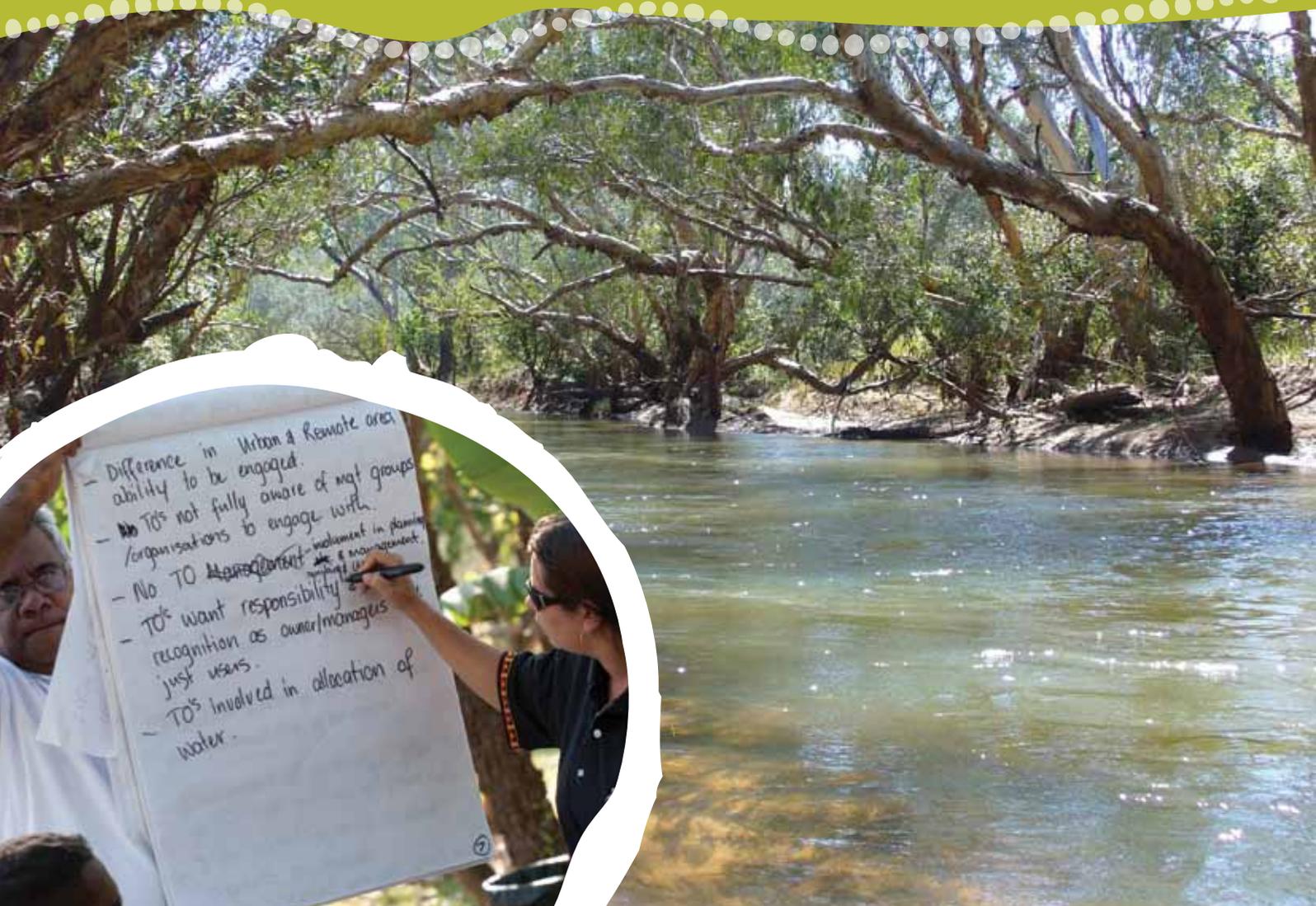


FACILITATORS' GUIDE TO INDIGENOUS WATER PLANNING

INDIGENOUS WATER PLANNING AND ENGAGEMENT OVERVIEW



- Difference in Urban & Remote areas ability to be engaged.
- ~~No~~ TOs not fully aware of mgt groups /organisations to engage with.
- No TO ~~Management~~ ^{involvement in planning} ~~involvement in~~ ^{management}
- TOs want responsibility ^{recognition as owner/managers}
- TOs just users.
- TOs involved in allocation of water.

INDIGENOUS WATER RIGHTS IN AUSTRALIA

The inclusion of the interests of Australia's diverse Indigenous population in water reform was assented to by all levels of government in Australia as part of the 2004 Intergovernmental Agreement on the National Water Initiative (NWI).

Sections 52-54 of the NWI make explicit the requirement for Indigenous participation in water planning. In addition, these sections establish an onus on the Australian and state governments to ensure that catchment-based water allocation plans incorporate Indigenous social, spiritual and customary objectives, and strategies for achieving these objectives (Council of Australian Governments [CoAG] 2004a).

These sections reflect a response to calls for improving the involvement of Indigenous communities and the protection of Indigenous water rights and interests in national water reform by peak Indigenous organisations and Traditional Owners around the country. Indeed Jackson and Altman contend that the negotiators of the NWI had specifically intended to address the previous neglect of Indigenous interests in water policy (2009: 30).

However these sections are not only to be understood as a correction to the historical exclusion of Indigenous people from decisions about water access and management. They can equally be seen as a pragmatic reform measure based on the substantial amount of the landscape, and particularly high priority conservation lands and waters, which is currently managed under the Indigenous estate. Research conducted by Altman et al (2007) found that as much as 20% of Australia's total landmass is held under Indigenous tenure, and that this figure could be as high as 60% in areas of the country's tropical north.

Perhaps more importantly, the inclusion of these sections in the NWI creates a distinct class of stakeholders: the Traditional Owners and Indigenous communities responsible for the area subject to a water plan. These sections commit the governments of Australia to acknowledging and protecting the special category of values that Indigenous stakeholders possess as Traditional Owners of the country's water resources.

The objectives of the NWI, and the program of national water reform generally, relies on implementation through either state legislation or at the level of catchment-based

water resource plans. As McFarlane (2004) identifies, the NWI provisions are "discretionary", which is intended to allow water planning agencies flexibility to tailor water reform to the needs, context and aspirations of specific catchments. However, recent assessments of the progress of water reform in Australia (including National Water Commission [NWC] 2011, 2009; Hampstead et al 2008; Gentle and Olzsak 2007; Tan et al 2008) have found there is considerable inconsistency in the incorporation of Indigenous interests in water plans. Historically, water planning agencies have generally failed to incorporate strategies for the realisation of Indigenous values and aspirations in water planning instruments, and reviews of water planning in Australia have identified improved consultation practices with Indigenous communities as a key mechanism for reform.

To date, there are no national guidelines to ensure the inclusion of Indigenous rights or interests in water reform, and the explicit inclusion of Indigenous interests in water plans has been uneven and rare (NWC 2007: 39, NWC 2011: 44-46).

Necessarily, the process of identifying the social, spiritual and customary aspirations of Indigenous communities within a catchment cannot be achieved without meaningful collaboration. As such, there is a need to implement planning processes that facilitate the direct participation of Indigenous people in defining and articulating their needs and interests in the catchment's water resources.

A process for establishing agreed protocols for engagement is critical to:

- provide assurance and equitable conditions for consultation and negotiation
- guarantee input into decision making
- protect Indigenous knowledge; and
- build long term cross-cultural understanding.

The development of principles and protocols for culturally appropriate involvement of Traditional Owners and Indigenous communities in water allocation decisions, and in resource management generally in Australia, is an ongoing project with a significant historical precedent. Processes for effective Indigenous engagement have been subject to rigorous development in the allied fields of cultural heritage and natural resource management,



Chair, Karajarri Traditional Land Association, Mervyn Mulardy and son, Karajarri Country, WA

INDIGENOUS WATER ENTITLEMENTS

and there is a high degree of opportunity for the current best practice in this field to inform engagement for water resource planning.

Protocols and the standards necessary to ensure meaningful Indigenous participation in water planning and management have been outlined in a number of statements, public submissions, consultation reports and agreements in different contexts across Australia (for example, Murray Lower Darling Rivers Indigenous Nations 2003; Boomanulla 2002; Lingiari 2002; Rea et al 2008; McFarlane 2004; Indigenous Water Policy Group 2008; Behrendt and Thompson 2004; Morgan et al 2004; Douglas 2004). Below is a list of some of the more consistent themes within these statements.

- Indigenous culture and values must be identified, respected and incorporated in natural resource planning and implementation, particularly with respect to the distinct connections maintained by Indigenous people to those resources.
- Indigenous identity and status of traditional ownership and custodianship must be recognised and reinforced through the planning process. This should include the recognition and respect of customary governance arrangements around the management of resources.
- Indigenous people must be recognised as a unique class of stakeholders in resource management processes, due to the inextricable connectivity between identity, spirituality and water.
- Indigenous knowledge about the environment must be afforded parity with scientific knowledge in decision-making processes around water and catchment

management. Where possible, active measures must be made to ensure legal protection of community intellectual property rights with regards to this knowledge.

- Cultural diversity of Indigenous people must be respected and recognised, including the differences in traditions, laws, sites, stories and cultural practices or traditional practices across communities.
- Planning processes must respect the cultural practices and custodial responsibilities of Indigenous peoples, which may impact on timeframes and could require flexibility in procedure. This also includes respect for community protocols as to who can legitimately speak for country in accordance with any designated arrangements for nominations and representation.
- The recognition of ongoing sovereignty and traditional custodianship of natural resources requires that the economic benefits that flow from natural resource management must be shared with Indigenous communities.

Some of the recent recommendations (for example, First Peoples Water Engagement Council 2011; NWC 2011) for improving the quality of Indigenous participation in water planning have included:

- providing resources to build capacity, including culturally appropriate information about water resource management and planning, water infrastructure, water sharing plans, and market trading;
- establishing effective and collaborative partnerships between governments and Aboriginal people, enabling information sharing and capacity building; and
- allowing adequate time for community consultation, decision making and comment on draft water plans.

The allocation of Indigenous-specific water entitlements, for cultural or commercial purposes, is a frequently asserted mechanism for the protection of Indigenous interests in water plans. Of particular significance is the work on Indigenous rights in commercial water allocations undertaken by the NAILSMA Indigenous Water Policy Group (IWPG) since 2006. The IWPG is funded by the National Water Commission to ensure the continual meaningful inclusion of Indigenous aspirations, interests and issues in water resource planning and management in north Australia. In July 2008, the IWPG issued a policy statement on Indigenous Rights in Commercial Water Allocations in North Australia (IWPG 2008). Although a number of other protocols for engagement in water allocation have been developed for Australia, the IWPG statement focuses on allocations for commercial purposes, and includes as a primary proposal:

“Any new water plan in tropical Australia must, irrespective of historical allocation, include an equitable Indigenous allocation from the consumptive pool for commercial purposes.”

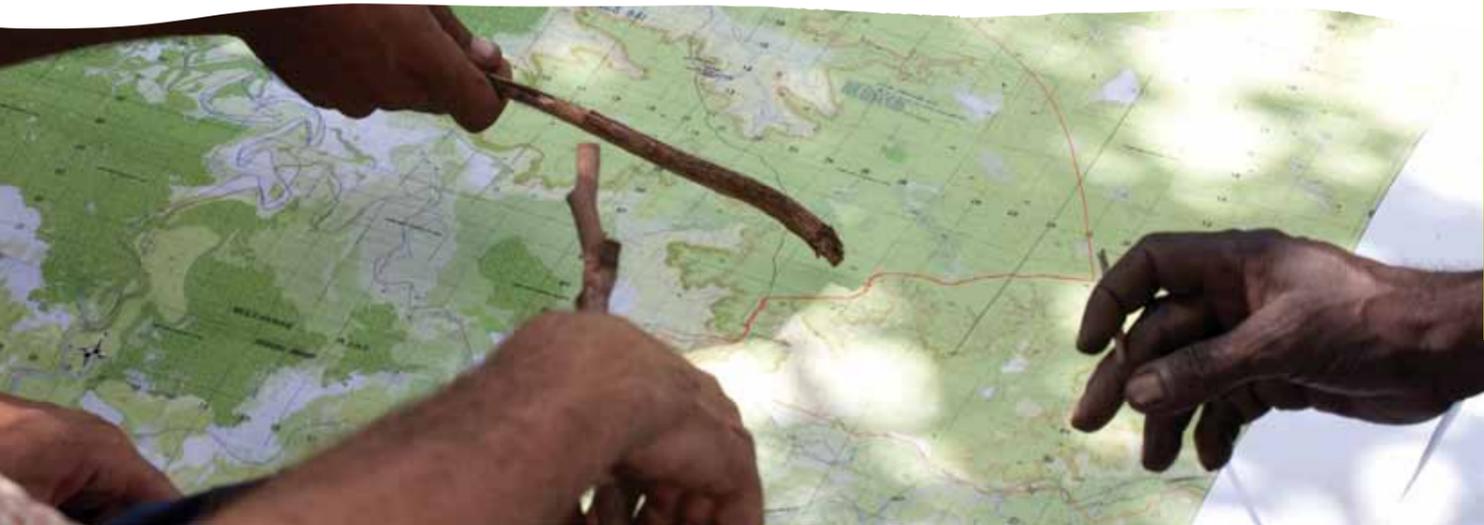
The call for the strategic reserve of an Indigenous-specific water allocation for commercial purposes is justified in relation to access to enforceable property rights and the achievement of social justice. The trajectory of water reform in Australia has tended towards an increased reliance on market mechanisms such as trading to determine trade-offs for water use and redress instances of over-allocation. Non-participation in the water market

in this context is tantamount to non-participation in the primary mode of decision-making, and is unlikely to provide security to Indigenous interests in the absence of enforceable property rights. The NWI seeks as its primary motive the establishment of resource security, and for consumptive water this tends to be about establishing security of entitlements to existing users. In this context, Indigenous rights and interests in water resources are not guaranteed, but determined in competition with other users with recognised interests and in some cases, access to expanded purchasing power (Altman and Jackson 2009).

The call for a strategic reserve reflects the desire of many Indigenous communities to have their interests in and rights to water given the commensurate status and security of legally enforceable tenure granted to other consumptive water users, rather than being defined on the basis of environmental or cultural flow requirements, or, as Douglas puts it, “shaped by default by the complex outcome and interplay of court and administrative processes” (2004: 13). In addition, it is seen to align favourably with the various initiatives aimed at addressing the significant levels of disadvantage experienced by Australia’s Indigenous population (for example, CoAG 2004b). Access to water entitlements is seen to have potential economic and social development corollaries that could serve to complement the development of micro-economic and cultural-ecological enterprises which will contribute to greater autonomy and self-reliance (Craig 2007).

The limited attention to establishing strategic water reserves for Indigenous people to date is linked to the assumption that Indigenous interests in water are limited to the protection of cultural heritage. This assumption, although consistently refuted in position statements and submissions, has tended to prevent consideration of the commercial interests that Indigenous communities may have in developing water resources. As a consequence, progress on the establishment of Indigenous water reserves in Australia has been limited.

“ANY NEW WATER PLAN IN TROPICAL AUSTRALIA MUST, IRRESPECTIVE OF HISTORICAL ALLOCATION, INCLUDE AN EQUITABLE INDIGENOUS ALLOCATION FROM THE CONSUMPTIVE POOL FOR COMMERCIAL PURPOSES.”





TRACK RESEARCH PROGRAM

Statutory water rights for Australia's Traditional Owners and Indigenous communities remain one of the major unrealised promises of the national water reform process. While water planning agencies in north Australia have responded through the creation of some legal and policy provisions for Indigenous water reserves, the gap between 'hypothetical' entitlements and the use of water resources for self-determined economic development opportunities persists. Below are some of the challenges to the realisation of water rights that have been identified.

- **Establishing terms of engagement:** Processes that formalise relationships and establish a more level platform for negotiation between Indigenous communities and government agencies in decision making about water management.
- **Defining or measuring Indigenous water use and flow requirements:** Tools and processes that enable greater clarification around water needs for cultural and consumptive purposes.
- **Access to the consumptive pool:** Processes for articulating consumptive water needs and public benefit, outlining governance arrangements and determining procedures for access.
- **Knowledge and information exchange:** Methods for enhancing cross-cultural knowledge exchange, recording Indigenous knowledge, protecting Indigenous property rights, and communicating Western hydrological knowledge and predictions.
- **Participatory goal setting:** Participatory planning techniques which allow social and economic aspirations in relation to water needs to be articulated.
- **Water management regimes:** Guidelines for determining the role of Indigenous groups in managing water, such as managing environmental flows or providing other environmental services or monitoring.

Two concurrent projects funded by the National Water Commission from 2007 to 2011 developed research, capacity building and facilitation programs designed to advance Indigenous interests and engagement in decision making and the management of tropical rivers: the Tropical Rivers and Coastal Knowledge (TRaCK) research program, and the NAILSMA Indigenous Community Water Facilitators Network. While these projects are among a number of initiatives to improve the statutory recognition of Indigenous water rights, they both outline clear recommendations for improving future practice.

The TRaCK research hub initially received funding from the Department of Environment, Water, Heritage and the Arts, the National Water Commission, Land and Water Australia, the Queensland Government and the Fisheries Research and Development Corporation. It was one of the consortiums formed under the Commonwealth Environmental Research Facilities scheme. Drawing together more than eighty of Australia's leading social, cultural, environmental and economic researchers, TRaCK focused on Australia's tropical rivers and estuaries with a degree of intensity, coordination and integration not previously seen in the region. It sought to provide the science and knowledge that governments, communities

and industries need for the sustainable use and management of Australia's tropical rivers and estuaries. A key element of the program included a coordinated approach to Indigenous engagement. Several research themes directly targeted Indigenous knowledge, Indigenous perspectives on the region's ecology, and how changes to ecology can impact Indigenous livelihoods in the region. Projects included research on building better Indigenous participation in water governance, collaborative water planning, Indigenous values and water flows, opportunities for sustainable enterprises, and detailed investigations of Indigenous rights in water.

INDIGENOUS COMMUNITY WATER FACILITATORS NETWORK

Established by the North Australia Indigenous Land and Sea Management Alliance (NAILSMA) in 2008, the Indigenous Community Water Facilitators Network (ICWFN) acted as a vehicle to ensure that Indigenous interests at the community level are articulated, encouraged and incorporated into water policy decisions, planning and water allocation processes. The aim of the ICWFN was to establish a community-based network to advance Indigenous engagement in research and management of tropical rivers, water use and conservation across north

Australia. Six regionally-based Indigenous Community Water Facilitator positions were established in priority catchments of north Australia to support communities to articulate their interests and values relating to water management, and to act as vehicles so that these community interests are articulated at the policy level. The overall outcomes of this level of engagement were not limited to water management, but included health, economic, cultural, environmental and social benefits for Indigenous participants.