Indigenous interests in water policy and management under changing climatic conditions

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Outline

1. Background
   • significance of water

2. National Water Initiative
   • implementation tasks relating to Indigenous interests

3. Effects of drought and climate change
   • geographical differences - north and south

4. Research questions
Background

Large stake in water:

• customary rights
• religious and cultural significance
• land base
• vital for community development and livelihoods

Image: Skyscans
Indigenous land tenure (2002)

Indigenous holdings c. 20%

Dark red = freehold
Red = reserve
Yellow = leasehold
Blue = holding < 100 km

Map provided by ANU’s Centre for Aboriginal Economic Policy Research
Specifically recognises Indigenous interests in water:

- NWI objective: meet Indigenous needs of access & management
- Key mechanism is water planning
- 4 Implementation tasks
Implementation tasks

1. Incorporate Indigenous social, spiritual and customary objectives in planning

2. Take account of native title rights

3. Account for water allocated to native title holders for traditional cultural purposes

4. Include Indigenous representation in planning
1. Incorporate social, spiritual and customary objectives

- Not defined in NWI but these objectives broadly understood from studies of:
  - Indigenous cosmology and tenure systems
  - Land management practices
  - Meaning and significance of water

Image: Skyscans
1. Incorporate social, spiritual and customary objectives *cont’d*

- Few studies
- Many objectives difficult to quantify
- Heritage management approach is limited
- Insufficient knowledge of planning techniques
- Focus is on terms of engagement
2. Take account of native title

• What do we know about native title rights to water?
  
  • Water bodies can be claimed
  • Customary use for sustenance is guaranteed
  • Customary uses may depend on inland water
  • Uncertainty over extent of rights to water is high, esp. commercial potential
2. Take account of native title con’t

Two aspects

i. provide water to ensure continued enjoyment of rights

ii. Consider effect of water use on native title (impairment)
3. Account for any water allocated to native title holders

How to determine Indigenous requirements for water?

• Substantial conceptual and technical difficulties

• Cultural flow vs. environmental flow?

• No standards for defining and measuring Indigenous water requirements
  • *cf. American West experience* – *e.g. irrigable acreage or homeland*
NSW: Indigenous allocations

- Legislation provides for protection of social, cultural and economic uses

- Native title rights to water recognised in WMA
  - for domestic and traditional purposes
  - but provided in only 2/35 WSPs

- Commercial licences available

- One ‘cultural access’ licence

- Limited uptake
Effects of drought and climate change

Differing experiences across the continent depending on

- Entitlements – land, water & resource rights & significance of Indigenous population
- Timing of allocations vis a vis Indigenous claims
- Water availability and river health

Australia’s distribution of run-off (Source: NLWRA, 2001)
In southern Australia

Strong concern about environmental conditions

Water shortages intensify competition with other sectors e.g. environmental water
  • Indigenous aspirations to ‘restore and repair’ but environmental flows ‘grossly inadequate’
  • Will environmental water be disproportionately reduced with climate change?
  • Objectives are to meet ecological criteria

Particular heritage impacts
  • Changes to flow regime - exposure and erosion, death of sig. trees
  • Efforts to assess and mitigate heritage impacts

Impacts on Indigenous enterprises & livelihoods?
In northern Australia

- Ongoing popularity of drought proofing schemes

- 2020 summit focus on northern rivers –
  - Changing attitudes to limits on agricultural settlement
Kimberley Water Transport Routes

- Ocean transport
- Canal
- Pipeline
Northern Australia

• No over-allocated systems

• Strong associations with unregulated, intact river systems

• Keen to avoid ‘southern’ mistakes

• Growing interest in Indigenous access e.g. Wild Rivers

• Focus on Indigenous economic devt.

• Water laws under review

• Collaborative water assessments

• Indigenous capacity is increasing
What are the key research questions?

• Understanding Indigenous connections to rivers and water:
  
  • Role for TEK in understanding river systems and in management?

  • Methods to access Indigenous values and incorporate in WAP?

  • Can we relate Indigenous customary values to flow regime and quantify an allocation? How can environmental water better satisfy cultural requirements?
Key research questions? Con’t

• Customary water management and market based-systems

  • How do Indigenous people see their water rights and what rules do they have for using and managing water?

  • How might market-based systems affect Indigenous use?
Key research questions? Con’t

• Are there opportunities from water-based economic activity?

  • What has been the American experience in quantifying Indigenous allocations and putting them to commercial use?

• How are Indigenous priorities addressed in other jurisdictions, esp. when water is scarce?

  • e.g USA reserved rights for instream flows to meet implied rights to fish

• And American tribal institutions and co-management models, e.g. USA tribal mgmt, water codes
Conclusions

• NWI to provide Indigenous access to water and participation in planning

• Indigenous people have diverse interests in water and NWI gives limited recognition to access to non-consumptive water

• In practice, substantial barriers especially where water is scarce, more promising in the north
  • e.g. NWI is discretionary and no explicit priority given to Indigenous interests
  • No standards or guidelines

• Need more Indigenous input into policy and implementation