interested in the guideline	4%
<b>11. Do you have any comments on how the guideline could be improved? (Question type: essay)</b>	

For the part where a written response was received, the responses are summarised below for those questions.

Q5. If there are parts of the policy you don't understand, which parts and how could they be improved?

- Need to explain the difference between this policy and floodplain harvesting
- No surface water should be taken
- Dry season take should not occur
- No provision for protecting ecosystems
- Who is going to regulate the activities.

Q9. Do you have any comments on how the policy could be improved?

- There needs to be a better explanation of the science that supports the policy and the scientific evidence and independence of the science required to support allocation of water in accordance with the policy.
- The policy is conservative and the amount that can be taken should be able to be increased in the future.
- There is not enough information about how this will be monitored. The use of smart meters is suggested.
- Compliance with the policy needs to be explained and should be independent.
- The policy should be expanded to include the arid zone particularly in the Barkly Region.
- The contingency rule should only be in place until science is available for the catchment.
- The contingency rule should be renamed.
- There is a risk that contingency rules become "gospel" and are difficult to shift or challenge.
- The policy should be that no surface water should be taken its needed for the environment.
- The policy is too precautionary at 5% and should be increase otherwise growth of the Territory will stagnate.
- Best available science may not be enough, it needs to be enough to make good decisions. Who will determine how much science is enough? Is the science independent?
- The science based approach should be removed and only the contingent allocation rule applied.
- Downstream impacts of taking water are not adequately addressed in the policy.

Q11. Do you have any comments on how the guideline could be improved?

- The guideline uses the Stahler stream classification system and is not clear about the guidelines applications to other types of waterways that are not streams or rivers.

## 5.2. Formal written submissions

28 formal submissions were received from:

A&J Orban	Leith Hopkins
Aboriginal Areas Protection Authority	Louie-Jane Gamble
Aboriginal Land Economic Development Agency	Michaela Vaughan
Alastair Wood	Minerals Council of Australia NT Branch
Amateur Fisherman's Association NT	Northern Land Council
Arid Lands Environment Centre	Northern Prawn Fishery Industry
Association of Mining and Exploration Companies	NT Farmers
Australian Ilmenite Resources Pty Ltd	Patrick Collins
Brian Teakle	Pew Charitable Trust
Charles Darwin University, Research Institute for the Environment and Livelihoods (RIEL)	Rochelle Christian
Environment Centre NT	Slattery and Johnson
Environment Defenders Office	The Australia Institute
Janet Dufall	The Waterways Network
Jessie Wells	Yugul Mangi Development Aboriginal Corporation

## 5.3. Campaign letters

There were 823 campaign letters received as follows:

- Environment Centre NT (141 received)
- Territory Rivers Keep'em Flowing - Pew Charitable Trust (682 received)

The campaign letters said our free flowing rivers are valuable and should not be risked by taking surface water. The letters supported by the Environment Centre for the NT and Territory Rivers Keep'em Flowing had very similar content. The main points were:

- value rivers and flood plains for culture, biodiversity, tourism and lifestyle
- rivers are important for traditional, recreational and commercial fishing
- want healthy free flowing rivers with longitudinal and lateral connectivity maintained
- take no more water
- no dams or structures and
- don't make similar mistakes to the Murray Darling Basin or Tasmanian Hydro - learn from them.

### 5.3.1. Environment Centre of the Northern Territory

There were 141 letters from the Environment Centre of the Northern Territory website:

To: Chief Minister Natasha Fyles, Environment Minister Lauren Moss, and the Department of Water Security,

I am very concerned about the future of our rivers and coasts - our great Territory rivers underpin our lifestyle, tourism industry and cultural heritage.

Very soon, the NT Government will be making decisions on the draft 'Surface water take - wet season flows' policy as well as the draft 'interference with a waterway' policy. These decisions will affect the future of our floodplains and iconic Territory rivers and coasts - a decision that Territorians want the Government to get right from the start.

Wet season flows power the natural cycle of our river systems, and these rivers systems are the lifeblood for our coasts and seas. I'm concerned about big industry's plans to take billions of litres of water from our floodplains and rivers in the wet season. Industry wants to take up to 520 billion litres of water from the Douglas-Daly, which is a recipe for disaster for the region. The mighty Roper River is one of the Territory's greatest rivers and flows into Limmen Bight Marine Park, supporting some of the best fishing in the Territory, incredible marine life and a growing tourism economy. This iconic Territory river has also been earmarked for water extraction and a dam proposal for industrial-scale irrigated crops like cotton.

If dams or other structures are built that stop billions of litres of water from reaching our rivers and coasts, we put at risk: endangered species, tourism businesses, fishing and the future of iconic Territory rivers.

We've seen the disastrous impacts when the promises of 'floodplain harvesting' go wrong on the Murray-Darling River. It would be a huge mistake to repeat them in the Territory. Any policy that puts our rivers at risk is one that Territorians are concerned about. Healthy rivers are central to our Territory way of life, the great NT fishing experience and jobs. Our rivers shouldn't be put at risk.

That's why I'm calling on the NT Government to reject the 'Surface water take - wet season flows' policy as well as the 'interference with a waterway' policy, and instead strengthen protections for our rivers and floodplains. This means ensuring no more water is taken from these systems beyond current levels and guaranteeing our rivers and floodplains will remain healthy for our future.

I urge you to guarantee the health of our rivers and floodplains. This starts with listening to communities who want to see strengthened protections, no extra water to be taken from these river systems and ensuring that our floodplains will remain healthy into the future.

### 5.3.2. Territory Rivers Keep'em Flowing

There were 682 letters from the Territory Rivers Keep'em Flowing website:

To: Chief Minister Natasha Fyles, Environment Minister Lauren Moss, Department of Water Security

I am very concerned about the future of our rivers and their floodplains. These great Territory rivers underpin our lifestyle, tourism industry and cultural heritage.

The health of our rivers is at stake with the decisions we make today. Healthy floodplains equal healthy rivers. Wet season flows power the natural cycle of our river systems. I'm concerned that some industry proposals include plans to take billions of litres of water from our rivers and floodplains in the wet season. Industry plans to take up to 520 billion litres of water from the Douglas-Daly (NT Farmers Association Plant Industries Economic Impact Analysis 2020) is a recipe for disaster for the region.

Very soon, the NT Government will be making decisions on a proposed 'surface water take - wet season flows' policy and an 'interference with a waterway' policy. These decisions will affect the future of our floodplains and iconic Territory rivers - a decision that Territorians want the Government to get right from the start.

That's why I'm calling on the NT Government to reject this policy and guideline, and instead strengthen protections for our rivers and floodplains. This means ensuring no more water is taken from these systems beyond current levels and guaranteeing our rivers and floodplains will remain healthy for our future.

If dams or other structures are built that stop billions of litres of water from reaching our rivers and aquifers, we put at risk: endangered species, tourism businesses, fishing and the future of iconic Territory rivers.

We've seen the disastrous impacts when the promises of 'floodplain harvesting' go wrong on the Murray-Darling River. It would be a huge mistake to repeat them in the Territory.

Any policy that puts our rivers at risk is one that Territorians who care about our rivers, fishing and communities are concerned about. Healthy rivers are central to our Territory way of life, the great NT fishing experience and jobs.

I urge you to guarantee the health of our rivers and floodplains. This starts with listening to communities who want to see strengthened protections for our rivers and floodplains, no extra water to be taken from these river systems and a guarantee to Territorians that our floodplains will remain healthy into the future.

## 5.4. Facebook

Facebook posts made on:

- 8 November 2022 announcing the draft policy and guideline were available on Have Your Say
- 11 November 2022 providing information about the policy and
- 12 December 2022 reminding the consultation period closes on 9 January 2023.

**Environment and Natural Resources NT**  
8 November 2022 · 🌐

The Northern Territory Government has released the draft Surface Water Take – Wet Season Flows Policy for public comment.


The Policy will apply to surface water extraction licences that take water (such as from rivers and creeks) during the Top End wet season to store and use during the dry season.

This addresses the current policy gap allowing licence holders the ability to extract up to 20% of flow in a waterway during the dry season to further safeguard the environment, culture and important ecosystems that rely on river flows.

This is your opportunity to share your views on environmentally sustainable use of wet season flows.

Visit Have Your Say NT before Monday 9 January 2023.  
<https://haveyoursay.nt.gov.au/wet-season-flows-policy>

Picture: Roper River at Redrock



**Have your SAY NT**

Provide your feedback on the draft Wet Season Flow Policy

**Environment and Natural Resources NT**  
Government organisation

[Learn more](#)

**Environment and Natural Resources NT**  
11 November 2022 · 🌐

There's been a lot of misinformation already about the Draft Surface Water Take – Wet Season Flows Policy.

To hear factual and balanced views on how our flowing rivers are better protected by this draft policy you should listen to these ABC interviews  
<https://www.abc.net.au/.../surface-water-plan.../101630270>

You can also go to [haveyoursay.nt.gov.au/wet-season-flows-policy](https://haveyoursay.nt.gov.au/wet-season-flows-policy) to read and comment on the draft policy.



**ABC.NET.AU**

**New surface water plan for NT - ABC**  
The NT Government has released its draft "Surface Water Take – Wet Season Flows Policy".

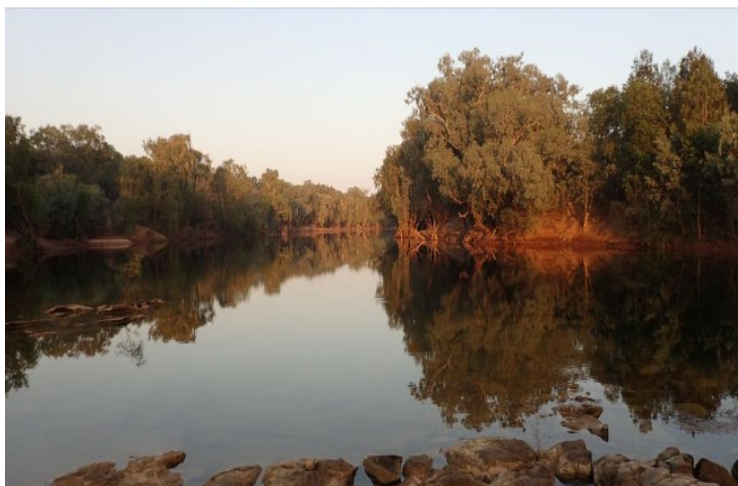
**Environment and Natural Resources NT**  
12 December 2022 · 🌐

The draft Surface Water Take - Wet Season Flows Policy and draft Inference with a Waterway Guidelines were released for feedback on 8 November 2022.

Don't miss out on your opportunity to say how water should be taken from rivers and waterways during the wet season in the Top End.

There are only a few weeks to go before the submission period closes. Make your submission on Have Your Say by 9 January 2023.

<https://haveyoursay.nt.gov.au/wet-season-flows-policy>



## 6. References

Bang the Table Engagement (2023 unpublished), *Have Your Say Northern Territory: Draft Surface Water Take – Wet Season Flows Policy, Summary Report for 11 November 2016 to 08 January 2023*, Darwin, Northern Territory

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Northern Territory Government (2022) *Have Your Say Northern Territory: Draft Surface Water Take – Wet Season Flows Policy* website- <https://haveyoursay.nt.gov.au/wet-season-flows-policy>