

A Policy Statement on North Australian Indigenous Water Rights

Issued by the North Australian Indigenous Land and Sea Management Alliance
and the Indigenous Water Policy Group November 2009.

Introduction

As traditional owners we have an inherent right to make decisions about cultural and natural resource management in Northern Australia. In accordance with Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), we must have a central role in the development, implementation and evaluation of policy and legislative or administrative measures that may affect us concerning water.

This Policy Statement should be seen in the context of the following assumptions:

- Water is a limited resource and in some catchments the appropriateness of the division of water use into consumptive and environmental allocations remains unclear. While the Indigenous Water Policy Group position claims a guarantee of an equitable allocation to Indigenous peoples from the consumptive pool, such a rights-based claim is made on the assumption that environmental and cultural flows are properly assessed and protected.
- Indigenous knowledge is integral for any decision making (in accordance with Article 31 UNDRIP). Indigenous people do not wish to exacerbate avoidable environmental degradation associated with over-allocation of water and therefore believe that water allocations should be based on the best available knowledge (including traditional and contemporary Indigenous knowledge and western scientific knowledge), sensitive to variations in the flow regime and open to review and adaptation.
- Maintaining water flows is fundamental to ensuring the vitality and existence of Indigenous heritage and spirituality.
- Water, land and Indigenous people are intrinsically entwined. (Mary River Statement, August 2009.)

Recognition and reaffirmation

The NAILSMA Indigenous Water Policy Group (IWPG) maintains, in accordance with Article 19 of the UNDRIP that,

'states shall consult and cooperate in good faith with the Indigenous people concerned through their own representative institutions, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them'.

The IWPG expects the Australian Government to be responsive to the rights of Indigenous peoples in accordance with the United Nations Declaration, specifically:

- to maintain and strengthen their spiritual relationship with their traditionally owned territories and waters (Article 25); and,
- to approve the commercial use and development of water on their traditional territories. (Article 32.2)

The Australian Government indicated its formal support for the UNDRIP in April 2009. Preceding this, the Commonwealth, State and Territory governments of Australia committed to policies to 'close the gap' in socio-economic status between Indigenous peoples and the broader community.

The IWPG states that recognising and enhancing Indigenous cultural and commercial rights in the ownership, management and use of water is fundamental to facilitating Indigenous economic development and reducing Indigenous disadvantage.

The recognition of native title in Australia has been a significant advance in the position of Indigenous peoples. Indigenous rights to land and waters are recognised within the Native Title Act (1993). The non-discriminatory protection of native title is a recognised human right.

It is therefore important to Indigenous peoples to build upon the rights recognised under the Native Title Act to ensure all Indigenous peoples can benefit from the commercial use of waters on their traditional lands.

Furthermore, Indigenous people are ready to engage and contribute to the Council of Australian Governments (COAG) water policies and the National Water Initiative (NWI). The NWI requires significant improvement with respect to the recognition of Indigenous rights and interests.

The Garma International Indigenous Water Declaration (2008) acknowledges that water is essential for life and that access to clean water is a human right. First Nation peoples, the Indigenous people of Australia, have maintained sovereignty over their lands and waters from which they obtain their spiritual and cultural identity, life and livelihoods.

The IWPG maintains in accordance with the Mary River Statement (2009) that the Indigenous peoples of northern Australia are the traditional owners and custodians of the land and waters of the region. Water land and Indigenous people are intrinsically entwined.

The IWPG advocates for the recognition of Indigenous rights to the ownership, management and use of waters for both customary and commercial purposes. Its advocacy for commercial rights is a pragmatic response to the COAG Water Reform Agenda, specifically the NWI, and the sudden pace of development in the north of Australia.

The Indigenous Water Policy Group

The IWPG is an initiative created and facilitated by NAILSMA.

Its members represent some Indigenous land councils and corporations across north Australia and other Indigenous institutions and community groups. (For more details go to www.nailsma.org.au)

Formed in 2006, it is the only construct in the north of Australia examining Indigenous water policy and coordinating across state and territory jurisdictions. The IWPG continues the work of the Lingiari Reports (2002) to address Indigenous rights, responsibilities and interests in water. The IWPG aims to improve people's awareness about government water reform agendas and to engage in research relating to Indigenous rights, responsibilities and interests in land and water resources.

The IWPG is one of three initiatives of the NAILSMA Indigenous Water Resource Program. The IWPG works in parallel with the Indigenous Community Water Facilitator Program, which supports regionally based Indigenous engagement and research in water policy and management. The IWPG also works with Tropical Rivers and Coastal Knowledge (TRaCK) through its Theme 6 on Sustainable Enterprises, which examines water markets and rights relating to Indigenous interests.

The Indigenous Water Policy Statement

The NAILSMA Indigenous Water Policy Group States that:

1. Indigenous peoples' traditional ownership must be fully recognised in Australian law.
 - The Native Title Act should be enhanced to provide for Indigenous rights to be recognised in the modern economy regardless of legal proof of native title.

This is consistent with the Federal Government's native title policies which seek to encourage agreements that recognise both native title and non-native title outcomes for Indigenous peoples.

2. To ensure cultural rights and the equitable use of the consumptive, commercial allocation of water, water legislation and policy must include:
 - an allocated Cultural Flow, (in accordance with Articles 8, 25-28 of the United Nations Declaration on the Rights of Indigenous Peoples UNDRIP).

Cultural Flows are water entitlements that are legally and beneficially owned by Indigenous peoples and are of sufficient and adequate quantity and quality to maintain the spiritual, cultural, environmental, social and healthy livelihoods of Indigenous peoples of northern Australia (refer to the MLDRIN 2008 Echuca Statement).

3. Any water plan in tropical Australia must, irrespective of historical allocation, include an equitable Indigenous allocation from the consumptive pool for commercial purposes.
 - An Indigenous guaranteed entitlement to water in tropical north Australia from the consumptive pool for commercial purposes.
 - For any commercial use of water, a negotiated revenue stream should be incorporated to be payable to Indigenous traditional owners and native title groups (in accordance with Articles 3, 5, 23, 26-28 UNDRIP).
 - The establishment of an Indigenous Water Fund (or similar) that underwrites the Indigenous purchase of an equitable allocation of existing consumptive pools where it is otherwise unavailable; and in cases where compensation is entitled (in accordance with section 17 of the Native Title Act).

An Indigenous Water Fund is an Indigenous managed construct to be used for the benefit of those Indigenous peoples currently unable to access a commercial allocation and its generated incomes (in accordance with Articles 4, 18, 20 & 23 UNDRIP).

- An Indigenous entitlement to waters should be temporarily tradable, especially on a negotiated leasehold basis that will avoid the longer-term alienation of water property rights from the Indigenous owners (in accordance with Articles 5, 23 & 26 UNDRIP).
4. The planning and ongoing management of water resources will be done jointly with Indigenous traditional owners, native title groups and State and Territory water agencies (in accordance with Articles 8, 18, 19, 23, 26-29 & 32 UNDRIP).

Disclaimer

Nothing in this Statement is intended to adversely affect the legal rights, negotiating or policy position of any of the Native Title representative bodies nor Indigenous peoples of north Australia.

More Information: water@cdu.edu.au and www.nailsma.org.au (NAILSMA is an independent Indigenous non government organisation.)