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Indigenous Rights to surface and subterranean waters in northern Australia: the current state of the law and new opportunities in commercial and cultural management for Indigenous people

Friday 2 December 2011 1.00 - 2.30 pm

ANU Water Initiative Seminar

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Room F.102 Forestry Building 48, Fenner School of Environment and Society, ANU



The Indigenous peoples of Northern Australia have legally recognised rights over large areas of land and water under land rights and native title law. The Northern Australian Land and Water Taskforce Report in 2009 identified key opportunities for the expanded use of surface waters and groundwater for commercial purposes.

The law of native title in Australia recognises Indigenous subsistence and customary rights to access, take and use water. It also recognises a right to share or exchange subsistence and other traditional resources obtained on or from the waters. This has also been described as a right of non-commercial exchange.

There is a developing native title jurisprudence in relation to the recognition of a right to trade in natural resources including water. In 2010 the Federal Court recognised a native title right to take marine resources including fish for trading or commercial purposes.

Modern water planning policy such as the National Water Initiative and water management legislation is in some cases providing a new avenue for the legal recognition of Indigenous specific rights to use water for commercial purposes. There is also increasing recognition of the need for an Indigenous right to a cultural flow to be recognised in water plans.

This seminar will examine the current state of the law in Australia and explore likely developments in relation to the rights of Indigenous people in this important area of natural resource management. The development of Indigenous commercial rights to water provides an important means by which Indigenous people can engage in the modern economy.

Michael O'Donnell is a Barrister and legal adviser to the North Australian Indigenous Land and Sea Management Alliance (NAILSMA) in Darwin and author of the recent report Indigenous Rights in Water in Northern Australia" – a joint NAILSMA –Tropical Rivers & Coastal Knowledge (TRaCK) publication. He has previous publications in relation to native title law and Indigenous rights to water in Australia.

This seminar is presented by the ANU Water Initiative, the Fenner School of Environment and Society and the Centre for Aboriginal Economic Policy Research.

Presented by

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