

# North Australian Indigenous Experts Water Futures Forum 5-6<sup>th</sup> August 2009



## Executive Summary

### Background

On the 5<sup>th</sup> and 6<sup>th</sup> of August 2009 about 80 Indigenous leaders from northern Australia convened at Mary River Park in the Northern Territory for the *North Australian Indigenous Experts Water Futures Forum*. Commissioned by the Northern Land and Water Taskforce (the Taskforce), the Forum was convened by the North Australian Indigenous Land and Sea Management Alliance (NAILSMA).

The aim of the Forum was to support the dialogue of north Australian Indigenous people regarding their ideas and concerns for economic development, associated cultural impacts, development opportunities and the perceived or actual consequences of development in northern Australia; as well as, governance and institutional arrangements as they affect Indigenous community interests and aspirations. The outcomes from the dialogue would then be presented back to the Taskforce.

The Forum was successful in creating an opportunity to develop and refine a clear Indigenous position and commentary about water resource uses, use impacts and allocation issues, through a series of open discussion sessions and regional and cultural based workshops. Positions and commentary were developed around the Taskforce Terms of Reference, as summarised below.



Photo by David Hancock  
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### Preamble to Terms of Reference

***The Taskforce maintains that Indigenous stakeholders need to have a strong voice so that their ideas and beliefs about water and water sustainability can be better understood. The taskforce has only scientific data on sustainability to work with and understands that this water research does not create a complete picture. Indigenous perspectives are needed to strengthen future discussions on the idea of sustainability.***

- **Sustainable Capacity of the Northern River Systems**

The Taskforce would like to gain a better understanding of what the consumptive and the non-consumptive uses for water might be so that they can understand what the current and future demands on water resources might be. The information being sought from Indigenous communities goes beyond water allocation and rights and the kind of information that the Taskforce is likely to get from state and territory governments or key research programs (North Australian Sustainable Yields – NASY).

- **Economic Development Options and Their Impacts**

The Taskforce would like to better understand Indigenous people's perspectives on economic development, as well as attitudes towards positive and negative impacts of economic development on social and cultural interests. The Taskforce is looking to gain understanding of what a shared economic future might be and identify associated risks and opportunities.

- **Institutional and Governance Arrangements for the Effective Management of Northern Water Resources**

The Taskforce would like to better understand the perceived and actual barriers to economic development and associated uses of water (existing or new) and explore ideas for institutional and or governance arrangements that may overcome any identified barriers. The Taskforce seeks to develop its awareness of any cross border interests and issues for water management and be open for any recommendations.

## **Key Forum Outcomes and Outputs**

### Mary River Statement

The Mary River Statement was both a key outcome and output of the Forum. The Statement demonstrates the commitment of delegates to unite in order to uphold the inherent rights of Indigenous peoples to actively participate in and contribute to policy formulation at all levels, predicated on the fundamental principle that water, land and Indigenous people are intrinsically entwined.

The Statement strongly asserts that Indigenous people must be central to decisions about the development, allocation and use of all waters in the north. The statement in part says:

*“Indigenous Peoples have rights, responsibilities and obligations in accordance with their customary laws, traditions, protocols and customs to protect, conserve and maintain the environment and ecosystems in their natural state so as to ensure the sustainability of the whole environment.*

*Consideration by the Australian Government to separate land and water in future policy development for Northern Australia and establish a new regime for the allocation and use of water is of critical concern to us.*

*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 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.*

*Any policies and legislation that are developed in water allocation and management in North Australia needs to ensure that Indigenous rights are paramount.*

*Indigenous peoples have always been part of and are crucial to the maintenance of our ecosystems and therefore want to ensure minimal impact from settlement and unsustainable development across Northern Australia.*

*We urge the government to ensure that sufficient resources are provided to enable the equitable participation of the Indigenous owners of Northern Australia in the development of policies, setting of allocations and management of regulatory schemes that may evolve.*

*We the Indigenous peoples of Northern Australia will work with the Government to establish what water entitlement and allocation is required to satisfy our:*

- (i) social and cultural;*
- (ii) ecological; and*
- (iii) economic needs.”*

### Reporting

Other key outputs from the Forum are the documentation of discussions of the regional workshop sessions and open forum (near completion – due 24<sup>th</sup> August) and the final fully developed report (in progress – due 18<sup>th</sup> September) that incorporates the results of discussions held over the two days and based on the Taskforce Terms of Reference.

Discussions were documented by Indigenous facilitators who conducted a series of workshop sessions during the Forum to consult with delegates specifically about:

- Social and cultural connections to water resources
- Economic development aspirations that are reliant on access to and development of locally or regionally significant water resources
- Knowledge and perceptions about current or proposed water resource management and governance arrangements (positive and negative impacts)
- Ability to pursue their economic development aspirations, and the resources or governance arrangements they would need.

Workshop sessions were held concurrently for four regionally based working groups that then reported outputs to the plenary. The first day's workshops covered and reported on their specific information exchanges and discussions about the cultural and non-Indigenous values and interests in water, including the current and proposed water uses in their regions. The second day focussed on checking that the previous day's work was comprehensive, and on developing a consolidated set of principles and recommendations for the Taskforce to consider.

Working group outputs were compiled and broadly classified into Results, Principles and Recommendations, but are provided only in summary here.

### **General Results**

Delegates saw the outcomes of the Forum as also providing an opportunity to formulate a broader foundation for advocacy of Indigenous interests and recommendations about water management in the north.

All working groups discussed the impacts of non cultural water uses in their local areas. Delegates highlighted the non-Indigenous and institutional ignorance of the cultural values of water, the need to consider water and land as one, and the importance of water in Australian Indigenous culture.

The importance of Indigenous Knowledge and for better application of western science was also highlighted. Of particular concern to one group was the impact of climate change and the perception that decisions were being made without due consideration for climate change's negative impacts on wetlands, and freshwater systems in the north. Decisions are currently made based on "southern models" that are not applicable to the north and do not consider existing Indigenous Knowledge.

Water allocation processes and uses was a considerable interest of concern. Historical water allocation and use (eg Ord River project) clearly demonstrates exclusion and marginalisation of Indigenous people in planning and decision making processes at the significant detriment of Aboriginal groups in the region. The Kimberley groups specifically voiced concerns that developers won't listen or understand Indigenous peoples' views, cultural laws and rights to water.

Australian law was perceived as not respecting Indigenous peoples cultural values and based only on short-term economic vision. Non-Indigenous businesses and governments are still seen to be taking and using water without consultation with Traditional Owners or respect for the custodians of their water resources. Indigenous people have historically been and continue to be excluded and denied their rights to both land and water. The Kimberley group stated that they are not going to change their cultural ways and beliefs, and they want to participate in discussions and decisions, but not at the cost of losing their cultural values.

Delegates believe that they are only considered to be worthy of consultation in regard to their cultural and subsistence uses of water, but in fact demand to participate in all levels of decision making. Management and commercial uses of water may be intended by governments to benefit society and economic growth, but instead, can cause significant negative social and cultural impacts on Indigenous people. Indigenous people should be recognised as the key proponent for policy decision making on the management of their cultural, social and environmental interests and commercial uses of water for their social and economic benefits.

### **Summary of Principles:**

- Land, water and people are inextricably connected, which means unity of land, water and Indigenous people. "Water and land cannot be separated. We look and care for country together not separate..."
- Indigenous people across north Australia are united in dealing with water issues and accordingly recognise that:

- we have cultural and kinship responsibilities and obligations under customary law to look after water,
  - Traditional Owners have a right and obligation to be involved in the management and decision making over water use.
- Indigenous peoples have responsibilities and obligations in accordance with Indigenous laws and customs. We have responsibility for maintaining the rivers and the environment and ecosystem in their natural state so as to ensure their sustainability of this whole environment.
  - Our water is part of our Native Title through our cultural and ceremonial practices that are part of the birds, animals, plants and us. We don't want younger generations to live with the same hardship we older ones did.
  - Indigenous people need to be the primary interface in the planning and development of water usage proposed and regulated.
  - Principles of International Law (eg. UNDRIP<sup>1</sup>, Ramsar<sup>2</sup>) be the guiding principles for development of Indigenous engagement on water.
  - Water dealings are based on free, prior, and informed decisions and engagement with Indigenous communities at all levels (in accordance with UNDRIP Article 19). This means representative bodies and Indigenous communities at ground level (traditional owners on country) be fully informed and participate in the process.
  - Water management and use includes all cultural uses, environmental flows, consumptive and commercial uses, and all freshwater systems are included whether on the mainland or on sea country.
  - Adherence to maintaining a balanced revised "Triple Bottom Line", (social/cultural, ecological and economic; and including political sustainability (as a fourth element)).
  - Water allocation needs to be linked with best practice, sustainable, efficient use and accurate up to date information about environmental flows.

#### **Summary of Recommendations:**

- That new ways to deal with government be established and supported, such as a new authoritative, statutory governance arrangement between governments and north Australian Traditional Owners. This could include the establishment of Regional Basin authorities in Northern Australia, or an Indigenous Water Commission.
- That the UNDRIP be used as the benchmark for establishing and building a new legal and cultural framework for doing business between governments, enterprises and Indigenous people in the North of Australia.

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<sup>1</sup> UNDRIP – United Nations Declaration on the Rights of Indigenous Peoples.

<sup>2</sup> Ramsar Convention - [http://www.ramsar.org/cda/ramsar/display/main/main.jsp?zn=ramsar&cp=1\\_4000\\_0](http://www.ramsar.org/cda/ramsar/display/main/main.jsp?zn=ramsar&cp=1_4000_0)

- That membership and governance of NAILSMA should be expanded to include the Prescribed Bodies Corporate with the intent of returning authority back to Traditional Owners living and working on country as part of building sustainable livelihoods.
- That NAILSMA, the Water Taskforce and land councils facilitate a broader forum across north Australia, and that among its tasks be the establishment of a set of guiding principles for governments, and the setting up of an interim working group to start lobbying water rights on behalf of Indigenous peoples.
- That the uses of water as a Northern Indigenous economic development opportunity, through sustainable practices, is investigated; and that there are clearly defined culturally relevant geographical boundaries in Northern Australia.
- That all water policy and legislation is enacted in accordance with national and international laws, and that policies are aimed at ensuring Indigenous rights are upheld.
- That a communication strategy is developed to ensure that Indigenous communities are informed and participate in water policy issues and opportunities; and that the strategy includes requirements for institutional feedback to community for a two-way approach.
- That the Native Title Act is amended to include water as a use right to negotiate economic benefits (other than just a customary use right), and this be included in other local/state/federal/international laws, codes and protocols.
- Engage other interest groups to develop partnerships that promote understanding, recognition and a common goal in water use and management.
- That the diversity, different needs and aspirations of urban, remote, and regional areas be all considered in any consultation and decision processes.



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