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Martuwarra First Law Multi-Species Justice Declaration of Interdependence: Wellbeing of Land, Living Waters, and Indigenous Australian People

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Martuwarra First Law Multi-Species Justice

Declaration of Interdependence: Wellbeing of Land, Living Waters, and Indigenous Australian People

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Thesis Declaration of Authorship and Certification Statement

This thesis is submitted as a Thesis by Publication with the University of Notre Dame, Western Australia.

This thesis and the material it contains has not been accepted for the degree or diploma award by any other institution.

I declare the research presented in this Thesis represents original work that I carried out during my candidature at the University of Notre Dame, Nulungu Research Institute, except for contributions from multi-authored articles incorporated in the Thesis where my contributions are specified in the Statement of Contribution. The University of Notre Dame Guidelines https://www.notredame.edu.au/__data/assets/pdf_file/0009/2007/GUIDELINE-Presentation-and-Submission-of-Research-Theses.pdf

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This thesis is structured as a series of connected stories to frame the research journey, lived experiences, collaboration and building trust: all critical ingredients which informed the analysis of Martuwarra First Law Multi-Species Justice as the Declaration of Interdependence of Wellbeing of Land, Living Waters, and Australian First Peoples. The status and authorship of each article is summarised in the table below. In accordance with the Notre Dame University Australia (UNDA) thesis by publication policy, collaborating authors have signed the declaration of contributions (See Appendix 1).

The chapters of the thesis are the same as the articles submitted to the journals listed in the table below. To support readership of the thesis, modifications have been made including changing the numbering of headings, figures and tables and referencing style. Footnotes for the Chapters 3, 7, 8 and Chapter 9 have been included, as the legal journal articles published used footnotes according to each particular journals' Manuscript Reference Guides. The corresponding references were inserted into the main reference section.

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Published	Lim, M., Poelina, A., & Bagnall, D.	(2017). Can the Fitzroy River Declaration ensure the realisation of the First Laws of the River and secure sustainable and equitable futures for the West Kimberley? *Australian Environment Review*, *32*(1), 18–24. Retrieved from: https://researchers.mq.edu.au/en/publications/can-the-fitzroy-river-declaration-ensure-the-realisation-of-the-f
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Published	Poelina, A.	(2019a). Country. In A. Kothari, A. Salleh, A. Escobar, F. Demaria, & A. Acosta (Eds.), *Pluriverse: A Post Development Dictionary* (Vol. 1, pp. 142–144). Tulika Books.
Published	Poelina, A.	(2019b, March 7). *Balginjirr: A Special Place in Our Home River Country*. Westerly Magazine. Retrieved from https://westerlymag.com.au/balginjirr-a-special-place-on-our-home-river-country/

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Published	O'Donnell, E., Poelina, A., Pelizzon, A., & Clark, C.	(2020) Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature. Transnational Environmental Law, 0(0), 1–25. doi:10.1017/S2047102520000242.
Published	RiverOfLife, M., Poelina, A., Bagnall, D., & Lim, M.	(2020). Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being. Transnational Environmental Law, 9(3), 541-568. doi:10.1017/S2047102520000163
Published	Poelina, A.	(2020). A Coalition of Hope! A Regional Governance Approach to Indigenous Australian Cultural Wellbeing. In A. Campbell, M. Duffy, & B. Edmondson (Eds.), *Located Research: Regional places, transitions and challenges* (pp. 153–180). Singapore: Springer Singapore. doi:10.1007/978-981-32-9694-7_10
In Press	RiverOfLife, Martuwarra, Taylor, Katherine S., and Poelina, Anne.	(2021) RiverOfLife, Martuwarra, KS Taylor and A Poelina, In Press. Living Waters, Law First: Nyikina and Mangala water governance in the Kimberley, Western Australia. *Australasian Journal of Water Resources*. Vol 25(1)
In Press	Poelina, A., Brueckner, M. & McDuffie, M.	(2021) Poelina, A., Brueckner, M. & McDuffie, M. (In Press). "For the greater good? Questioning the social licence of extractive-led development in Western Australia's Martuwarra Fitzroy River Catchment". In Brueckner M. et al. (Eds) Mapping mining legacies: On their problems and potential. Special Issue, *The Extractive Industries and Society*, Volume 7 No. 4. https://doi.org/10.1016/j.exis.2020.10.010

Abstract

The thesis is comprised of experiential research, poetry, film and peer reviewed publications, and book chapters culminating in twelve chapters and two appendices. The study is in the Kimberley region of northern Western Australia. The study used an Indigenous decolonising research paradigm. It calls for a powerful policy and investment approach to the planning and development of regional governance. The author engaged 'cooperative participative inquiry' with leaders from six independent Indigenous Nations. These Nations are connected through Warloongarriy, the First Law for Martuwarra, the Fitzroy River.

First law is the spirit that connects all things and promotes multispecies justice through a unity pathway for collaboration, cooperation, and the sharing of information to ensure peace, harmony, balance, and wellbeing. The Martuwarra Fitzroy River Council position of *standing*, encapsulates collective guardianship responsibility and original Australians authority to protect Martuwarra's right to flow as a sacred living entity for generations to come. The central theme focuses on the responsibility of Indigenous leaders to facilitate knowledge sharing and strengthen community capacity building. Through 'cooperation, unity, organisation and cultural synthesis' First Peoples are decolonising through an earth-centred regional governance approach. This approach is focused on improving cultural wellbeing and resilience, and what is required to make the transition to justice, hope and freedom. We seek pathways for cooperation, for collaboration and for sharing information so we can collectively, as 'family', co-design the world we want to leave to our children and their children's children for generations to come.

This required a deeper understanding of the impact from continuing colonisation and the collective responsibility of original Australians to sustainably manage our culture and society, lands and living waters. Local Indigenous leaders who are under the guidance of senior cultural elders, believe it is time to send the dream out, to stand with '**One Mind and One Voice',** to enliven our dream to reach our full potential as human beings. The Martuwarra Fitzroy River Council was established to partner with government in the stewardship of the planet's greatest and most scarce resource, water. Martuwarra is a living ancestral serpent being, with the right to live and flow.

After 150 years of invasive colonial development, it is time to do business differently, on just terms.

Dedication

Dedicated to halting incremental genocide and ecocide within Martuwarra Fitzroy River Catchment Estate and peoples, West Kimberley, region of Western Australia.

For Mardoowarra/Martuwarra, Fitzroy River and its tributaries, together with their floodplains and the *jila* sites of *Yoongoorookoo*, *Galbardu*, *Kurrpurrngu*, *Mangunampi*, *Paliyarra* and *Kurungal*, continues to demonstrate how the six distinct expressions of the Rainbow Serpent tradition are grounded in First Law and its system of guardianship responsibility to protect our sacred ancestral right to life. A knowledge management system grounded in Indigenous interpretations of the different ways in which water flows within the catchment is of outstanding heritage value to the nation under criterion (d) for their exceptional ability to convey the diversity of the Rainbow Serpent tradition within a single freshwater hydrological system (Australian Heritage Council, 2011).

The young emerging leaders of Martuwarra believe that Bookarrarra; the past, present, and future, is dedicated to multi species justice for seven generations to come.

Acknowledgements

Martuwarra Fitzroy River Always Was Always Will Be.

I acknowledge the *Knights of the Southern Cross* and the RTP Scholarship.

To the leaders of the Martuwarra Fitzroy River Council, thank you for your leadership, unity, organisation and cultural synthesis. You made this journey possible.

I am indebted to my true partner, teacher and friend Ian Perdrisat who continues to provide me with guidance and mentoring both in my community and academic practice, endlessly reading and critiquing my research with every draft change, challenging my thinking, loving and supporting me, working with me always constructively, to see and be in the world with new ways of knowing and being.

To my sisters, Women of High Degree Lucy Marshall and Jeannie Warbie, who took my learnings to a level way beyond what I could have re-imagined.

To my Supervisors who provided the independent lens in which to situate this body of work. Made possible through their collective wisdom and guidance, ethics of care and love for Martuwarra and custodians. They remain my lifelong friends, colleagues and critics; Professor Stephen Muecke; Associate Professor Sandra Wooltorton, Professor Sandy Toussaint and Professor John Boulton.

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I acknowledge Louisa Stredwick and Dr Glenda Harward-Nalder (Ngugi, Quandamooka) who came to my rescue to take the editorial process to the level of standing and merit, worthy for submission of this thesis; Dr Alexander Hayes in recognition of his skilful editorial contribution which provided the framework in which to locate the body of work and the journey.

Martuwarra Fitzroy River Right to Live and Flow

Martuwarra Fitzroy River
Largest Aboriginal cultural heritage site in our hands
733 kms winding across our lands
Don't bring us harm
We have friends of the Martuwarra
Dreaming a forever dream
River must have the right to live and flow

I love E River cause E love us to.
River all around us
River watching us
Wondering what we going to do
River hold the memories of all of us passing through
Past… Present… Future hold in this moment of time
River must have the right to live and flow

Yoongoorookoo, Galbardu, Kurrpurrngu, Mangunampi, Paliyarra and Kurungal
Are the names we call the serpents from the beginning of time
Nyikina, Warrwa, Bunuba, Walmajarri, Gija, Ngarinyin, Mangala, Gooniyandi
We hold the River for all of us
We need the River to have a fair go
River must have the right to live and flow

Let's stand in unity, one mind one voice, one River Country
Aboriginal and National Heritage Listed for you and me
Birds, fish, animals, trees, all people sharing, trade, ceremony
Living waters, law first, rules from our ancestors
Keep the living waters, flowing free
River's right to live and flow
River must have the right to live and flow

Glossary

Aboriginal	Aboriginal, Traditional Owner, First Peoples, First Nations, Indigenous Australian, Indigenous people are used interchangeably to describe original Australians. Note traditional owners are sometimes not capitalised throughout the thesis.
Balginjirr	Sometimes spelt Balkinjirr or Palkinja is the name of a sacred and ancient river before the Mardoowarra/Martuwarra Fitzroy River. It is also the name of the authors family and kinship estate.
Bookarrarra	A Nyikina concept without an English equivalent. Nyikina people call it 'beginning of time', others refer to 'the dreaming' or 'dreamtime'. Bookarrarra integrates the past, present and future into this fluid moment in time.
Country	When Country is spelt with a capital C as it refers to the geology, geography, water and biosphere of a location.
First Law	Australian Law that pre-exists colonial law. It is also called customary law or Indigenous law.
Government	In the context of this thesis 'government' usually means the the Australian Government and/or one of the state governments of Australia.
Indigenous People	The original people Indigenous to Australia also known as Aboriginal and Torres Strait Islander peoples, Traditional Owner, First Peoples, First Nations, Indigenous Australian.
Liyan	Also spelt lian is the critical element of Indigenous wellbeing the spirit that connects your head and heart to the universal ambient energy that centres intrinsic feelings and connection to Country and people.
Living Waters	Water that is alive. It is a living being that is full of life and sustains life as opposed to stagnant, deoxygenated or polluted water that does not sustain life. Living Water places are associated with ancestral/spiritual beings. This can apply to entire rivers or wetland systems or a single remote soak.
Martuwarra/Mardoowarra	First Peoples generic name for the Fitzroy River. The different spelling is due to various traditional language orthography.

	Martuwarra is used as a generic spelling adopted by the Martuwarra Fitzroy River Council. Whereas Mardoowarra is the Nyikina spelling. Each Indigenous nations has a different name for the River as well as different names for significant locations along the River.
Native title	Native title recognises the rights and interests to land and waters of Aboriginal and Torres Strait Islander peoples under the *Native Title Act (1993) (Cth)*.
Native title determination	A decision by an Australian court or other recognised body that native title does exist or does not exist.
Native title holder	A person who has native title rights and interests over a particular area of land or waters.
North and south	North and south of the Australian continent (not the 'global' north or south).
Northern Australia	Tropical/semi tropical regions spanning across the top of northern Western Australia (WA), the Northern Territory (NT) and Queensland.
Pastoralist	A cattle grazier who holds a pastoral lease.
Pastoral lease	Crown land leased from the government for the purpose of livestock grazing on the natural vegetation.
River	Spelt with a capital R as it is used in most of the chapters as an alternative name for Martuwarra and therefore a proper noun.
River Country	Spelt with a capital R and C as it is used as an alternative name the Martuwarra basin catchment estate and therefore a proper noun.
RNTBCs and PBCs	Registered Native Title Bodies Corporation is also referred to as Prescribed Bodies Corporation are entities that manage native title rights and interests on behalf of the native title holders. RNTBCs/PBCs are 'prescribed bodies' because they are have prescribed obligations under the *Native Title Act 1993 (Cth)*.
Traditional Owner	Can have quite complex meanings (Edelman 2019), but here 'Traditional Owner,' or 'T.O.' reflects the common usage in the Kimberley, that is, a respectful term(s) for the person who belongs to specific country.
Water allocation plan	A 'water plan' is a government plan that caps the volume of water use in a particular area, defines objectives, often reserves

	water for specific purposes, and establishes any special rules for water use in that area.
Water licence	Government-issued permit to take a specified water from a particular location.
Yimardoowarra	Aboriginal or Indigenous person who identifies and belongs to the Mardoowarra/Martuwarra Fitzroy River.
Yoongoorrookoo	Nyikina word for the sacred ancestral Rainbow Serpent being. There are six discrete Indigenous nations along the length of the River. Each nation has a different language name for the Rainbow Serpent; Galbardu, Kurrpurrngu, Mangunampi, Paliyarra, Kurungal and Yoongoorrookoo.

Additional Relevant Publications

Peer Reviewed Journal Articles

Wooltorton, S., Toussaint, S., Poelina, A., Jennings, A., Muecke, S., & Kenneally, K. (2019). *Kimberley Transitions, Collaborating to Care for Our Common Home: Beginnings*. Nulungu Research Institute. Retrieved from https://trove.nla.gov.au/work/236987027?q&versionId=263919353
Wooltorton, S., Poelina, A., Collard, L., Horwitz, P., Harben, S., & Palmer, D. (2020, October). Becoming Family with Place. *Resurgence & Ecologist*, pp. 34–35.
Wooltorton, S., Collard, L., Horwitz, P., Poelina, A., & Palmer, D. (2020). Sharing place-based indigenous methodology and learnings. *Environmental Education Research*, *26*(7), 917–934. doi:10.1080/13504622.2020.1773407
RiverOfLife, M., Poelina, A., Alexandra, J., & Samnakay, N. (2020). *A Conservation and Management Plan for the National Heritage listed Fitzroy River Catchment Estate (No. 1)*. Martuwarra Fitzroy River Council, Nulungu Research Institute, The University of Notre Dame Australia. https://doi.org/10.32613/nrp/2020.4
RiverOfLife, M., McDuffie, M., & Poelina, A., (2020). *Martuwarra Country: A historical perspective (1838-present)*. Martuwarra Fitzroy River Council; Nulungu Research Institute, The University of Notre Dame Australia. https://doi.org/10.32613/nrp/2020.5
Redvers, N.; Poelina, A.; Schultz, C.; Kobei, D.M.; Githaiga, C.; Perdrisat, M.; Prince, D.; Blondin, B. (2020). Indigenous Natural and First Law in Planetary Health. *Challenges* **2020**, *11*, 29. https://doi.org/10.3390/challe11020029
Poelina, A., Wooltorton, S., Harben, S., Collard, L., Horwitz, P., & Palmer, D. (2020). Feeling and hearing Country. *PAN: Philosophy Activism Nature*(15).

Book Chapters

Poelina, A. (2017). Protecting the River of Life. In K. Aigner (Ed.), Australia: Vatican Museums Indigenous Collection (pp. 217–223). Canberra: Aboriginal Studies Press. Retrieved from https://aiatsis.gov.au/publications/products/australia-vatican-museums-indigenous-collection/paperback
McDuffie, M., & Poelina, A. (2019). Nyikina Collaborative Filmmaking in the Kimberley: 'Learning to Listen with Your Eyes, and See with Your Ears'. In P. Morrissey & C. Healy (Eds.), Reading the Country (pp. 229–238). University of Technology Sydney ePress. doi:10.5130/978-0-6481242-2-1.t
Poelina, A. (2020a). A Coalition of Hope! A Regional Governance Approach to Indigenous Australian Cultural Wellbeing. In A. Campbell, M. Duffy, & B. Edmondson (Eds.), Located Research: Regio nal places, transitions and challenges (pp. 153–180). Singapore: Springer Singapore. doi:10.1007/978-981-32-9694-7_10
Poelina, A. (2020b). Eco-activism and Social Work. (D. Ross, M. Brueckner, M. Palmer, & W. Eaglehawk, Eds.) (Vol. 1, p. 13). Foreword, London: Routledge. Retrieved from https://www.routledge.com/Eco-activism-and-Social-Work-New-Directions-in-Leadership-and-Group-Work/Ross-Brueckner-Palmer-Eaglehawk/p/book/9780367250041
Poelina, A., Webb, T., Dhimurru Aboriginal Corporation, Smith, A. S., Smith, N., Wright, S., … Hill, R. (2020). Foundations of Our Knowledge Our Way. In CSIRO & NAILSMA (Eds.), Our Knowledge Our Way in Caring for Country (Vol. 1, pp. 1–20). NESP Northern Australia Environmental Resources Hub, Charles Darwin University.

Conference Presentations

Poelina, A. (2017 September). *Warloongarriy Law – First Law: Protecting the Right to Life for the Mardoowarra National Heritage Listed Fitzroy River*. Presented at the 22nd International River Symposium, Brisbane, Australia. Retrieved from http://riversymposium.com/profiles/anne-poelina-2/
Poelina, A. (2018). Keynote Address -*Summary Of The 47TH Session Of The Intergovernmental Panel On Climate Change: 13-16 March 2018* (No. 715) (pp. 4–5). UNESCO. Retrieved from http://enb.iisd.org/climate/ipcc47/
Poelina, A. (2019 11th March). *Counting and Accounting the Values of the National and Aboriginal Heritage Listed Fitzroy River*. Presented at the 9th National Water Forum, Rockford Hotel, Adelaide. Retrieved from https://unisabusinessschool.edu.au/siteassets/schools/docs/9th-national-water-forum-programme-final.pdf
Poelina, A. (2019 12th March). *River of Life – Film and Conversation*. Presented at the National Water Forum, Mercury Cinema, Adelaide, Australia.
Poelina, A. (2019 11th July). *One Mind and One Voice - Film and conversation*. Presented at the The Re-(E) Mergence of Nature in Culture: Symposium, Sydney Environment Institute, The University of Sydney, NSW, Australia. Retrieved from http://sydney.edu.au/environment-institute/events/re-emergence-nature-culture-ii/
Poelina, A. (2019 22nd August). *Indigenous rights and questions of personhood. An examination of the evolving relationship between legal person and the state*. Presented at the School of Law Legal Workshop, University of Melbourne, Victoria, Australia.
Poelina, A. (2019 13th June). *Science Panel Presentation with Mr Al Gore*. Presented at the Climate Reality Project, Brisbane Convention Centre, 'South Bank' Brisbane, Australia.
Poelina, A. (2020 26 June). *Thirst of Action: Indigenous Engagement*. Presented at the OzWater'20, Online. Retrieved from https://www.ozwater.org/program/keynote-speakers/
Poelina, A., (2020, 5th September), "*Reclaiming and Reframing the Martuwarra Fitzroy River Commons for the Greater Common Good*", International Association for the Study of the Commons, Annual Keynote Address.
Poelina, A., (2020, 20th October), "*Always Was, Always Will Be the Mardoowarra Fitzroy River of Life*", CSIRO Annual NAIDOC Keynote Address.
Poelina, A., (2020, 25th October), "*Beyond Sustainability: Imagining a Regenerative Future*" Global Panel, Qatar Foundation.
Poelina, A., (2020, 11th November), "*Martuwarra First Law Justice: Land, Living Waters and Indigenous Peoples Wellbeing*", Virtual Building Bridges 2020 Series, Reconciliation 2020 Western Sydney.
Poelina, A., (2020, 25th November), "*Climate change mitigation will only succeed if grounded in Indigenous and Collective Wisdom*", TEDxPerth University of Western Australia, Perth, WA.
Poelina, A. & Perdrisat, M., (2020, 3rd December) Distinguished Speakers, "*First Law a gift to healing and transforming Just Us*!", The University of Sydney, NSW.

Tables, Figures & Photographs

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1 CHAPTER ONE

1.1 *Introduction*

> On 17 November 2015, the Western Australia Constitution Act of 1889 was amended to recognise the state's Aboriginal inhabitants for the first time as the First People of Western Australia and traditional owners and custodians of the land - what we ourselves call 'Country'. The amendment promotes the view that the state parliament should seek reconciliation with Western Australia's Aboriginal people. Although the amendment was a gesture of support, neither state nor federal governments have yet recognised the full extent of Indigenous rights (Poelina, 2019a, 143).

1.1.1 *Preface*

Chapter 1 outlines my worldview, it positions me as an insider researcher, and highlights the study methodology and the guiding principles which directed my scholarly engagement and analysis.

I am a Nyikina Warrwa marnin, an Indigenous woman from Martuwarra also known as the Fitzroy River (River) in the Kimberley region of the remote north-western corner of Western Australia. For over sixty years I have lived with 'Country', practised our First Law, and celebrated our Living Waters. In this instance, River and Country and Living Waters are written as proper nouns because they are living entities. The River Country is alive and in a reciprocal relationship with both my human and non-human family (Poelina & Nordensvärd, 2018).

The oldest living culture on the planet is offering to share our gift of wisdom created from countless generations of lived experience co-existing with our ancestral Country and Living Waters. We are at a point in our shared journey as an evolving nation state where we as Australians need to redefine who we are in modernity. This gift of love from Indigenous Australians, is extended in a spirit of true reconciliation and friendship to help our fellow Australians. We want to share so that others to learn to feel, see, hear and touch Country and Living Waters. To realise a deeper sense of connection with Australia, their home (Wooltorton, Poelina, A., Collard, L., Horwitz, P., Harben, S., & Palmer, 2020).

Our shared world is a complex evolving state of trauma, healing and transformation impacting the lives of multiple species. Some species have already become extinct, and others are at high risk of extinction within the near future. Australia holds the global record for species extinction. According to the Western Australian Office for the Auditor General, 130 years of intensive sheep and cattle grazing in the Kimberley has left it in a degraded state (Office of the Auditor General, 2017). We are quickly destroying our prime agricultural land with salination and fossil fuel harvesting.

In this thesis I argue contemporary local Indigenous leadership is essential for forging new partnerships with like-minded people, agencies, and institutions internationally. Genuine collaborative partnerships are required to strengthen liyan, our deep spiritual connection that centres intrinsic feelings of how to read people and place. I've been informed by multiple voices that have provided multiple perspectives. I take the reader on a journey to unpack the imposed colonial governance frame in order to re-imagine new just futures that strengthen confidence, love, empathy, wisdom, humanity, resilience, and hope.

Historical colonial values and ethics are responsible for the paucity of morality that perpetuates immoral investment into invasive exploitative development. Colonial invasion of the Kimberley started in the late 1800s. Similar to many other Indigenous people's experience, members of my family were rounded up and either massacred or forced into slavery to work on remote pastoral stations. Former slaves are still alive today. Furthermore, the impact of colonisation continues today as evidenced by numerous studies, inquiries, reviews, and commissions that have reported how successive governments continue to fail to adequately address the rights, interests, aspirations and needs of Indigenous Australians (RiverOfLife, McDuffie & Poelina, 2020). Despite Traditional Owners' rights having been determined in the High Court of Australia in the significant Case known as *Mabo No. 2 v The Commonwealth* (1992), current federal and state government policy provides greater land management decision making rights to invasive corporate interests over Traditional Owner native title rights and interests (Poelina et al., 2015).

The colonial approach to contemporary government invasive development policy seeks to justify tolerating human rights abuses against remote Indigenous people by claiming government actions are for the greater good, in our national interests. The

notion of the greater good is used to garner wider community support for unjust development. The insincerity of government is evident in policies and their implementation that are designed to benefit persons other than Indigenous Australians (Poelina, Brueckner & McDuffie, In Press).

Through lived experience, I have developed a deep understanding of the impact of colonisation. I seek pathways for cooperation, for collaboration and for sharing information so we can collectively, as 'family', co-design the world we want to leave to our children and their children's children for generations to come. New approaches need divergent conceptualisation of reconciliation regarding healing the relationship between governments in Australia, the wider population, and original Australians.

Furthermore, the study and the partnership relationships identified, developed, and nurtured the need to make and maintain social, cultural, and professional networks over the duration of the study. This body of work evidenced the ongoing invasive colonial power of the state remains conflicted with the cultural authority of Martuwarra people. The study explained:

- each of the individual chapters incorporated distinct research methods such as telling stories;
- how I collaborated with several authors to provide multiple trans-disciplinary perspectives to illuminate the diversity of Indigenous peoples struggles as well as identify unique cultural actions for cultural solutions;
- the study considered how cultural actions and cultural solutions were derived from collective wisdom: Indigenous Kimberley elders and leaders have strengthened community hope through a collective process to re-imagine a new Dreaming that is grounded in climate justice, human rights and the multispecies justice;
- the thesis was an effective vehicle for generating genuine collaboration from previously polarised factions. There is a wider sense of community concern regarding politically influenced decision-making models that are more that an attack on Indigenous Australians, rather they are a grave injustice on all Australians.
- the study affirmed the original people in the Fitzroy River catchment are the guardians of Martuwarra. It concludes with recommendations to guide policy and better practice from the view of the Martuwarra Council. It is essential governments and future industry investors maintain the health and majesty of the River of Life that is responsible for the regions rare and exotic plant and wildlife, culture, and people.

- It is time to reframe the power of the state; to acknowledge Traditional Owner cultural authority in order to engender legal pluralism to promote Martuwarra First Law multispecies justice for land, Living Waters, and Indigenous Peoples Wellbeing.

1.2 *Identity*

I am a local Indigenous woman born out of Martuwarra Country. I have extensive family, kinship and community relationships throughout the Kimberley region. My role involves knowledge making, sharing and peacemaking from my position as an Indigenous community philosopher, leader, and researcher.

I have listened to the stories and songs from my grandmother, Emily. She instilled in me the importance of Bookarrarra, the beginning of time in which the past, present and future are fused into this moment in time in which we must act (World Health Organization, WHO, 1999). I consciously choose to stand to defend Country, culture, and the rights of all people. Defending Country extends to multi-species justice for our non-human family. My choice to stand for Country is rooted in my Nyikina Warrwa world view that is grounded in Indigenous ethics and values. I learnt from my eldest sister, Lucy Marshall, that if you see something that is not right, you must question it. You must choose to act or not act; to talk or to stay quiet. When challenged, "you must stand if you believe something is right or wrong. Who's going to back you up, who's going to be your witness?" (Personal Communication, Lucy Marshall 16th May 2017).

My blood line and song lines are embedded in my River Country. I am born from nature and my values and ethics are grounded in my relationship with Country. From the moment we are born, we Nyikina and Warrwa people are told stories and listen to songs. We learn that we are related to other living creatures. My rai, also known as jarniy or totem, is the blue tongue lizard, Ngalyak. My relationship with Ngalyak engenders a lifelong empathic responsibility to care for another conscious spirit beyond myself. By developing a relationship with your rai, you learn that everything is alive and has a right to live. We learn that everything is connected where natural harmony and balance are maintained through First Law (Redvers et al., 2020).

We are taught from an early age that our spiritual, cultural and property inheritance as Nyikina Warrwa people is through Mardoowarra Country. The Martuwarra was

created by our ancestor, Woonyoomboo. We are told that Woonyoomboo was a human being. Woonyoomboo came when there was no river as we know it today. As he travelled through Country, he planted different species of food and medicinal plants along the journey (Watson et al., 2011). In some special places he planted trees with a powerful spirit, we call malaji (Milgin, Nardea, Grey, Laborde, & Jackson, 2020). These trees that Woonyoomboo planted throughout the riparian zone of the river are still there today, particularly in certain sacred places.

Songs and stories describe Woonyoomboo as a leader, scientist, map maker and horticulturist exploring the landscape and giving names to places, creatures and Living Water locations. Importantly he travelled north, south, east and west, to the Peninsular, the Ranges and into the Dessert Country. From the Sunrise to the Sundown Country. Furthermore, he established the kinship system and the moral codes of conduct as well as practical ways to prepare local bush food and medicine to thrive on Country. The timeless names and stories of important people and cultural places remain today and have been released to the public in the film, The Serpent's Tale (Martuwarra Fitzroy River Council et al., 2021).

Stories, songs, and dances transmit collective memories, knowledge, and practices over time. They awaken an emotional spiritual connection inside of you. Our identity is constructed around our relationship with our ancestors. Their wisdom continues to guide my belief that we come from special people and have inherited responsibility for looking after special places. We are reclaiming our due inheritance to our legal, human, cultural, environmental, and economic rights as Martuwarra people (Egan, 2008). *Due Inheritance*, written by Ted Egan is wisdom based on his extensive relationships forged between Indigenous Australians and the author. Egan provides the justification for considering the revival of the cultural and economic wellbeing of our people, as a model for better practice. Reclaiming our due inheritance and cultural authority has guided this thesis enquiry.

1.3 *Guiding Thesis Enquiry*

Martuwarra First Law multispecies justice requires and guides responsible governance of Country; sustainably managing land and Living Waters for the benefit of all plant, animal, and human wellbeing. The study is grounded in my worldview that has been formed from my lived experience learning and practicing First Law.

First Law is the natural laws of nature that informs traditional knowledge. First Law recognises we humans are responsible for generating peace and multi-species justice with other non-human beings and with the River Country.

1.4 *Location of the Study*

The location of the study is Fitzroy River Catchment. The Martuwarra, Fitzroy River the longest river in the Kimberley region of Western Australia (WA), it has its source in the King Leopold Range. Its catchment area is almost 100,000km2 (Pepper & Keogh, 2014), and the floodplains are up to 15 km wide. The Kimberley is one of Australia's 15 biodiversity hotspots (Humane Society International, 2018).

Figure 3: Towns and languages of the Fitzroy River Catchment. Language label location is indicative not exact. Source: https://klrc.org.au/

1.5 *Intent of the Study*

The intent of this study was to explore the process, and potential impacts and outcomes of proposed developments on Martuwarra in relation to all people of the Fitzroy River Catchment Estate.

As the insider researcher, I collaborated with a diverse group of community and academic researchers to document a wide body of evidence. The evidence revealed our shared connection to the cultural, physical, emotional, spiritual, environmental

and economic circumstances have influenced the wider community's health, happiness and wellbeing.

1.6 *Aims of the Study*

The following aims seek collective wisdom through cultural solutions, collaboration, and strengthening capacity and cultural authority.

1.6.1 Evidence-based Framework

To build an evidence-based framework for cultural solutions/cultural actions to enhance livelihoods, and justice for Aboriginal people facing development on their traditional lands and Living Waters. This doctoral study was predicated on the assumption that Indigenous wellbeing is dependent on the development of intergenerational culturally healthy lifeways; a model grounded in the inheritance of First Law also known as customary law.

1.6.2 Strategic Partners

Traditional Owners, supervisors and research colleagues combined traditional Indigenous Australian and Western knowledge and practices into a trans-disciplinary and complementary model. The course of the study developed strategic partnerships to explore examples of the practical application of 'dialogic theory' into 'dialogic action' (Freire, 1968). Effective partnerships inform practice and develop new investments that enhance cultural as well as the socio-economic determinants of wellbeing.

1.6.3 *Communication Skills*

To improve my capacity to share knowledge through contemporary communication tools such as film, podcasts, social media, and other digital formats. It was my intention to also improve my skills in more traditional communication methods such as public speaking, interviews and key-note conference presentations and writing academic peer reviewed publications.

1.7 *Guiding Principles*

My principles are guided by ancient wisdom that is supported by emerging knowledge regarding Indigenous responses to the influence of contemporary colonial policies and

practice. Due to the multidisciplinary nature of this study, the supervisory team is comprised of eminent academic researchers from disparate yet complementary disciplines. My Principal Supervisor is Professor Stephen Muecke; Co-Supervisors are Associate Professor Sandra Wooltorton and Professor Sandy Toussaint and Professor John Boulton. This diverse team has extensive research and supervisory experience in cultural health, humanities, the arts and sciences as well as extensive field research in partnership with Kimberley Indigenous communities.

Smith (1999) produced a list of 25 Indigenist research principles: "claiming, testimonials, storytelling, celebrating survival, remembering, Indigenising, intervening, revitalising, connecting, reading, writing, representing, gendering, envisioning, reframing, restoring, returning, democratising, networking, naming, protecting, creating, negotiating, discovering and sharing" (Smith, 1999, 145).

1.7.1 *First Law*

Each of the chapters in this thesis complement each other to tell a good story regarding the spirit of good-will generated by disparate people working in a range of disciplines from around the world collaborating to provide multiple perspectives. Transdisciplinary collaboration provides opportunities to share knowledge across disciplines with the intention of contributing to 'collective wisdom' to better understand the world around us (Redvers, Poelina, Schultz, Kobei, Githaiga, Perdrisat, Prince, & Blondin, 2020). Emerging from antiquity, successive generations of my family have contributed to the collective wisdom responsible for governing First Law; spirituality, culture, science, politics and the arts (Watson, J., Watson, A., Poelina, A., Poelina, N., Watson, W., & Camilleri, 2011). Collective wisdom remains central to responsible governance for caring for land, Living Waters, and relationships between human and non-human beings. Wunan Law is the expression of collective wisdom throughout the Kimberley (Black, 2010).

My elders told me Law is in the land, not in man. Everyone is under the Law and no-one is above it! First Law philosophy has emanated from an earth-centred approach, affirming the Law is grounded in place, in this instance, Martuwarra Country. In the Kimberley, First Law teaches us how to care for the land and Living Waters to sustain our culture. We know that Country is alive, and it holds memory. We know that Country gets lonely without the vibration of people.

1.7.2 *Liyan*

The critical element of Indigenous wellbeing is the connection between your head, heart and spirit that centres intrinsic feelings of truth and honesty and peace known in my language as liyan. Insincere approaches by government create a bad feeling that is no good for your liyan, your spirit. Liyan is our spiritual connection with the earth, the spirit of harmony with the universe (RiverOfLife, Poelina & McDuffie, 2020b). For example, if you do good things and think good thoughts you generate positive energy and lift your and other's spirits. Whereas, lying, bullying, or stealing and other offenses create negative energy such as conflict, fear, anxiety, and mistrust.

Furthermore, liyan incorporates spirit, moral compass and a conscious feeling that positions the someone within the cultural landscape and grounds their intuition for reading circumstances, reading people and reading the Country (McDuffie & Poelina, 2019; Muecke & Roe, 2020). In contemporary times, liyan is the internal guiding spirit that connects historic spiritual concepts of sovereignty and identity with contemporary Australian 'native title' rights and interests. My eldest sister described liyan as her intrinsic right that comes from her traditional relationship with Country. "We are the native title holders of this land, my language, my Country, and my River" (Pers comm. Lucy Marshall, 16th May 2017).

1.8 *Theoretical Framework*

My research considers the ongoing impact of colonisation on the contemporary circumstances Indigenous Australians experience through a multispecies justice lens. Indigenous people in the Kimberley continue to experience colonial oppression through structural violence and institutional racism that is responsible for unjust invasive exploitation (Lea, 2020).

Indigenous ways of storytelling involve multiple stories. With the support of family, friends, and colleagues, I have built a body of knowledge to demonstrate Martuwarra First Law is the vital ingredient for justice in relation to land, Living Waters and Indigenous peoples wellbeing. In my former doctorate, titled *Action Research to Build the Capacity of Nyikina Indigenous Australians* (2009), I provided evidence of the inter-generational structural violence and institutionalised racism experienced by my Nyikina Warrwa family. Our elders encouraged us to focus on our resilience and

resourcefulness. We were taught to maintain a positive spirit. Through their collective wisdom our elders taught us a pedagogy of freedom to strengthen our authority for cultural actions as instruments of First Law (Poelina, 2009).

This former study identified 'frame analysis' as a method to better understand the insider worldview regarding Indigenous disadvantage and dis-ease. The concept of frame analysis is derived from Goffman's (1974) research which captures and analyses how people understand situational undertakings. The researcher has the ability and opportunity to re-set perspectives, through a range of options and strategies for orienting policy to action transformational change (Goffman, 1974).

In sections of this present thesis, (Chapters 4 and Chapter 8) the voice of Martuwarra is presented as the lead author, Martuwarra RiverOfLife.

1.8.1 Anti-dialogic Action

In Chapters 2, 4, 9 and 10, I pay particular attention to the Kimberley colonial settler experience from an Indigenous perspective. My interest in doing so is to take readers on a journey with me. I explored the characteristics of oppression and freedom, as revealed by Paolo Freire (1970). These characteristics influence everyday realities that fluctuate between anti-dialogic and dialogic actions.

Freire's *Pedagogy of the Oppressed* (1970) describes the instruments of anti- dialogic action enacted through, "conflict, invasion, manipulation, and divide and conquer," (Freire, 1970, 11) which leads to chaos, uncertainty, despair, dis-ease and hopelessness (Poelina, 2009). Anti-dialogic language is framed around a 'deficit discourse' where Indigenous identity is bound to narratives of 'negativity, deficiency and disempowerment' (Fforde, Bamblett, Lovett, Gorringe, & Fogarty, 2013).

Overseas and in Australia, deficit discourse is linked with negative outcomes, such as stereotyping and perpetuating the notion of lack of agency where people become physically and spiritually distant (Fforde et al., 2013). An anti-dialogic framing of the so-called 'Aboriginal problem' would interpret Aboriginal people as being the problem. In contrast a dialogic perspective sees the dominant Western model of oppressive governance over Indigenous people as systemic racism and therefore problematic. The consequences of colonisation from legislated inequality are termed

'structural violence' and are evident in three forms: (1) physical violence manifested in mortality and morbidity rates; (2) spiritual, psychological and emotional violence is manifested in poor mental health and high levels of substance misuse; and (3) individual and community violence manifested in family and community breakdown (Altman & Kerins, 2012; Boulton, 2016; Galtung, 1969, 1996).

The anti-dialogic lived experiences of Indigenous Australians are direct outcomes of the continuing colonial tactics by governments in Australia. Governments, both state/territory and federal continue to deny the historical legacy of colonisation that is responsible for racism and structural violence in the contemporary Australian context (Poelina, 2009; Lea, 2020). Inevitably, this systemic frustration reduces aspirations and inhibits the ability of an Indigenous person to reach their full potential as a human being.

There needs to be thorough consideration of the social determinants of health and wellbeing to better understand the extent of oppression Indigenous Australians experience in the Kimberley (Boulton, 2016). This anti-dialogic approach is opposite to the earth-centred decolonising approach.

1.8.2 Dialogic Action; cooperation, unity, organisation, and cultural synthesis

In all of the chapters I explore how multiple partnerships are required to move dialogue into action, I pay particular attention to this unity pathway in Chapters 9 and 10. Indigenous leaders have started to invite the world's best practice expertise to work with Traditional Owners. Traditional Owners are exercising our cultural authority to advocate for the natural and cultural heritage qualities, culturally affirming sustainable economies and health-giving properties of this globally unique riverine system.

The earth-centred approach prioritises the wellbeing of Martuwarra and its species and entities, including people. The River's spirit is the central life force shared by diverse cultural and physical landscapes along the entire length of the river. The River Country provides food, medicine, recreational and ceremonial activities which promote and support the health and wellbeing of the people. In turn, the people reciprocate as guardians, managing Martuwarra through investing in an ethic of care and love.

Indigenous leaders have invested in strengthening their collective capacity by developing collaborative dialogic cultural actions. Indigenous leaders invested in building trust in the collaborative processes that were used. Their contributions brought collective wisdom into the situation. Through their commitment and dedication to contributing to workshops, their wisdom guided the research, generated discussion, and adopted 15 Position Statements which frame *A Conservation and Management Plan for the Martuwarra Fitzroy River Catchment Estate 2020* (RiverOfLife, Poelina, Alexandra, & Samnakay, 2020c). The trust, unity and cultural authority demonstrated in this collaborative Indigenous leadership model is an example of regional earth-centred cultural governance in action.

1.9 *Methodology*

This thesis by publication is a series of published peer-reviewed journal articles and other mediums that collate interrelated fields of Indigenous people's water rights and ecological health within a colonial context in the Kimberley. A multidisciplinary approach was used to triangulate multiple perspectives to provide a deeper understanding of matters of interest to Indigenous Australians.

A separate methodology chapter is not required in this thesis as different methods were used for independent peer reviewed papers. To this end, the methods are embedded in each of the published chapters. My role as an Indigenous researcher places me as an insider in the research process and draws on my deep continuing relationship with my River Country. It concludes with a participatory action research approach to capture the why and how this body of information was grounded in a cooperative inquiry.

The journey of this thesis introduced me to like-minded people from many diverse cultures from around the world who share my values, ethics, and spiritual connection to the earth. Through transdisciplinary cultural synthesis this thesis builds a body of evidence to inform better practice policy for improving the lives of Australia's Traditional Owners.

1.9.1 Indigenous Research

As an Indigenous researcher exploring and analysing within the Indigenous context, it is important that this research honours the continuity of First Law, Indigenous science

(knowledge making, adaptation, mitigation) and culture from the beginning of time to modernity. Decades of mainstream research has focused on single issue approaches which do not reflect the interconnected nature of Indigenous lives (Smith, 1999; Smith, Maxwell, Puke, & Temara, 2016; Smith, Tuck & Yang, 2018).

1.10 *Insider Researcher Position*

Ngajanoo nilawal Anne Poelina, *ngayoo Yimardoowarra marnin*.

I am a woman from the Mardoowarra. I am of the River and authorised to receive counsel from the River and speak on behalf of Martuwarra. As a guardian of the River, I feel duty bound to protect Martuwarra's right to live and flow because it gives and supports life. It is the River of Life (Poelina & Taylor, 2017).

I am an 'insider' and as such I have access to Indigenous social, cultural, and family networks within the Kimberley region. This study did not require interviewing participants. To this end, I was reliant on secondary sources therefore a research ethics application was not required. As an insider my ethics are determined by local Indigenous cultural protocols. I presented and discussed my research to Walalakoo Registered Native Title Body Corporate and to Martuwarra Fitzroy Council members, and to the Kimberley Region Aboriginal Health Advisory Group. All endorsed the study.

In this study, my analysis remains informed by my personal experience. As an insider I was supported by local Indigenous agencies to access, document and analyse information to shape my reflections regarding local Indigenous community situations in a wider political context. This includes collaboration with my research supervisors and colleagues with whom I co-authored thesis chapters as peer reviewed journal articles and film components.

As insider researcher I need to balance my responsibilities and obligations to Martuwarra, family, community, and the university. Engagement in this doctoral study is framed by Smith's advice that,

> the research domains through which indigenous research can operate are small spaces on shifting ground. Negotiating and transforming institutional practices and research

> frameworks is as significant as the carrying out of actual research programmes (Smith, 1999, 140).

I drew on the anti-oppressive research principles described by Brown & Strega (2005). I reframed the notion of 'experimental research' in this thesis as 'knowledge gathering and sharing'. To this end gathering and sharing knowledge are necessary ingredients for building capacity for sustainable life and regenerative development on Martuwarra Country.

As an Indigenous leader and insider researcher, I consider Indigenous methodologies to be research by and for Indigenous people, using techniques and methods drawn from the traditions of those people (Lambert, 2011). There is no singular 'Indigenous methodology' (Louis, 2007; Smith, 1999) however, Louis finds commonalities, including relational accountability, respectful representation, reciprocal appropriation, and rights and regulation.

I adopted the following principles from Louis as they clarified the difference between Western research and Indigenous methodologies (2007):

- Accepting/advocating of Indigenous knowledge systems
- Positioning of the Indigenous community members and the researcher in the research (in non-diminutive terms)
- Determining a research agenda (in response to needs of the community)
- Directionality of sharing knowledge (both ways)

1.10.1 Relationship with Country

Through sharing we start to listen, learn, act, observe, reflect, and make personal judgements and decisions regarding how we think and act in our world around us. We are instructed by elders to "read the signs, look up in the sky, down in the ground. Read Country and learn that Country is alive and is also reading us, as human beings!" (Pers comm. Lucy Marshall, 16th May 2017).

Stories are the vehicle knowledge keepers use to transmit shared values, ethics, philosophy, meaning, reason, and choice over millennia. In deep history, time is not static. Traditional knowledge has been generated over thousands of years of knowledge making, sharing, practice, observation, recording, adaptation, and

transformation. This ancient knowledge is transmitted to each emerging generation through repetitive circular storytelling which is in constant evolution and transition. Senior Elder, Lucy Marshall reminds us, "to see, think and importantly, do!" (Pers comm. Lucy Marshall, 16th May 2017). We cannot simply exist, we have an intrinsic responsibility to future generations to care for our rivers and all Living Water sources, flows and variations throughout the nation and across the planet.

The first stories we heard when we were growing up was where our family were born or buried. My Mother's rai, spirit, was conceived at Balginjirr. Her Aboriginal name is *Wiliany*, the freshwater mussel which lives in the Lower Liveringa Pool and other Living Water systems of Martuwarra. My family is buried on pastoral stations throughout the region. In 1997 my mother's last request was to claim her native title right by being be buried at Pandanus Park Aboriginal Community on her ancestral native title Country.

As Traditional Owners we continue to carry our knowledge, responsibility and relationships through stories, songs and dances. Contemporary storytelling includes multi-media, poems, publications and films. We Indigenous leaders are mobilising community organisations by collaborating with multiple and diverse partners to co-design our world.

These multiple voices contribute to framing collective wisdom as the new way forward for governing Martuwarra's catchment estate. The Martuwarra Fitzroy River Council (Martuwarra Council) is a coalition of six Native Title Representative Bodies along the river. It was established in 2018 and has become an authoritative Indigenous voice for Martuwarra (Poelina, Taylor & Perdrisat, 2019).

As an insider researcher, I continue to maintain a close relationship with Indigenous people and communities associated with Martuwarra. This study identified how the active participation of riverside communities in cultural practices improves resilience, multispecies justice and wellbeing.

1.10.2 *Cooperative Inquiry*

Cooperative Inquiry is a form of action research which seeks to find meaning in four different ways: 1.) by direct encounter (experiential knowing); 2.) by representing it in

terms of imaginal patterns (creative or presentational knowing); 3.) by interpreting and critiquing it through language-related concepts (conceptual or propositional knowing); or 4.) by reflection and action in relation to it (post-conceptual or participative knowing) (Heron, 1996, 204). In this way Cooperative Inquiry research includes four ways of knowing: experiential, presentational/creative, propositional/ conceptual and post-conceptual/participative/practical. In Heron's work, post-conceptual or practical knowing is the epitome of cooperative inquiry as it is a rich bricolage of each of the previous ways of knowing, some of which continue, others of which contextually change (1996).

Cooperative Inquiry as explained by Heron (1996), is helpful for developing mutual goals so that sectional interests can work together to achieve harmony and balance. Each process and outcome of these experiences are unique to each local circumstance. Storying unique places such as the River Country promotes integrated forms of learning particularly in regard to responding to multi-species injustice. In Heron's cooperative inquiry process, repeating cycles perhaps seven or more times of each of the ways of knowing is essential (Heron, 1996). Peter Reason an eminent global 'deep ecologist' in his long-time collaboration with Heron provides advice on how to add to Heron's body of work by extending our epistemology within co-operative inquiry by emphasising the practical (Heron & Reason, 2011). The repeated re-cycling experience creates a sense of being. It is in a sense of place and celebrated and transmitted in the thesis through the arts in the form of poetry, films, stories, reports, and plays.

Conceptual learning is developed by regular cyclic storying for knowledge-deepening as well as a practical application for building wisdom over a lifetime. The first cycle is only a tentative, not yet well-founded way of knowing. Each form of knowing increases in reliability/truthfulness as the number of cycles increase. The process is a form of action learning (Wooltorton, et al., 2020). It explains Indigenous ways of learning by doing. This study involved collective story telling as a model to reveal how Indigenous Australians living within Martuwarra's catchment estate share a common experience of invasion and colonisation with other Indigenous Australians.

1.11 *Thesis Chapter Summaries*

Each chapter contributes to framing the thesis journey through creation and resilience associated with cultural actions and cultural solutions (Smith, 1999; Smith et al., 2016; Smith, et al., 2018). As the insider researcher alongside my family, communities, research colleagues I explored the relationship between active participation in cultural practices, and personal and community resilience and wellbeing.

1.11.1 *Chapter 1: Introduction*

This introductory chapter sets the context of this thesis by framing the impact of colonisation from an insider perspective grounded in liyan, our deep spiritual connection. It defined Country as land that is responsible for sustaining life and Living Waters; the rivers, lakes, spring and soaks essential for maintaining the multiplicity of rare, exotic and endangered native species. It proposes that sustainable management of Country is an opportunity for all Australians to learn to feel Country and Living Waters.

It foregrounds local Indigenous leadership as consistently striving for justice, and government policy as unjust where it gives control of development decisions to invasive corporate interests over those of Traditional Owner native title holders. It proposes that genuine collaborative partnerships are required to strengthen confidence, love, empathy, wisdom, humanity, resilience, and hope. This first chapter introduces the topics that frame the study in following chapters.

1.11.2 Chapter 2: First Law, Balginjirr Our Special Home, Country

Chapter 1 introduced the insider standpoint, and pluralistic ways to collaborate with Traditional Owners and technicians to co-create contemporary forms of storying such as animation and film. Chapter 2 sets the context for colonisation in Western Australia and examines the impact of subsequent colonial laws and contemporary management systems that have been imposed over the historical earth-centred governance of Country. By contrast, since Bookarrarra, the beginning of time, the First Law creation story of Martuwarra, the river of life is retold over countless generations. These stories share wisdom, responsibility and ethics of love and care required to live in harmony and balance with our non-human family and the environment. My wellbeing is maintained by building my resilience through cultural

actions such as writing poetry and plays that affirm my family relationships and connection to Country.

1.11.3 Chapter 3: Can the Fitzroy River Declaration ensure the realisation of the First Law of the River and Secure Sustainable and Equitable Futures for the West Kimberley?

Traditional Owners created the Fitzroy River Declaration in 2016 to express a collective voice for Martuwarra's right to live, flow and sustain life. This chapter gives voice to the Martuwarra by way of a film to ground the meaning of the story. Chapter Three identifies the Fitzroy River Declaration as a starting point for realizing sustainable and equitable futures. This includes partnerships with senior local Indigenous elders, cultural mentors and local Indigenous governance and service agencies.

1.11.4 *Chapter 4: Living Waters, Law First: Nyikina-Mangala water governance in the Kimberley, Western Australia*

Chapter Four describes a First Law cultural governance groundwater policy framework for maintaining water quality and volume associated with health and wellbeing benefits for people and Country. In this chapter, I explore emerging conceptual challenges regarding a problem-based approach. My examination of the conceptual gaps regarding a co-governance model has revealed ways to promote dialogue, negotiation and agreement. The conclusion identifies the cultural governance model adopted and developed by the six Indigenous nations who have formed an alliance to work together to promote and protect Martuwarra, the Fitzroy River, through a united and organised approach.

1.11.5 Chapter 5: An Indigenous cultural approach to collaborative water governance

The Fitzroy River Declaration has raised Traditional Owners' sense of liberation and consciousness for collectively advocating on behalf of the River. In 2018 six independent Indigenous nations signed a Memorandum of Understanding to form the Martuwarra Council, an Indigenous cultural approach to collaborative water governance. The Council identified the need to establish a Martuwarra Fitzroy River Catchment Authority as a statutory body to monitor and regulate potential cumulative impacts from development.

1.11.6 Chapter 6: Sustainable Luxury Tourism: Indigenous Communities and Governance

Chapter 6 identifies cultural tourism as an innovative and creative way to build sustainable authentic cultural industries that ensure economic opportunities for Indigenous people. In this context, Luxury Tourism is not about '5 star ratings', rather it is about the opportunity to go with Indigenous people to experience feeling Country and learn how to become 'family' within an earth-centred context. The study affirmed this type of commercialisation requires a good relationship between Traditional Owners, industry, other tourism operators and local organisations.

1.11.7 Chapter 7: Stop Burying The Lede: The Essential Role Of Indigenous Law In Creating Rights For Nature

First Law grounds the need for cultural investment and secure land tenure to guarantee certainty for natures rights. Indigenous regulated commercialisation is a way to promote legal reforms for ecological justice. 'Just development' is seen as a means for brokering sustainable development for putting into action customary laws for multi-species justice.

1.11.8 Chapter 8: Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being

As the lead author, Martuwarra RiverOfLife, gives voice to the sacred ancestral serpent, Yoongoorrookoo that created Martuwarra. Chapter Eight identifies First Laws' authority to frame justice through an earth-centred lens where the law comes from the land and not imposed by man. To this end, legal pluralism comes from a diverse range of disciplines that have collaborated to explore a cooperative inquiry approach to generating coherent evidence. Cooperative enquiry is required to better understand existing laws that are responsible for sustaining the tools of colonisation; conflict, chaos, manipulation and, divide and conquer.

1.11.9 *Chapter 9: For the Greater Good? Questioning the Social Licence of Extractive-Led Development in Western Australia's Martuwarra Fitzroy River Catchment Estate*

Indigenous Australians have historically been excluded from decisions regarding resource development. The WA Government's fossil fuel and water extraction policies require review regarding 'who are the beneficiary of the development and at

who's cost'. In this chapter we apply a social licence lens to consider the notion of the greater good regarding the real and lasting impact of invasive development on people, non-humans, landscapes, and rivers. Traditional Owner historical relationship with Country is based on ecological values that have created a deep spiritual understanding of all that is within the landscape and biosphere, where plants and animals, rivers and land are considered to be family.

1.11.10 Chapter 10: A Coalition of Hope: A Regional Governance Approach to Indigenous Australian Cultural Wellbeing

Chapter 10 provides an opportunity to generate collective wisdom by collaborating with a disparate range of Indigenous and non-Indigenous researchers from around the globe. A coalition of hope is required for Indigenous leaders to reflect on the national disaster of the Murray Darling Basin and the impacts of global climate change in order to build new sustainable economies. This approach focuses on cultural wellbeing, resilience and what is required to make the transition to justice, freedom, and hope.

1.11.11 Chapter 11: Discussion

The Discussion chapter brings together the main concepts that have been revealed throughout the various chapters. Chapter 11 identifies and considers similarities and common characteristic that promote and diminish genuine opportunities for improving the wellbeing of Traditional Owners, County and the wider community.

1.11.12 *Chapter 12: Conclusion*

The thesis concludes by identifying Living Water is necessary to sustain all life. First Laws describe methods and knowledge that preserve the life generation influence of Living Water for people, land and multiple species. Governments continue to impose invasive laws, policies and practice that disadvantage Indigenous Australians. The recommendations identify dialogic actions required to change colonial injustice experienced by remote Indigenous Australians, our land, water and environment.

1.12 *Chapter One Summary*

In Chapter I set the context for this thesis by framing the impact of colonisation from an insider perspective grounded in liyan, our deep spiritual connection. It provided

the theoretical framework to explain how the study was implemented. The study was framed by the Indigenous values where Country is land that is responsible for sustaining life and Living Waters essential for maintaining the multiplicity of rare, exotic and endangered native species. I presented the structure of thesis with particular regard for the content and relationship of each of the chapters to each other. The following Chapter 2 explores pluralistic ways to collaborate with Traditional Owners and technicians to co-create contemporary forms of storying such as animation, poetry and film.

2 CHAPTER TWO: First Law, Balginjirr, Country

Citation: Poelina, A. (2019b, March 7). Balginjirr: A Special Place in Our Home River Country. Westerly Magazine. Retrieved from https://westerlymag.com.au/balginjirr-a-special-place-on-our-home-river-country/

2.1 *Preface*

As part of my celebration of my cultural identity I am co-creating animations, films, and writing poetry and plays. This first chapter includes these forms of storying and the readers is encouraged to watch the films.

Martuwarra Country's story is soon to be published by eminent authors globally. They are activists in the creation of a Post Development Dictionary of which my story is one essay amongst the voices of so many wise people. This has provided the opportunity to generate pluralistic ways to collaborate, share wisdom and live-in harmony and balance with each other and our amazing planet, Mother Earth (Poelina, 2019a).

Since Bookarrarra (the beginning of time) First Law stories have been told mainly through the voices of our non-human family and these stories are told over the generations to ensure we sustain a lifelong relationship, growing and nurturing an ethics of care and love. These laws are founded on the principle that the priority of law is to protect and manage the sustainable harmony of peoples, land and living waters.

Through this First Law story of the River, I shared how a Senior Nyikina Elder, Joe Nangan, also known as Butcher Joe, wrote this story "Ingaruko, the Rainbow Snake" (Nangan & Edwards, 1976, 56-57). I took this story, and we translated the words into the Nyikina phonetics. I created with the collaborations of others cited in this body of work, the animation Yoongoorrookoo, Creator of the Law as a "pragmatic illustration (not rigid rules) of justice that a judge could apply or modify according to the circumstances" (Biblestudytools.com, 2020). The River continues to be a sacred living serpent ancestral being in First Law.

The Poem Balginjirr was written by me and resulted in my first published poem. The poem was written when I was thinking about how to resolve a situation, but the

cultural solutions did not seem to be forthcoming. I walked over to my uncle's grave on my community Balginjirr as he remains a constant guide and mentor. I hear his voice and see his face and he continues to whisper his wisdom into my lessons for and with life. Following some moments of quiet, I returned to my home and the words flowed with no interruptions. Following the audio recording with the publisher I had a sound file, that was made visually alive by my filmmaker, colleague, and lifelong friend, Dr Magali McDuffie.

The River Country of the Martuwarra provides the context in which to locate the study. I affirm my family relationship and connection to Country. The legislative frames highlight the laws of this state and nation and the ongoing colonisation of Indigenous peoples in the Kimberley and across Australia. The analysis presented gives the reader an understanding of how the situation of disadvantage is encased in the reality that started for the Indigenous or the original inhabitants of Western Australia (WA) at the point of invasion in 1829 and were consolidated in the 1889 Constitution. It took 126 years for the original peoples of Western Australia to be recognised as citizens of their state in an amendment to the WA Constitution in 2015.

I believe this content will instil the need to take up the gift offered, which is to centre our collective wellbeing for each other and for justice for all living species, and for our living cultural landscapes. I urge the reader be united, organised in a cooperative inquiry, to take the time in the forthcoming chapters to view the film links and to be immersed in a small way into the world of the Martuwarra Fitzroy River, First Law, Peoples and our Dreams. We dream and work towards peace to sustain each other, and the survival, prosperity and wellbeing of our River Country and outwardly to planet, Mother Earth.

I invite you to watch the film "Yoongoorrookoo, Creator of the Law" citation below.

2.2 *Introduction*

Citation: Poelina, A. (2017c). *Yoongoorrookoo: Creator of the Law* (Film). Australia: Madjulla Inc., https://vimeo.com/425874378/8321a51bca

2.3 *Balginjirr Poem*

To watch the visualising of the Balginjirr Poem and my reading to better understand the context please go to the link:

> Poelina, A., (Producer), & McDuffie, M. (Director). (2019b). *Balginjirr Poem* (Online Film). Retrieved from: https://vimeo.com/395462956/20170d66ee

2.4 *Balginjirr, 'A Special Place on our Home River Country'*

I came home to our River Country, our place…our space…today.

I stood at your gravesite and recall the first night when I came back to my mother's land, and now I ask you…Do you know what is coming our ways?

I heard your many lived stories…those who had stood before, through the collective wisdom as elders, now see some of their children's children start to sway.

Is Country for sale, is Country for keeps, who will work with Country to watch over the people who sleep.

Some dream, dreams of money and some talk of gold, lead, mineral sands, intensive agriculture, pastoralism, harvesting water into licences and allocation flows.

The nightmare for people like me, is to be buried alive from the constant demands on a sacred river and kinship system, not found anywhere else on the planet, but to us known, intergenerationally as the River of Life.

Can we learn from the Murray Darling…hey, what about the oldest river in the world…the Finke…let these rivers share with us what the humans have done! We need to know this to let the Mardoowarra, Martuwarra…Fitzroy River run.

Do we cover it with intensive cotton, coal mine, scar up the country…drawing from the aquifers, seismic lines…fracking hydrogeology…or do we take a breath and keep the living waters living free?

Can we listen to the ancient songlines, singing the creation stories of geo-heritage, astronomy…astrology…and ancient boab trees?

Our bloodlines singing our songlines roamed this country wise and free.

Five times ten years plus five since I first walked with this big spirit Country, who still knows me and who will forever hold me.

Country knows you, Country watches you and Country is alive…waiting for you to see.

What is coming will change our world forever, if we don't stand with one mind and one voice, in solidarity.

Our fellow Australians are learning of this river country, they too recognise the Mardoowarra, Martuwarra, Fitzroy River is National and Aboriginal Heritage Listed and to be shared by you and me.

Do we call them our friends, do we call them our foe, do we work together to understand what must be done to give all of us a fair go?

2019 can it really be, that Indigenous Australians, the original First Peoples still stand.

Do we call on Earth justice? Earth-centred governance? First Law of this land! We must all come together…lead and govern for our common good for this wide brown land, Country.

We have seen how the Crown Law has taken and we ask what will be left? We cannot forget that this land we come from and still hold onto was taken by theft.

We have a new dream, a dream for oneness, values, ethics…need not confess, but unless we stand together, with collective wisdom, it will be nothing we dreamed the dreams from, it will quickly turn to nightmares, poison and sweat.

We all want the same things for our children and their children's children before we are laid to rest.

In good faith, free informed consent, sciences, industry and traditional owners, it's time to build collaboration and welcome all projects to the table in good spirit to understand the cumulative impact test.

Can the government keep its pre-election promises and demonstrate good governance for citizens of this state, whilst they are in power…now they are GST blessed.

Climate Change, Climate Chaos, quickly spiralling out of control, but despite 90 IPCC Scientists Warning – Warning quickly approaching 2.5 degrees, some numbers from Paris which the world agreed, No More Coal, our Federal Minister for the environment does not believe what she has been told.

If this truly was about shifting from the old economies-fossil fools, sorry fuels transitioning to an abundance of renewable, wind, wave, solar in abundance, which we can globally lead.

Tell the companies, renewables are gold. They can make forever profits if they transform from the old.

Come on Country men, fellow Australians, global citizens, one mind, one voice, one River Country. Let's make a River peace park before there's nothing left. Let's hold to humanity, one planet, Mother Earth, she's the best!

I know we can do this, and we must if we are to stay blessed. I know our ancestors are watching and waiting to make sure we past this test. Past, Present, Future held in this moment of time, lets hold to the Dreaming and hold our blood and songlines.

Sleep well my family along this river time, and I am sure we will keep talking as you watch over us in this modern Dreamtime. Circular storytelling, we know time moves in a circle and not in a straight line.

Run free forever Mardoowarra, Martuwarra, Fitzroy River…ask the humans to be kind, they think that they are on top of the tree but if they are not careful, we will all be left behind.

River, bird, animals, fed by living waters shall and deep, cradled in the coolness of Country once surrounded by sheep. Years of pastoralism, agriculture and now plans for grid lines, licences, permits, ask the humans to consider more than themselves, think of biodiversity, water quality, and creative ways to maintain their keep.

I close my eyes, but not my head and heart as my liyan, my moral compass keeps my watch…tick…tick…ticking my brain shrieks…no more alarm clocks…just the sharing of the river country, for the Friends of the Mardoowarra, Martuwarra, Fitzroy River Country.

Hello, hello, do you hear me? Don't desert or leave me, can we stand together for all time as the River of Life with the Right to Life, to live and flow…is someone listening is someone standing for all of us, what about the Queen before she passes on, should we go to her and ask her only one time, now time, let the people and the River Country be finally free?

An ancient River with the right to life, this is the First Law, which we know, Law of the Land, not Law of Man (Black, 2010). First Law provides the values, ethics, civil society, social cohesion, words of consensus, not conflict, multiple worldviews, trans-disciplinary knowledges and practice post development, post colonisation, post oppression, not just for the blackfellows but all who have made this land their home.

Come to know us, know Country and redefine who we are, it's a new time we can seize it can we hold this wide brown land, we can advance Australia fair, fair go, for its citizens not corporate welfare in the millions.

Rather a fair go for the Aussie; black, white, brown and green and some other multi-coloured world views, let's be more open, others can teach us some of their unspoken…with this Coalition of Hope…we can Advance Australia Lucky Country and give the Mardoowarra, River Country and Peoples a Fair Go!

Balginjirr is my family's traditional estate and connects us to Country.

Citation: Poelina, A. (2019a). Country. In A. Kothari, A. Salleh, A. Escobar, F. Demaria, & A. Acosta (Eds.), *Pluriverse: A Post Development Dictionary* (Vol. 1, pp. 142–144). Tulika Books.

2.5 *Country*

My Indigenous heritage is Nyikina; in my language "… ngajanoo Yimardoowarra marnin" means "… a woman who belongs to the river".

This centres me as property belonging to the Mardoowarra, Fitzroy River, Country. We are the traditional custodians of this sacred river in the Kimberley region of Western Australia.

We were given the rules of Warloongarriy Law from our ancestor Woonyoomboo. He created the Mardoowarra by holding his spears firmly planted in Yoongoorrookoo, the

Rainbow Serpent's skin. As they twisted and turned up in the sky and down in the ground, together they carved the river valley track as sung in the Warloongarriy river creation song. This is the First Law from *Bookarrarra*, the beginning of time. This is inherent to what we call Country.

On 17 November 2015, the *Constitution Act 1889* was amended to recognise the state's Aboriginal inhabitants for the first time as the First People of Western Australia and traditional owners and custodians of the land - what we ourselves call Country. The amendment promotes the view that the state parliament should seek reconciliation with Western Australia's Aboriginal people.

Although the amendment was a gesture of support, neither state nor federal governments have yet recognised the full extent of Indigenous rights. On 2 and 3 November 2016, Aboriginal leaders met in Fitzroy Crossing to showcase to the world the recognition that the National Heritage Fitzroy River is our living ancestor from source to sea. The Fitzroy Declaration (KLC, 2016b) claims:

> Traditional Owners of the Kimberley region of Western Australia are concerned by extensive development proposals facing the Fitzroy River and its catchment and the potential for cumulative impacts on its unique cultural and environmental values. The Fitzroy River is a living ancestral being and has a right to life. It must be protected for current and future generations and managed jointly (KLC, 2016b).

Building on the United Nations Permanent Forum on Indigenous Issues Background Guide (Australian Human Rights Commission, 2012) (for) 2017 launched in 2016, we recognise this as an important model for cultural governance of our natural and cultural resources. The UN framework grounds the Fitzroy River Declaration and the final resolution of Kimberley traditional owners and custodians, allowing us to investigate legal options and strengthen protection under the Commonwealth Environmental Protection and Biodiversity Act (1999), along with protection under the Western Australian Aboriginal Heritage Act (1972), whilst exploring legislation in all its forms to protect the Fitzroy River Catchment.

The colonial invasion and occupation of our country and peoples was and continues to be violent and brutal. It resulted in subjugation and slavery of the people, but invasion was defined as development. The colonial states were established to create wealth for

private and foreign interests at the expense of Indigenous people, our lands and waters. Since the historical discourse regarding development from the Anglo-Australian perspective has been in terms of the process and impacts of invasion, this begs the question as to how it benefits First Nation peoples, Aboriginal or Torres Strait Islanders.

As a traditional owner of 27,000 square kilometres of Nyikina country, I am a witness to, and share in, the struggle to reconcile conditions imposed on Aboriginal people across the continent with the fulfilment of traditional law. The focus of federal and state government policy and private investment is on the development of Northern Australia within a Western economic framework. So Anglo-Australian settler society disregards the value our 'human capital' grounded in traditional knowledge systems and the rights of nature.

Foreign interests view our country as a resource for investment: from the pastoral industry and intensive agriculture, mining for diamonds and gold, and pearls to fracking for gas and oil. None of these industries is sustainable: each has an adverse effect on air, land, water and biodiversity; and brings poverty to local people due to the Development Paradox.

The experience of Aboriginal people in the Kimberley and throughout Australia is shared with other First Nations people in countries that were colonised during the seventeenth and eighteenth centuries. The Norwegian peace philosopher Johan Galtung calls this legislated inequality 'structural violence' (Galtung, 1996). Its effects are measured in high mortality rates for children and adults alike; in endemic alcohol and drug abuse; in socially transmitted disease, and in trans-generational psychic trauma. The effects of life on the frontier are recapitulated down through the generations and made worse by the violence of child removal from families, a state policy known today as the Stolen Generation.

In 2017, we recall a decade since our government ratified the United Nations Declaration on the Rights of Indigenous People 2007 (UNDRIP). However, we have not seen these principles incorporated in Australian law. Many of us who have our customary law recognised in Native Title now work together to take charge of our

own destiny and partner with like-minded people to deliver justice based on the First Water Law of the Mardoowarra.

This is a story of hope, innovation, and cultural creativity as we explore our rights and responsibilities to create our own systems by going back to the principles of First Law, the law of Country. This First Law encompasses our relationship with each other, our neighbours, and most importantly our family of non-human beings - animals and plants. These are key to our personal, community, cultural and systemic economic well-being. As our Majala Centre (Poelina, 2019b) demonstrates, our culture, science, heritage and conservation economy are blossoming, founded upon our connectivity and cultural identities. Guided by First Water Law, our 'living water' systems are our life force, joining surface to groundwater, uniting the diverse cultural landscape of the Kimberley. At the same time, we are building collaborative knowledge systems, combining Western sciences, traditional knowledge, and industry practice in sharing our most precious resources - water and biodiversity.

We are reframing 'sustainable life' in country (McInerney, 2017).

2.6 *Chapter 2 Summary*

Chapter 2 set the context for colonisation in Western Australia and examined the impact of subsequent colonial laws and contemporary management systems that have been imposed over the historical earth-centred governance of Country. The First Law creation story of Martuwarra, the River of Life has been retold over countless generations to share wisdom, responsibility and ethics of love and care required to live in harmony and balance with our non-human family and the environment. The following Chapter 3 gives voice to Martuwarra by way of a film to illuminate the meaning of the story for realizing sustainable and equitable futures.

Acknowledgements

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3 CHAPTER THREE: Fitzroy River Declaration

Can the Fitzroy River Declaration ensure the realisation of the First Law of the River and Secure Sustainable and Equitable Futures for the West Kimberley?

Citation: Lim, M., Poelina, A., & Bagnall, D. (2017). Can the Fitzroy River Declaration ensure the realisation of the First Laws of the River and secure sustainable and equitable futures for the West Kimberley? *Australian Environment Review*, *32*(1), 18–24. https://researchers.mq.edu.au/en/publications/can-the-fitzroy-river-declaration-ensure-the-realisation-of-the-f

3.1 *Preface*

This chapter links to the previous chapter's thesis through its advocacy to consider the history of invasive development and the opportunity for just development. It commences with a film Mardoowarra Right to Life. This film was made to share the voice of the Mardoowarra/Martuwarra to introduce you to its peoples. This context is important to grounding the meaning into the story in this chapter. The meaning found in asking the question in regard to the intent of the Fitzroy River Declaration made by ALL Fitzroy River Catchment, Traditional Owners in 2016. The chapter concluded the Declaration is an important starting point for achieving sustainable and equitable futures in the West Kimberley.

Keywords: Fitzroy River Declaration, First Law, Sustainable and Equitable Future.

3.2 *See Film*

Poelina, A., & McDuffie, M. (2017a). *Mardoowarra's Right to Life* (Online Film). Madjulla Association. Retrieved from https://vimeo.com/205996720

3.3 *Introduction*

On 3 November 2016, at Fitzroy Crossing in the West Kimberley, WA, Traditional Owners from the Mardoowarra (Fitzroy River) catchment concluded the Fitzroy River Declaration (Declaration). In this document the Traditional Owners stated their concerns over the cumulative impacts of the wide range of development proposals on the River, River is written with a capital as a proper noun in sections of the thesis to affirm an enduring relationships of respect and identity of Martuwarra people.

The First Laws of the River, Warloongarriy law (First Laws), is embodied in the Declaration through recognition of the river as a living ancestral being with a right to life in its enduring form; as well as inclusion of the obligation to protect the river for

current and future generations and the incorporation of provisions for joint management of the river by Traditional Owners. This is the first time in Australia that both First Law and the inherent rights of nature have been explicitly recognised in a negotiated instrument. Importantly, Traditional Owner groups also agree to cooperate on a far-reaching plan of action for the protection of the globally significant traditional, intellectual, cultural and environmental values of the river.

Despite its shortcomings, the Native Title Act 1993 (Cth) provides Traditional Owners with an entry point to negotiate agreements. Native title groups, however, continue to face challenges in the post-determination landscape. With native title determined for most of the River, the Declaration provides an important catalyst for considering post-determination futures in the Kimberley and across wider Australia.

This article outlines the threats to the unique cultural and ecological values of the river as well as the events that led to the evolution and conclusion of the Declaration. A key component of the article is the exploration of legal options (including those based on the First Laws) which might enable realisation of the aim of the Declaration to protect the river for present and future generations. The chapter concludes that the Declaration is an important starting point for achieving sustainable and equitable futures in the West Kimberley. Underlined, however, is the importance of harnessing momentum which has developed following the conclusion of the Declaration and of developing mechanisms in state law1 to give effect to the First Laws.

3.4 *The First Laws of The River*

The First Laws that govern the river include Warloongarriy law and Wunan law (the Law of Regional Governance). Since Bookarrarra (the beginning of time) these First Laws have ensured the health of the living system of the Mardoowarra and facilitated relationships between Mardoowarra nations and peoples.

Warloongarriy law sets out the obligations of all who belong to the river - it is a law shared by the nations of the Mardoowarra through a shared songline. Under Warloongarriy Law, the Traditional Owners of the Mardoowarra regard the river as a

[1] State law is used in this context to refer to "formal" state and Commonwealth law including common law. It is used so as to be distinguished from Indigenous First Laws.

living ancestral being (the Rainbow Serpent), from source to sea, with its own “life-force" and spiritual essence. The Traditional Owners believe that the River gives life and itself has the right to life. The Warloongarriy law teaches that the Rainbow Serpent being is an important creation being which exists in the underground structure of the channels linking excavated waterholes and in flowing surface water, river channels, gorges and permanent waterholes. Mardoowarra native title owners are river people who derive their identity and very existence from the River. For example, the Nyikina people call themselves Yimardoowarra (belonging to the Mardoowarra/Martuwarra Fitzroy River).

Under First Laws, Mardoowarra tribes and tribe members of native title groups have special traditional community rights and duties in relation to the river, including rights to use and access water in the river (Australian Heritage Database, n.d.). As noted in the National Heritage Listing information, the river "provides a rare living window into the diversity of the traditions associated with the Rainbow Serpent" (Australian Heritage Database, n.d.). Four distinct expressions of the Rainbow Serpent are found within the Fitzroy River catchment.

Each is a:

> different [expression of the] way in which water flows within the one hydrological system, and all four expressions converge into one regional ritual complex, called Warloongarriy Law ... that serves to unite [the Fitzroy River] people and their Rainbow Serpent [traditional law] (Australian Heritage Database, n.d.).

The Wunan law was a Kimberley regional governance system of sharing which "traverse[d] the whole continent and [gave] shape to the Law of Relationships” (Black, 2010, 46).

These principles recognise the need for trade and co-management for coexistence between human and non-human beings. This Indigenous regional governance system facilitated extensive trade across vast estates of land spanning from the Kimberley to the NT (Poelina, 2015). The cooperative model of the Wunan is based on principles that respect the sovereignty of the various Indigenous nations but ensures the wellbeing of river and desert country by viewing it holistically and treating it as an indivisible, connected living system, to ensure its continuity over time.

Mardoowarra Traditional Owners support a return to the Wunan model to exercise Warloongarriy law and thus fulfil their birthright and duty to manage River country collectively and holistically as an integrated whole. It has always been so, but this distinctive quality is more important than ever given the significant, direct, as well as legal and institutional threats to the cultural and environmental values of the river in modern times.

3.5 *Threats to traditional and environmental values of the Mardoowarra*

The Mardoowarra is located in the West Kimberley of Northern Australia. It is a globally unique river system and is one of Australia's largest rivers (Brocx & Semeniuk 2011, 57-58). It is also one of Australia's few remaining wild rivers, as it exists in its natural condition given it is not regulated by dams or other barriers and is also otherwise relatively unaltered by human development (Australian Government, 2015).

About 64% of the 7000 people in the Mardoowarra catchment are Indigenous (Silva & Kostas, 2009). The catchment consists of the traditional lands of the Ngarinyin, Nyikina, Warrwa, Mangala, Walmajarri, Bunuba and Gooniyandi peoples. The Kimberley region is also characterised by iconic and diverse landscapes and varied assemblages of plant and animal species (Carwardine, O'Connor, Legge, Mackey, Possingham, & Martin, 2011).

Indigenous communities in this area make significant use of wild resources. Customary fishing, hunting, and harvesting contribute substantially to local food security as well as cultural and medicinal practices. These resources are therefore a key part of this culturally significant socio-ecological landscape (Jackson, Finn & Scheepers, 2014, 100-109).

The Kimberley is however subject to increasing threats from agricultural expansion, changed hydrological and inappropriate fire regimes, mining, tourism and invasive species (Gibson & McKenzie, 2012). Grazing is the most extensive land use in the catchment and is accompanied by a resurgence in mining interest and activity (ABC News, 2012). In the Australian Government's Our North, Our Future: White Paper on Developing Northern Australia (White Paper), (Australian Government, 2015), the government commits to working closely with northern jurisdictions to "support

innovative changes to the arrangements governing land use" with the goal of simplifying such arrangements to attract further investment. The government also aims to demonstrate the benefits of land tenure reform for Indigenous and non-Indigenous investors.

Despite qualifying language within the White Paper to work in conjunction with Indigenous communities and to ensure high environmental standards, there is a clear undertone of investment, development and economic concerns being the overarching objective of the Commonwealth Government's interests in Northern Australia. In this context, the Mardoowarra catchment is one of two rivers in Tropical North Australia most likely to face agricultural development and increased water extraction (Jackson, Finn & Featherston, 2012, 893-908). The federal government also aims to amend the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) to facilitate a simpler, faster process to ensure certainty for investors with a particular view to facilitate development in Northern Australia.

At the same time, proposed amendments to state laws, conflicting and confusing land tenure systems and the oppressive nature of the Native Title Amendment Act 1998 (Cth) according to Triggs (1999), threaten the long-term cultural, intellectual and ecological sustainability of this culturally and environmentally significant river system. As separate native title claims have been determined all along the river, this facilitates government negotiations with separate Traditional Owner groups. The result is the Mardoowarra and the peoples are fractured into component parts at odds with the First Laws, as well as English and Australian common law (The Whanganui River Report, 1999).

Further, while the Indigenous land management sector continues to experience rapid growth with large areas of northern Australia being devolved to communal tenure, there are separate and different legal and institutional arrangements for Indigenous freehold and trust arrangements and pastoral leases across the Commonwealth (Barber, Jackson, Shellberg, & Sinnamon, 2014). Various state and territory jurisdictions, which require the navigation of various interacting legal regimes, have also emerged (Barber, et al., 2014). A complex regime is evident in how and by whom the Mardoowarra is governed.

The River is heritage listed by the Commonwealth (2011) as part of the West Kimberley heritage listing. Meanwhile, the River's Geikie Gorge (Heritage Council, 1995) and Geikie Gorge National Park (Heritage Council, 2009) are state heritage listed. As noted above, native title has been recognised for many groups along the river with claims still being negotiated in other parts. Indigenous Land Use Agreements have been entered into for some of the river and there are various Indigenous and non-Indigenous pastoral leases that have been granted in the area. Despite this, mining leases have been granted along the Mardoowarra, including in areas of the National and State Heritage Listings. The WA Government has granted these leases under powers conferred by the Native Title Amendment Act 1998 which enables the state government to do so in "the national interest" (Native Title Amendment Act 1998 (Cth), Subdiv P, ss 36A, 42 & 43).

3.6 *Legal and governance options for realising the objectives of the Declaration*

The Declaration represents an agreed expression of the First Laws and the priorities for implementing First Laws in modernity. Article 8 of the Declaration emphasises the importance of investigating legal options and ethical options that support the priorities for action identified by Traditional Owners of the river. This section therefore sets out governance and legal options for realising the aspirations of the Declaration.

3.6.1 *Governance options for realising procedural aspirations of the Declaration*

Articles 1, 4, 5 and 7 refer to the development of processes for decision-making and catchment level planning or governance:

- Article 1 concerns joint decision-making processes for the Prescribed Body Corporates (PBCs);[2]
- in Article 4, Traditional Owners agree to cooperate to develop a management plan, based on traditional and environmental values, for the entire catchment;
- Article 5 supports the development of a catchment management body which is based on cultural governance; and

[2] PBCs are the corporate bodies nominated by respective native title groups to manage native title rights and interests once native title has been recognised by the Federal Court.

- Article 7 relates to the engagement of local and state governments with the objective of ensuring that these governments act in accordance with processes agreed by Traditional Owners.

Development of a regional governance system of sharing under Wunan law could provide an important mechanism for achieving the aspirations contained with the four Articles described above. The system would be designed to empower integrated regional decision- making based on holistic systems of thinking and informed consent around precautionary and intergenerational equity principles while shifting the balance of power to regional people and stakeholders.

The regional governance framework based on principles of Wunan law would include representation from all of the Traditional Owners connected to the Mardoowarra while providing a framework for collaboration with the pastoral, agricultural, scientific, conservation and government sector. A governance system based on Wunan law has the potential to facilitate cultural synthesis, cooperation, unity and organisation resulting in dialogic action while providing a decolonising framework distinct from the colonial paradigm of cultural invasion, divide and conquer, and manipulation (Freire, 1968).

3.6.2 *Legal Options*

In the Declaration, Traditional Owners agreed to:

- reach a joint position on fracking (*Native Title Amendment Act 1998* (Cth), Art 2);
- create a buffer zone to exclude the extraction of hydrocarbons, water extraction for irrigation and the construction of dams (*Native Title Amendment Act 1998* (Cth), Art 3); and
- establish a joint Indigenous Protected Area (IPA) over the river (*Native Title Amendment Act 1998* (Cth), Art 6) as a mechanism for realising other objectives of the Declaration.

The Declaration aims to protect the traditional and environmental values that underpin the River's National and State Heritage Listing. In the Declaration, Traditional Owners express interest in exploring legal options for realising other Articles of the Declaration, in particular· strengthening protections under the Aboriginal Heritage Act 1972 (WA) and National Heritage Listing under the EPBC Act. Traditional Owners also agree to consider options for the development of specific legislation to protect the unique cultural and natural values of the Fitzroy catchment (Native Title

Amendment Act 1998 (Cth), Art 8). The discussion that follows explores legal avenues that could be pursued in support of the issues raised in the Declaration.

Fracking concerns could be addressed through an approach similar to that of the Victorian Government that has banned the exploration and development of all onshore, non-conventional gas until 2020 (ABC News, 2016). As the political context of WA has changed with the incoming Labor Government, there is an opportunity to consider a similar approach in the West. A moratorium on fracking for the Kimberley or the Mardoowarra specifically may be more politically palatable and would provide the time necessary to fully appreciate the evidence on fracking and avoid potentially irreversible environmental harm in the meantime.

The entire Mardoowarra catchment was included in the National Heritage List in 2011. The EPBC Act 1999 and the Aboriginal and Torres Strait Islander Heritage Protection (ATSIHP) Act 1984 therefore can provide temporary relief for activities such as fracking, mining and irrigation which threaten the National Heritage or cultural values associated with the Mardoowarra. The Federal Court has jurisdiction to grant injunctions (EPBC Act 1999 (Cth), s 475) or make remediation orders (EPBC Act 1999 (Cth), s 480) for contraventions of the EPBC Act.

In addition, the Federal Minister responsible for the ATSIHP Act can, following an application by an Aboriginal person or group, make a declaration in relation to areas and objects that are of particular significance to Aboriginal people. Where there are areas and objects under serious and immediate threat of injury or desecration, or of being used in a manner inconsistent with Aboriginal tradition, the Minister can make an emergency declaration to protect these areas or objects (ATSIHP Act 1984 (Cth), s 9). This mechanism is however only meant to be used as a last resort where state or territory protections have been ineffective. The emergency declaration is also only a short-term response granted for 30 days. An extension of time of a further 30 days can also be sought (ATSIHP Act 1984 (Cth), s9(2)-(3)).

The Mardoowarra is also listed as an Aboriginal Heritage Site under the Aboriginal Heritage Act 1972 (WA)i. Weakened on a number of occasions, the Aboriginal Heritage Act aims to recognise, protect and preserve Aboriginal sites in WA. However, in the 45 years since the introduction of the Aboriginal Heritage Act, the

State of WA has experienced significant socio-economic change (Vaughan, 2016, 254). The Aboriginal Heritage Act also pre-dates Mabo No. 2 v The Commonwealth (1992) and the introduction of the Native Title Act 1993 (Cth). While the Aboriginal Heritage Act provides important protections such as making it an offence to excavate, destroy, damage, conceal or alter Aboriginal sites, (Aboriginal Heritage Act 1972 (WA), s 17) the increase in competition and conflict over land use and the shifts in the legal landscape since the Act's inception have meant that the legislation has become ineffective (Black, 2010, 25). It is thus important to consider potential amendments to the Aboriginal Heritage Act which would strengthen protection of the Mardoowarra while giving effect to Warloongarriy law. It is concerning, however, that proposed amendments to the Act (Black, 2010, 69) limit Indigenous involvement and contain inadequate safeguards for the consultation of Traditional Owners.

An IPA over the Mardoowarra catchment, as set out in Art 6 of the Declaration, could provide an effective way to galvanise collaboration between native title groups in order to realise the objectives of the Declaration and by extension First Laws. To establish an IPA, Traditional Owners enter into a voluntary agreement with the Australian Government to manage country in accordance with traditional law, custom and culture in line with requirements of the National Reserve System and international conservation guidelines.

With native title recognised for most of the Mardoowarra catchment, the catchment is an important candidate for the establishment of an IPA given that a prerequisite for terrestrial IPAs is that Traditional Ownership has been "formalised" (Black, 2010, 69). Native title provides the land security on which to form a Mardoowarra IPA. An IPA would enable Traditional Owners to implement their own governance structures and access a network of external agencies and would be supported by government funding arrangements (Australian Government National Indigenous Australians Agency, 2016). This, in combination with other income generating activities, could facilitate the achievement of economic sustainability and land management goals (Langton, Rhea & Palmer, 2014, 102). Once established, however, IPAs receive small amounts of funding from short-term funding contracts (Ross, Grant, Robinson, AIzurieta, Smyth, & Rist, 2009, 242-247). So further, as IPA arrangements are voluntary, they provide no legal protections for native title lands beyond those

recognised under native title. IPAs thus lack the protection of some other categories of protected areas such as national parks.

Australia has the unfortunate distinction of being the only Commonwealth nation that does not have a treaty with the Indigenous peoples. Discussion around the possibility of a treaty with Indigenous nations and state governments has however emerged in SA (Winter, 2016). Victoria (Fitzsimmons, 2016) and the NT (Davidson, 2016). In WA, the Noongar claim (De Poloni, 2015) in 2015 is also seen by some to be akin to treaty. Such developments suggest the possibility of not only realising treaties with Indigenous nations but also treaty agreements with specific nations.

A further step to build on the Fitzroy River Declaration could therefore be a binding "Mardoowarra Treaty" between Mardoowarra Traditional Owners, the WA State Government and the Commonwealth Government. The Mardoowarra Treaty could be based on principles of Warloongarriy law as well as the regional governance framework and principles of Wunan law. The treaty would recognise the sovereignty of Mardoowarra nations while codifying existing Warloongarriy and Wunan law as well as common law and statutory native title principles which require that native title be ascertained and rendered conceptually in accordance with the laws and customs of first nations peoples' past, present and future.

3.7 *Conclusion*

The Fitzroy River Declaration creates an important precedent for envisaging post-native title determination futures in the Kimberley. Development and economic interests in the region, nevertheless, create significant pressures on environmental and cultural values as well as the capacity of existing state-based legal frameworks to protect these values. It is important therefore to build on the momentum garnered in the conclusion of the Declaration to secure Indigenous rights and the legal and ethical protection of the river. Indigenous governance mechanisms that may facilitate realisation of the First Laws principles should also be fully realised.

3.8 *Annex - The Fitzroy River Declaration*

3.8.1 Fitzroy River Declaration - November 3, 2016

Traditional Owners of the Kimberley region of Western Australia are concerned by the extensive development proposals facing the Fitzroy River and its catchment and the potential for cumulative impacts on its unique cultural and environmental values.

The unique cultural and environmental values of the Fitzroy River and its catchment are of national and international significance. The Fitzroy River is a living ancestral being and has a right to life. It must be protected for current and future generations and managed jointly by the Traditional Owners of the river.

Traditional Owners of the Fitzroy catchment agree to work together to:

- Action a process for joint PBC decision making on activities in the Fitzroy catchment;
- Reach a joint position on fracking in the Fitzroy catchment;
- Create a buffer zone for no mining, oil, gas, irrigation and dams in the Fitzroy catchment;
- Develop and agree a Management Plan for the entire Fitzroy Catchment, based on traditional and environ- mental values;
- Develop a Fitzroy River Management Body for the Fitzroy Catchment, founded on cultural governance;
- Complement these with a joint Indigenous Protected Area over the Fitzroy River;
- Engage with shire and state government to communicate concerns and ensure they follow the agreed joint process;
- Investigate legal options to support the above, including:
- Strengthen protections under the EPBC Act National Heritage Listing;
- Strengthen protections under the Western Australian Aboriginal Heritage Act (1972); and
- Legislation to protect the Fitzroy catchment and its unique cultural and natural value

3.9 *Chapter 3 Summary*

Traditional Owners created the Fitzroy River Declaration in 2016 to express a collective responsibility for Martuwarra’s right to live, flow and sustain other life.

This chapter gave voice to Martuwarra by way of a film to illuminate the meaning of the story. Chapter Three identified the Fitzroy River Declaration as a starting point for realizing sustainable and equitable futures. This included partnerships with senior local Indigenous elders, cultural mentors and local Indigenous governance and service agencies.

Acknowledgements

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4 CHAPTER FOUR: Living Waters

Living Waters, Law First: Nyikina-Mangala governance in the Kimberley, Western Australia

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4.1 *Preface*

To apply the previous chapter outcomes, the article 'Living Waters, First Law' water governance framework centres Living Waters, First Law and the health/wellbeing of people and Country. The framework is based on a groundwater policy position developed by the Walalakoo Aboriginal Corporation, the Nyikina and Mangala peoples' native title corporation, in the West Kimberley, Western Australia in 2018. The article celebrates Traditional Owner's pragmatic decolonising strategies. It explores the emerging conceptual challenges to the status quo by comparing Living Waters, First Law framework to Australia settler state water governance framework, represented by the National Water Initiative. Bacchi's 'what is the problem represented to be' approach is used to interrogate the underlying assumptions and logics (2009). We find that there are incommensurable differences with First Law and Australian water reform agenda. Yet, our analysis also suggests 'bridges' in relation to sustainability, benefits and responsibilities could promote dialogues towards decolonial water futures.

Keywords: First Law; Living Waters; First Peoples; Indigenous; wellbeing; water governance.

4.2 *Introduction*

> Our ancestor Woonyoomboo with our sacred ancestor Yoongoorrookoo (serpent) created the Mardoowarra (Fitzroy River) and its tributaries. The Mardoowarra is a gift to human and non-human beings, such as the birds, the animals and all the plants within this system… we advocate the protection of all river tributaries and wetlands which re-charge and connect the ancient aquifers and underground to surface water systems. These Living Water systems are connected to the Mardoowarra. First Law and custom that govern the river include Warloongarriy law. Since Bookarrarra (the beginning of time) this First Law ensured the health of the living system of the Mardoowarra. The importance of these laws is the principle that the law is in the land and not in man. It is framed around values and ethics of co-management and co-

> existence which continue to facilitate inter-generational relationships between the shared boundaries of all the River nations through ancient songlines, contemporary customs and practices. Under Warloongarriy law, the Traditional Owners of the Mardoowarra regard the River as a living [sacred] ancestral being (the Rainbow Serpent), from source to seas, with its own 'life-force' and spiritual essence. It is the 'River of Life' and has a right to Life. (Walalakoo Aboriginal Corporation 'RE: proposed water allocation plan', message to the Department of Water and Environmental Regulation, June 2018, via email*).*

Living Waters, Law First is a cultural governance framework for water developed by Walalakoo Aboriginal Corporation (WAC) in Western Australia. A central objective of the framework is to look after Living Waters, care for Living Waters is enmeshed with human health and wellbeing. Living Waters are connected physically and spiritually throughout Booroo (Country), including connections that run through the earth and aquafers. Thus, the management of rivers, billabongs, springs, soaks, flood plains and aquifers are all connected, and based on reciprocal relationships.

Water is connected to identity, culture, livelihoods, and economies. Our epigraph illustrates how the physical manifestations of the epic journeys of Woonyoomboo and the sacred ancestral being, Yoongoorrookoo, entwined with ethics, values, custom, law, language, and inter-generational obligation, as water moves above ground, down rivers and permeates though groundwater systems (Pannell, 2009). WAC elders indicate water has meaning beyond the need to drink and sustain life, because as custodians we see ourselves as an integral part of the landscape, the Mardoowarra, and our cultural values are strongly associated with water rights and responsibilities (Watson et al., 2011). These relationships are detailed in *Birr nganka Yimardoowarra* (the knowledge source of the Mardoowarra's people), a hydro-ecological framework developed by Nyikina women elders. Senior elder Annie Milgin explains, "Birr Ngangka – the cycle of life, story and law in Nyikina Country – is not just for people: It animates in all forms of life" (Milgin, et al., 2020, 7).

Attention to water governance is warranted because water issues are never just about access to water volumes. Water is contested on multiple levels, from access to rules to societal discourses (Zwarteveen & Boelens, 2014). Decisions about water have profound impacts on people's lives. Water justice depends on the fairness of water

governance processes and outcomes (Nikolakis & Grafton, 2014). In Australia, a major contributor to injustice is a governance system based on water colonialism.

Australia's First Peoples have responded to water colonialism with a range of water policy positions, actions, declarations, academic research and other outputs (Taylor, Moggridge & Poelina, 2017). Nevertheless, research led by First Peoples on nation building and water governance is often overshadowed within the literature (Hemming, Rigney, D., Bignall, Berg, & Rigney, G., 2019). The need for change is acknowledged, but the debate often reflects the discourses and actions of settler state water management planning. Limited attention is paid to how First Peoples are actively decolonising water governance or how decolonisation can be operationalised, especially in relation to co-governance.

Here, we take an explicitly decolonial stance on water governance that supports First Peoples' resurgence and local nation building and revitalisation of First Law. We refer to the decolonising practices of envisioning the future, reframing of the status quo and democratising decision making (Smith, 1999; Smith et al., 2016; Smith, et al., 2018). Traditional Owners' vision for water governance is described in the Living Waters, Law First framework. The 'water governance' hegemony is reframed by exploring water co-governance based on First Law. Water governance is 'democratised' by Traditional Owners through foregrounding First Law principles for water decision making.

After describing First Law, Living Waters, we consider potential implications for Australian's National Water Initiative (NWI). Previous work has highlighted the need for reform (e.g., Nelson, Godden & Lindsay, 2018; Hartwig, Jackson & Osborne, 2018; Jackson, 2017a; Tan & Jackson, 2013; Altman, 2004; Hemming & Rigney, 2014; Marshall, 2017). The NWI implicitly precludes options such as cultural governance and co-governance. A reformed NWI that is inclusive of such models would need to find ways to harmonise with First Peoples' diverse water governance frameworks and institutions. Comparing the NWI to the Living Waters, Law First framework allows us to explore, in specific detail, areas of conceptual similarity and difference.

Our analysis of the two different world views is based on Bacchi's 'what is the problem represented to be?' approach (2009). Bacchi suggests that government policy can be examined by questioning how the policy 'problem' is represented. This approach assumes that the implicit representation of a 'problem' reveals much about the politics of the policy 'solutions'. We choose Bacchi's approach for its analytical insight into politics, power and representation. In addition, using a tool designed for policy analysis in this context subverts hegemonic assumptions about who makes water policy in Australia.

After highlighting the tensions, we consider how points of similarity could be used as 'bridges', drawing people(s) together across knowledge divides (Anderson and McLachlan, 2016). Cultivating bridges of shared understanding are crucial because they are the building blocks for a shared water future based on equity, reciprocity, and wellbeing of all. Bridges are necessary for confronting the challenges of decision-making power, ownership, responsibilities and rights. Combining the 'bridges' and conceptual 'gaps' we propose a research agenda as a starting point for dialogue about broader water reform and highlight the importance of asking 'unsettling' questions.

Together, the analysis and case study provide pragmatic strategies towards water decolonisation in the Kimberley, Western Australia. Our work adds to the growing literature in Australia about First Peoples' diverse water governance frameworks and strategies. Our contribution is to propose bridges to promote dialogic action in an effort to decolonise water governance in Australia.

4.3 *Background*

Before describing the Living Waters, Law First Framework, we outline our methodological approach. We describe how we conceptualise the terms 'Living Waters', 'First Law' and cultural governance in this chapter.

4.3.1 Research collaboration

This chapter has three authors, RiverOfLife (Martuwarra), Poelina and Taylor. The Martuwarra is the lead author, and we acknowledge Yoongoorrookoo the sacred ancestral living being, through the Martuwarra and in turn through the River's affiliation with Warloongarriy Law ('river law') as creator and keeper of First Law (Poelina, 2017b). Acknowledging the Martuwarra reflects the fact that people, land

and water are not separate. Country shapes the human authors as they shape and represent Country in their writing. (Bawaka Country, Wright, Suchet-Pearson, Lloyd, Burarrwanga, Ganambarr, R., Ganambarr-Stubbs, Ganambarr, B.,Maymuru, 2015). The Aboriginal English word, Country can be used in several ways (Pleshet, 2018). We capitalise Country as a proper noun. Country is a living presence to which people relate. Country also connotes the estate of specific people, e.g., Nyikina Country.

Poelina is a Nyikina Warrwa woman. 'Ngayoo yimardoowarra marnin'; she belongs to the Mardoowarra/ Fitzroy River (throughout the chapter we use the generic term Martuwarra, but acknowledge the Nyikina spelling, Mardoowarra). Taylor is an Australian born woman of British/European descent. Both are residents of the West Kimberley, where this case study is located. Where Poelina provides specific comments from her perspective as a Nyikina Traditional Owner, it is indicated in the text. Otherwise, a collaborative co-authorial voice between Poelina, Taylor and Country can be assumed.

WAC's research programme is directed by their six-person research committee, who are a sub-section of the WAC's board members (i.e. from a board of Nyikina and Mangala people). We thank Annie Milgin, Linda Nardea, Anne Poelina, Patricia Riley, Robert Watson, Kimberley Watson for their contributions.

4.4 *Methodological approach*

According to Poelina, the challenge before the Martuwarra people is to frame their own 'dreaming' and imagine how their water governance can be strengthened through the goodwill of governments (Poelina, 2020a). Goodwill is critical to constructive co-governance partnerships and changes to water governance that advance First Law must also be protected by appropriate legislation to avoid being undermined by arbitrary administrative fiat. Our observations are privileged by tens of thousands of years of water governance wisdom and authority in partnership with the Martuwarra's guardians. Our intent is to describe decolonisation envisaged by Traditional Owners to re-imagine the future, dreaming and celebrating resilience and well-being.

Consistent with Traditional Owner's visions, this article draws on critical and decolonising methodologies to support our collaborative research approach. We begin by assuming that all research is grounded in value systems and is therefore political;

by valuing First Peoples' knowledges; and by using the practice of academic inquiry towards emancipation and social justice (Freire, 2005); (Norman, Lincoln & Smith, 2008).

By 'decolonisation' we refer to the undoing of colonisation that leads to material changes, returning stolen lands and waters (Christie, 2014; Tuck & Yang, 2012). Water decolonisation is a process that supports First Peoples' water sovereignty, shifting power, decision making authority and material access back to Traditional Owners. It implies that new relationships need to be developed between the Australian government and First Peoples. It implies changes to the relationships between the water sector, commercial water users, civil society and First Peoples. We understand water decolonisation to be an unfolding process, leading not to the pre-colonial past, but a yet-to-become future (Césaire, 2000; Tuck & Yang, 2012).

Smith proposes that research for decolonisation can encompass many forms and practices. Here we highlight some of Smith's twenty-five Indigenous projects' that involve: envisioning, reframing, sharing and democratising decision making (1999). This article describes how Traditional Owners decolonise by reframing water management, envisioning and democratising through new governance structures, sharing First Law stories about Living Waters. In this article, reframing occurs through policy analysis (see section 4 for detail). Democratising happens by questioning the colonial constructions of decision-making processes/bodies that are enforced by settler legislation and undergoing reforms that reinstate First Peoples' principles (Smith, 1999).

The story of Traditional Owners' envisioning, reframing and democratising water governance is aligned with the literature on Indigenous resurgence and nation (re)building (Hemming et al., 2019). Resurgence refers to the actions that reconnect people with homelands, cultures and communities, renewing roles and responsibilities to both water, people and other life (Corntassel, 2012). Practising water governance for Living Waters revitalises Law, supporting First Peoples using "their powers and responsibilities as Nations in order to promote an Indigenous-centred discourse on sustainable self-determination" (Corntassel, 2008, 121). Renewing relationships between neighbouring First Peoples within the catchment is integral to resurgence (Poelina, et al., 2019; Corntassel, 2012). Thus, visions of water governance

decolonisation are also visions for wellbeing between Living Waters, lifeways and livelihoods and ALL peoples on and with Country (Poelina, 2020a).

4.5 *First Law, Living Waters*

The inherent rights of First Peoples to govern their lands and waters is embedded in their Law, sometimes called customary or traditional law. Here we refer to it as 'First Law'. First Law is considered to come from the land (Black, 2010; Lim, Poelina & Bagnall, 2017; Graham & Maloney, 2019). Through First Law, law of the land, everyone is under this law and no one is above it. First Law grounds First Peoples' ontologies, relationships and obligations. These deep relationships and world views are framed as Indigenous jurisprudence that combine the past, present and the future into an ethics of care (Anker, 2008). First Law is central to sustaining Traditional Owners' ways of life, livelihoods and wellbeing.

According to First Law, relationships to water (and land) are defined by responsibilities, not just by rights (Graham & Maloney, 2019). Thus, Traditional Owners are custodians who have a duty to protect the water that nourishes billabongs in the dry season and the river that flows during the wet season (Toussaint, Sullivan, Yu, & Mularty Jnr., 2001). Nyikina and Mangala Traditional Owners continue to adhere to the lessons of Woonyoomboo's story as it underlies the construction and resilience of their identity, health and wellbeing, cultural inheritance and guardianship for the Martuwarra and Living Waters (Watson et al. 2011).

But what are 'Living Waters'? Many people use this Aboriginal English term to describe waters that are alive. Nyikina Living Waters are *Oongkoor,* the permanent waters inhabited by spiritual beings/ water snakes and are the source of energy that animates Country (Milgin et al., 2020). Nyikina man Paddy Roe described several connected springs as, being part of his spirit because he was born in a place where he was connected to these serpents these yungurugu (i.e., Yoongoorrookoo). He believed the yungurugu is the rainbow snake that holds the water always as living waters, never going dry (Benterrak, Muecke & Roe, 1984).

Further into the desert, Walmajarri people talk about *jila*, the permanent water places that are *wunggur ngaba*— Living Water— inhabited by the *Kalpurtu* serpent ancestral beings (Sullivan, Boxer, Bujiman, & Moor, 2012). Moving several hundred

kilometres south of the river, Karajarri people refer to *pulany*, the powerful ancestral snakes who live in *jila* (Yu, 2000a). Further south still, Noongar people know the *Waugal*, the Rainbow Serpent, created wetlands, the trail evidenced today by Living Waters (Wooltorton, Collard & Horwitz, 2018). Living Waters are "at the heart of a person or group's country" (Lingiari Foundation, 2002, 8).

First Law instils obligations on the guardians to look after Living Water systems as this life force sustains all other life, human and non-human. As guardians of Living Waters, Traditional Owners have a duty to place its interests ahead of their own. Guardianship/custodianship for water is inter-generational, relational and dynamic. Consistent with First Law, Living Waters must be given appropriate respect and the correct protocols need to be followed by the right people for that Country (Appleyard, Macintyre and Dobson, 2001). Observation, visitation and relationship is important (Poelina, Webb, Dhimurru Aboriginal Corporation, Smith, A. S., Smith, N.,Wright, & Hill, 2020). Looking after Living Waters requires attention to the signs which indicate the balance of all life. The complexity of these relationships are being fully developed in the research being undertaken with Senior Nyikina Elders Annie Milgin, Linda Nardea and Hilda Grey to translate Nyikina concepts and knowledge into a seasonal calendar (Milgin et al. 2020).

Poelina's view is that a Living Water, Law first framework promotes reciprocal responsibility through an ethics of care based on the relationship between all living systems. It enshrines key values and ethics to promote wellbeing and the balance and sacredness of all life. Importantly, it recognises that water is a living life force that humans have an obligation to care for in a respectful manner. Traditional custodians must recognise and protect all inhabitants who are connected to these ancient living water systems (Poelina, 2017a). This is the Living Water Law. Poelina says that from her perspective, the spirit of the water is living. This then creates and continues the life cycle from the minute, the diatoms, to the largest, such as the sawfish, crocodiles, bull sharks, birds, fish, plant and other river creatures which live in harmony with people and the River Country (Poelina & Fisher, 2020).

4.6 *Water governance and decolonisation*

Water governance is central to water decolonisation as an expression of self-determination. Water governance is the set of systems that control decision-making

about water use and management (Curran, 2019). Water governance matters because it effects water access and distribution, who is making decisions, and who is determining the rules under what conditions.

In Australia, water colonialism limits what can be achieved by the settler government's system of water governance. Water colonialism is the system of assumptions/beliefs, processes and actions, based on colonial imperialism, that exclude First Peoples, their laws and responsibilities (Robison, Cosens, Jackson, Leonard, & McCool, 2017. The consequence of water colonialism is that water is distributed to predominantly benefit 'white water citizens', idealised water users who fit the colonial story and advances imperial objectives (Berry & Jackson, 2018). In the Murray Darling Basin, First Peoples' water holdings are small and diminishing (Hartwig, Jackson & Osborne, 2020). State sanctioned 'water grabs' are still ongoing with plans mooted for northern Australia (Northern Australia Land & Water Taskforce, 2009; Australian Government, 2015; Douglas, Jackson, Setterfield, Pusey, Davies, Kennard, Burrows, & Bunn, 2011; O'Neill, Godden, Macpherson, & O'Donnell, 2016).

The implicit assumptions of water colonialism discourses limits the way that 'water management' is imagined and preclude consideration of whose rules — the settler state's or First Peoples'— are being upheld by water governance (Taylor, Longboat & Grafton, 2019). In Australia, the term 'aqua nullius' refers to the erroneous belief that water belonged to no one prior to British colonisation (Marshall, 2017). Aqua nullius remains built into the foundation of Australian governance. A 'paradigm shift' is needed for justice and equity (Marshall, 2017). Furthermore, settlers have much to gain from First Peoples' perspectives (Bozhkov, Walker, McCourt, & Castleden, 2020).

'Cultural governance' was used by WAC to delineate between First Peoples' governance and Australian settler state water governance. Cultural governance is consistent with First Peoples' ontologies, expressing their laws and jurisdictions. Cultural governance refers to a complex, adaptive and continuing contemporary practice. It resists false dichotomies of material/ spiritual aspects of water. Living Waters are a connected system in a cultural landscape. Therefore, cultural governance

pertains to all water on Traditional Owner's Country, not just that which maintains specific sites.

'Cultural' is a contentious term and has the potential for mischaracterisation. For example, First Peoples' 'cultural water values' are frequently misinterpreted by settler water managers/ regimes to refer to pre-colonial practices only, focusing on the intangible/symbolic rather than material water access (Jackson, 2017b). Political understandings of First Peoples' water sovereignty are often side-lined by settlers capturing/ studying 'cultural water' associations (Hemming et al., 2019). Despite the misinterpretations, the terms 'culture' and 'cultural' are becoming synonymous with First Peoples' culture, including Law, language, institutions and ontologies. Other ways of describing 'cultural governance' might be 'Nyikina and Mangala governance' or 'Aboriginal governance' of water.

Cultural governance and Australian settler state governance could be brought together to form 'co-governance'. By 'co-governance,' we mean a hybrid system of shared decision-making authority between the Australian government and First Peoples. This conceptualisation could include input from community, industry and other groups but must be centred on First Peoples' decision-making authority and responsibilities according to First Law. Co-governance is distinct from participatory water management processes. Even 'participatory' modes may view First Peoples as just another stakeholder among many, and colonial structures of power are retained (O'Bryan, 2019).

The co-governance relationship between neighbouring First Peoples/ First Nations is as important, if not more important, than the relationship between First Peoples and the settler state. Co-governance balances individual Nations' autonomy with regional responsibilities through collaboration, negotiation and observance of First Law. As we describe in section 3, regional governance systems (such as the Martuwarra Council, which is based on *Wunan*) pre-date colonisation. Contemporary co-governance reinstates core principles of these systems and renews relationships between peoples (Norman, 2012; Poelina, Taylor & Perdrisat, 2019).

Working towards water decolonisation can take many forms. Here, we focus on water governance but observe that decolonising actions are diverse and can include

improving security of drinking water supplies, undertaking ceremony, walking for water or developing games and water quality monitoring (Alcantara, Longboat & Vanhooren, 2020; Longboat, 2013; Abu, Reed & Jardine, 2019; LaPensée, Day, Jaakoka & Noodin, 2018; McGregor, 2015). Everyday acts of visiting water, caring for water and sharing stories about water all contribute to decolonisation and resurgence.

4.7 *Wellbeing and water governance*

Wellbeing of people and water is a key objective of the Living Waters, Law First framework described in section 3 below. Living Waters depend on the reciprocal relationships between people and water (RiverOfLife, et al., 2020a). Likewise, human wellbeing is connected to the health of water and Country (Ganesharajah & Native Title Research Unit, 2009; Griffiths & Kinnane, 2011). Kwaymullina explains, "country is loved, needed, and cared for, and country loves, needs, and cares for her peoples in turn" (2005, 1).

Wellbeing is also sustained by revitalising law and culture. Health, including mental health, is concerned with spiritual, social, emotional, cultural, physical, mental and economic wellbeing (Burgess C.P., Johnston F.H., Bowman D.M., Whitehead P.J., 2005; Altman & Kerins, 2012; Dockery, 2010; Swan & Raphael, 1995). Conversely, colonisation, history and racism contribute to ill health (Swan & Raphael, 1995; Poelina, 2020b). Thus, the Living Waters, Law First framework supports wellbeing through strengthening connections to Country, Law and culture.

4.8 *Case study*

In this section we overview WAC's water policy position. Some background is provided about the NWI but this is brief, given that it is well represented in the water policy literature (examples: O'Donnell, 2013; RiverOfLife, Poelina, Davis, Taylor, & Grafton, 2020d; Gray & Lee, 2016; Marshall, 2017; Connell & Grafton, 2011; Grafton & Wheeler, 2018; Alexandra, 2018). We chose to make our comparison with the NWI in order to make conclusions relevant to the national framework, which is being reviewed in 2020-2021 (Productivity Commission, 2020). We note that Western Australia has not yet fully implemented the NWI (Hart, O'Donnell & Horne, 2019; Butterly, 2012). Nevertheless, it plans to enact compliant legislation in the near future

(Government of Western Australia, 2018; Western Australian Department of Water, 2013).

4.8.1 WAC groundwater governance policy position: First Law, Living Waters

WAC is a registered native title body corporate (RNTBC). It was established to represent Nyikina and Mangala peoples after the determination of 26,215 square kilometres of exclusive and non-exclusive possession land under the *Native Title Act 1993* (Cth) in the West Kimberley, Western Australia (Walalakoo Aboriginal Corporation, 2019). These lands stretch from tidal waters of the King Sound along the lower reaches of the Mardoowarra and to the Great Sandy Desert (WAC, 2017).

In 2018, WAC developed a groundwater policy position in response to a groundwater allocation plan consultation run by the Western Australian Department of Water and Environmental Regulation (DWER). WAC sent DWER a formal written response. The DWER will complete a Draft Derby Water Allocation Plan, which will then be released for public comment. At the time of writing this article, the initial consultation was over, but the draft Plan was not yet available. WAC's response to the pre-plan consultation was developed by a subcommittee and Taylor, with reference to previous work such as WAC's Healthy Country Plan (2017). The draft was further developed by Poelina, reviewed by the WAC Board via email, and then emailed to DWER by WAC's Chief Executive Officer in June 2018. WAC's policy position acknowledges the rights of neighbouring Traditional Owner groups to govern water on their Country. Figure 2. indicates the language groups of the broader Fitzroy catchment.

Figure 2: Towns and languages of the Fitzroy River Catchment. Language label location is indicative not exact. Source: https://klrc.org.au/

The smaller Derby water allocation plan area encompasses several native title determination and application areas: Bunuba#2, Warrwa and Mawadjala Gadjidgar and Nyikina and Mangala (Figure 3). Given the type of analysis and objectives of this article, it is outside of the scope to discuss the responses by other Traditional Owner groups. We also note that there are a variety of other perspectives, for example by the cattle grazers who hold pastoral leases.

Figure 3 shows the pastoral stations— Yeeda, Meda, Mowanjum, Mount Anderson, Blina, Liveringa and Debesa— *that overlay native title lands in the proposed plan area.*

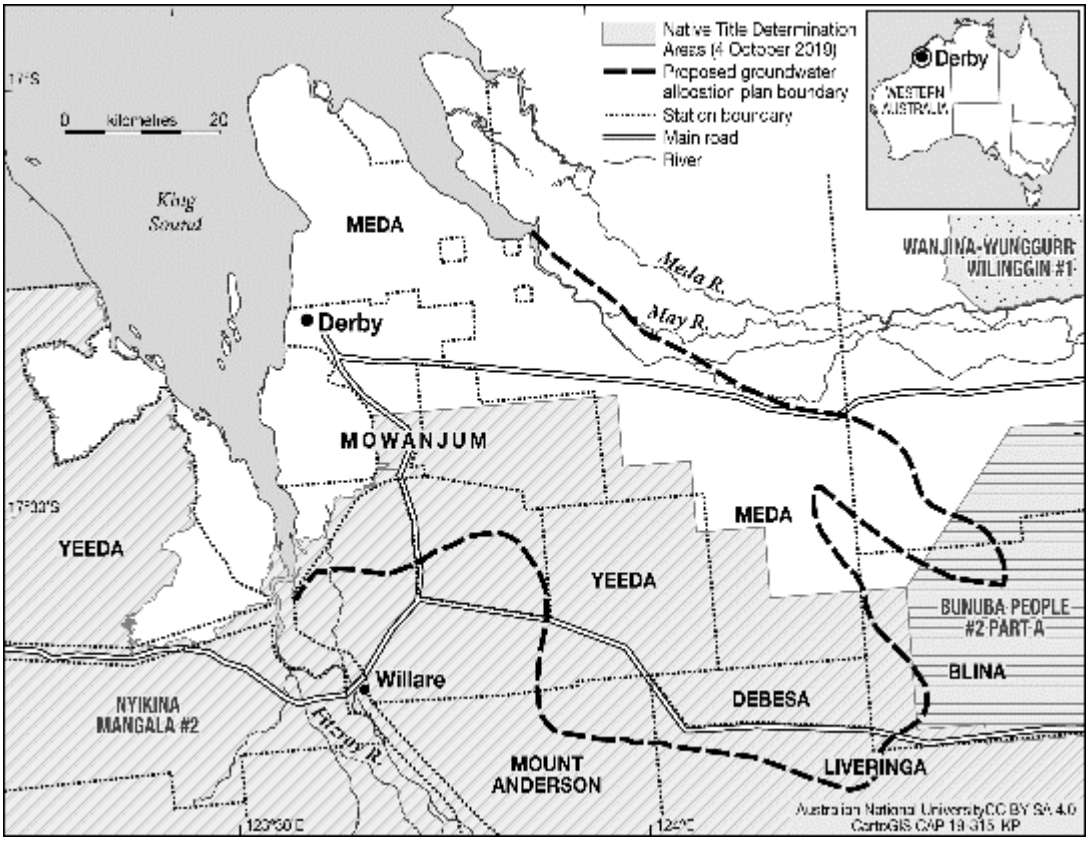

Figure 3: Approximate location of the proposed boundary for the new groundwater allocation plan as per DWER's pre-draft plan consultation 2018.

4.8.2 Vision

WAC's policy position was established in their Healthy Country Plan. The Traditional Owners agree the Mardoowarra and their creeks, springs, wetlands … are protected and they have control of our water rights (WAC 2017). WAC reiterates this vision and identifies several aims for the groundwater management plan, in regards to no negative impacts on jilas, wetlands, creeks, billabongs or culture. WAC's priorities for the water plan included: Traditional Owner's water obligations and rights, native title rights, community drinking water supplies, maintaining water in the environment and water for Nyikina and Mangala peoples' potential future commercial use.

4.8.3 Principles

WAC listed the following principles:

- Land, water and people are not separate.
- Access to clean water is a universal and basic human right.
- As guardians of the Mardoowarra, we have a duty of care to ensure inter-generational equity to water for current and future generations.

- Living Water is a living spirit which generates and holds memory and includes rivers, wetlands, soaks, billabongs, flood plains and aquifers*.
- Cultural governance of water is essential.
- Projects that support sustainable life and livelihoods on the river country are the highest benefit uses of water (not extractive industries).
- WAC asserted Nyikina and Mangala peoples' rights to make decisions using free, prior and informed consent, particularly regarding water planning and infrastructure. *Wording for this principle was updated in 2019 based on feedback from Traditional Owners in the research committee.

4.8.4 Cultural governance

Cultural governance underpins the policy position. As mentioned earlier, 'cultural governance' is water decision-making by Traditional Owners according to First Law. WAC is building avenues to support cultural governance. WAC proposed that Western Australian government water law and policy be revised to "recognise Traditional Owner's inherent rights to water, responsibilities as water custodians and water managers under First Law"(WAC, "RE: proposed water allocation plan, message to the DWER, June 2018, via email).

Further strategies that support cultural governance include forming collaborative partnerships with stakeholders, building capacity of WAC's members, conducting water research and knowledge sharing by elders and on-the-ground conservation work by the Nyikina Mangala Rangers.

4.8.5 The Martuwarra Fitzroy River Council

In addition to their position on the draft Derby Plan, WAC contributes to cultural governance by being a member of the regional water leadership body, the Martuwarra Fitzroy River Council (Martuwarra Council). The Martuwarra Council is a coalition of Indigenous organisations from across the Fitzroy catchment, bringing together Bunuba Dawangarri Aboriginal Corporation RNTBC, Walalakoo Aboriginal Corporation RNTBC, Yanunijarra Aboriginal Corporation RNTBC, Wilinggin Aboriginal Corporation and the Yurriyangem Taam and Warrwa native title claim groups (Poelina & Fisher, 2020).

The Martuwarra Council revitalises Wunan throughout the catchment for the purpose of water management. Wunan is the First Law of regional governance (Doring &

Nyawarra, 2014) traditionally regulating land tenure, sharing of resources and trade through the Kimberley based on a circular economy (Doring & Nyawarra, 2014). The Council has endorsed terms of reference which enshrine the principles of Warloongarriy, river law (Lim, et al., 2017). Warloongarriy Law unifies all the Martuwarra First Nations, through key values, ethics and codes of conduct to promote and protect their collective wellbeing. Under their guardianship and authority the first duty is to uphold the right of their sacred ancestral River to live and flow (Poelina, et al., 2019).

The co-operation, unity, organisation and mobilisation of the Martuwarra Council strengthens cultural actions and is consequently an "instrument of liberation" (Freire 2005, 8). The truth, healing and reconciliation between members of the Martuwarra Council is enabling the transition away from colonialization and towards wellbeing, empowerment and self-determination.

4.8.6 Knowledge(s) and science

WAC supports water management is underpinned by what is often termed 'two-way learning' or 'two-eyed seeing' (Bartlett, Marshall & Marshall, 2012; Purdie, Milgate & Bell, 2011). That is, 'western science' and Nyikina and Mangala knowledges/ sciences together. First Peoples are championing the benefits of two-way science (Woodward, Hill, Harkness, & Archer, 2020).

4.8.7 Strategies for water management and licencing

Living Waters are interconnected and relational systems and, thus, require time spent reflecting the connected nature of water through Country, health, wellbeing, love and protocols. To achieve this, WAC further suggested that the future Derby water allocation plan could monitor and report on cultural objectives, and that Traditional Owners have greater involvement in decision making, monitoring and ongoing assessment of water use. Although water licensing is not the only issue of concern, it can have a significant impact. WAC supported the Martuwarra Council's calls for a 'moratorium' on water licencing and water (re)allocation by DWER until water plans in the catchment are finalised (Dickie & Walalakoo Aboriginal Corporation, 2018).

Sustainable industries are those which are compatible with protection of Living Waters under First Law. WAC advocated for peer reviewed scientific, social and

cumulative impact assessment, which must inform and regulate an adaptive water management plan, responsive to climate change.

To manage consumptive use, WAC has proposed to develop and trial voluntary, formal agreements between WAC and water licence applicants/ development proponents. The purpose would be to promote better working relationships and to manage water. The agreement could be related to, yet independent from, DWER's water licencing process. The water licence holder might agree to provide water monitoring data directly to Traditional Owners on a negotiated schedule. For the proponent, an agreement would demonstrate 'social licence' by a willingness to respect Traditional Owners and First Law by gaining free, prior and informed consent from Traditional Owners. Water use agreements could be modelled on Indigenous Land Use Agreements (ILUAs). For equity reasons, is also important that Traditional Owners are also able to access water for consumptive use to support future enterprises.

4.9 *The National Water Initiative*

The 2004 NWI is an agreement between the Council of Australian Governments (COAG) about water management (Council of Australian Governments 2004). The NWI aims to achieve a nationally compatible, market, regulatory and planning based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes, primarily through water property rights reform. The NWI is structured around eight key elements and ten objectives. These objectives cover water access entitlements[3], water planning, environmental management, environmentally sustainable levels of extraction, water trading, risk assignment, water accounting, reporting, efficiency and recognition of the connectivity of surface and groundwater systems. The NWI also considers 'adjustment issues' faced by water users and communities when the government takes action to correct for over-allocation/ overuse.

Much is written about the NWI and its implementation. Here, we focus on how First Peoples' water rights, interests and responsibilities are incorporated. First Peoples are

[3] The NWI's Indigenous access clauses have been critiqued and found inadequate for many reasons, including their discretionary nature (Tan & Jackson, 2013; Jackson & Morrison, 2007; Marshall, 2017).

not explicitly referred to within the NWI's objectives or key elements (Clauses 23 and 24). However, one of the NWI's intended outcomes is to "recognise Indigenous needs in relation to water access and management" (Clause 25ix). Clauses 52 to 54 cover 'Indigenous Access' to water and representation in water planning. The NWI says that water plans should incorporate Indigenous 'social, spiritual and customary objectives. Water plans must incorporate the possible existence of native title rights to water in the catchment or aquifer area, and water for 'traditional cultural purposes' must be included in accounting. A final notable item is that water planning frameworks will provide a statutory basis for protecting Indigenous and cultural values under the banner of "environmental and other public benefit outcomes" (Clause 25ii).

The NWI's Indigenous Access Clauses have been critiqued and found inadequate for many reasons, including their discretionary nature (Tan & Jackson, 2013; Jackson & Morrison, 2007; Marshall, 2017). The NWI requires that native title rights are accounted for, yet water planning frequently fails to do so (Productivity Commission, 2017a, 2017b). The *Native Title Act 1993* (Cth) itself is problematic (Watson, 2002). The arising native title rights to water are limited to the rights to domestic, social and cultural purposes, but not for commercial purposes (O'Donnell, 2013). Under the NWI, water remains vested in the Crown.

The Australian government recognises that the NWI has 'unfinished business' and that future water reforms need to have better outcomes for First Peoples (Productivity Commission, 2017a, 2017b). However, changes must address the structural issues. We interrogate how the NWI conceptualises water policy 'problems' in order to understand more about possible areas for reform.

4.10 *Analysis: what is the problem represented to be?*

To deconstruct the logics of both the NWI and the Living Waters, Law First frameworks, we use a 'what's the problem represented to be?' style analysis (Bacchi, 2009). This post-structural approach proposes that policy presents 'solutions' that can be traced back to representations of 'problems'. Questioning the underlying logic and the often-unexamined assumptions make politics visible and creates space for challenging the status quo (Bacchi, 2000). Here, Bacchi's approach is used towards decolonising ends, reframing the water policy 'problems' addressed by the Australian

government and reclaiming space for First Peoples' interpretations of water governance.

The 'what is the problem represented to be?' approach asks six questions of policy:

- What is the 'problem' represented to be in a specific policy or policy proposal?
- What presuppositions or assumptions underpin this representation of the 'problem'?
- How has this representation of the 'problem' come about?
- What is left unproblematic in this problem representation? Where are the silences?
- Can the 'problem' be thought about differently?
- What effects are produced by this representation of the 'problem'?
- How/where has this representation of the 'problem' been produced, disseminated and defended? How has it been (or could it be) questioned, disrupted and replaced?

The six questions guided a content analysis of:

- WAC's submission to the Western Australian government about the proposed Derby Water Allocation Plan (WAC, RE: proposed water allocation plan, message to the DWER, June 2018, via email).
- The NWI (Council of Australian Governments 2004).

We interpret the NWI with evidence from the literature. Where possible, references have also been provided in support of our interpretation of WAC's water framework.

Both governance frameworks aim to address overlapping and connected water issues. Thus, they reflect multiple water policy 'problems'. To limit the scope of this article, our analysis focuses on water allocation, management and the roles of settlers and First Peoples. Drinking water service issues were excluded. The results are summarised in Table 1 below.

Table 2: What is the problem represented to be?

WPR?	NWI	Living Water, Law First
What's the problem(s)?	First Peoples' need better water access. Water management is inefficient, environmentally unsustainable and inconsistent between jurisdictions.	Australian water management erases First Peoples' water sovereignty and Law. The well-being of Living Waters/ people/ Country is threatened by proposals for unsustainable

		development that expands the colonial 'frontier'(Langton, 1999).
What are the assumptions?	Water is governed according to Australian law. Australian governments have authority for decision making and First Peoples' claims to water are limited/ aqua nullius (Marshall, 2017). Water is a resource/ natural capital (Cook & Bakker, 2012). Separating land and water property rights facilitates water trade (National Water Commission, 2011). Resources can/should be allocated to maximise human consumptive use/ benefits (Graham, 2011).	Water is governed according to First Law (Poelina, Taylor & Perdrisat, 2019). Traditional Owners have custodial responsibility and inherent rights for water. Living Waters have an ancestral spirit. Land, water and people are not separate (Milgin et al. 2020). Living Waters are already in use (by plants, animals, etc.) and thus water is already fully 'allocated'. Water plans are a 're-allocation' (Poelina, Taylor & Perdrisat, 2019).
How has this representation come about?	Water colonialism (Robison et al., 2017). Techno-managerial view of water (Parsons & Fisher, 2020).	From the Bookarrarra. First Peoples' contemporary policy and scholarship.
Where are the silences?	First Peoples' water , rights and responsibilities (Marshall, 2017).) Reciprocal relationships with water	Market based mechanisms for distributing water.
What are the effects?	Beneficiaries are settlers (Berry & Jackson 2018). Decision making power and responsibility remains with Australian government.	Emphasis on First Law, quality of relationships and well-being. Shifts in decision making power and responsibility towards Traditional Owners.
How is this representation produced?	Reproduced through government funded programmes, state/territory water policy and law, and dominant discourse of water sector and media. Land tenure and the grandfathering of water entitlements (Jackson, 2017a).	Produced through WAC decision making and policy implementation, dialogue with government, establishment of Martuwarra Fitzroy River Council, media, literature and advocacy.
And how could it be questioned?	Questioned through formal processes such as the triennial review (Productivity Commission 2017a), media and scholarship.	Questioned by water management orthodoxy.

4.11 *Discussion*

The analysis in Table 1 shows two contrasting approaches to water governance. In brief, WAC's framework honours Living Waters according to First Law and responds to the policy 'problem' of colonisation's threats to the system integrity. By contrast, the NWI's representation is based on managing water resources as natural capital and the central 'problem' of inefficient and unsustainable resource use.

4.11.1 Underpinning assumptions and sources of knowledge

Different problem representations arise from disparate knowledge systems. Each framework has an ontological foundation that encompasses systems of law, culture, science and ways of knowing water. The contrast between water as spirit, versus water as resource, is typical of comparisons of 'western' and 'Indigenous' frameworks (Parsons & Fisher, 2020).

WAC's policy is based on the foundation of First Law that comes from the land and is tied to the *Bookarrarra.* This law of relationship are the values, ethics and rules for living in harmony with nature and our fellow non-human beings. These 'rules' are the codes of conduct necessary to maintain balance and harmony with each other and with Country. This is the First Law which continues through *Bookarrarra* and on into modernity. *Bookarrarra* is the fusion of past, and how this is actioned in the present but always focused on the future generations (Poelina, 2020c). Consequently, Living Waters, Law First, assumes water as an ancestral spirit, placing emphasis on the quality of relationships, adherence to Law and ensuring wellbeing of the interconnected system.

By contrast, the NWI is based on European laws that has misinterpreted First Peoples' systems land and water title/custodianship (Lilienthal & Ahmad, 2017; Marshall, 2017). Colonial laws have excluded First Peoples and can be considered 'maladapted' to the Australian landscape (Graham, 2011). The NWI assumes water is an inert resource and focuses on access to quantities of water (Cook & Bakker, 2012). Consequently, the nature of property rights and understandings of 'ownership' are contested (Marshall, 2017). For example, the NWI unbundles land and water entitlements, whereas under First Law, land and water are intrinsically connected.

The contrasting foundations effect how water is distributed according to each framework. The NWI highlights market mechanisms to reallocate water to its highest market use. There is a focus on using water efficient technology to provide a 'solution' to water problems. By contrast, WAC asserts that projects that support sustainable life and livelihoods on the River Country are the highest benefit uses of water. WAC centres the responsibility of Traditional Owners to make decisions that look after Living Waters.

Representations of the roles of First Peoples and settlers are starkly different between the two frameworks. The NWI makes provisions for First Peoples' water access, emphasising native title rights to water. However, the NWI does not link this problem (lack of access) to underlying colonial structures or recognise First Law and its commensurate obligations and responsibilities. Thus, the NWI presents a 'solution' of settler government regulated water allocation plans, without challenging or transforming those systems (Hartwig, et al., 2018). As WAC's framework makes clear, Traditional Owners are asserting their water obligations, authority and Law.

The persistence of water colonialism in Australian water management reflects an asymmetric power dynamic. In comparison with First Peoples' water governance frameworks, the NWI dominates the water management discourse in Australia. Notwithstanding that the federal government has limited constitutional powers for water, the NWI is reproduced through an array of state, territory and federal legislation, policies, funded programmes and the dominant water sector discourse. By contrast, the First Law, Living Waters is reproduced by WAC's decision-making processes and policy implementation, dialogue with government and collaborating in the Martuwarra Council. Despite the imbalance in resources, Traditional Owners are successfully sharing their message through advocacy and diplomacy.

4.11.2 Subverting water policy 'problems'

The comparison of Living Waters, Law First with the NWI highlights the necessity of explicitly questioning the assumptions behind the logic of water policy. By applying insights from decolonising theory, Bacchi's method is recontextualised as a decolonial tool. Through their policy and water governance work, Nyikina and Mangala Traditional Owners assert themselves as self-determining peoples and not 'just another' stakeholder (O'Bryan, 2019).

Unless the tensions between water policy 'problem' representations are resolved, the NWI will remain antithetical to First Peoples and their Law. Yet, decolonisation is happening (Poelina, 2020a). First Peoples do not need to wait for the Australian government to sanction actions that fulfil their responsibilities to Country. The utility of WAC's groundwater policy position is that it does not rely on Western Australian government policy changes (although these could also help). The *Birr Nganka Yimardoowarra* framework could be the foundation for a monitoring program to track broader, environmental, individual and community wellbeing (Milgin et al., 2020). Nyikina women elders have developed a hydro-ecological framework describing plant and animal indicators of each season (Milgin et al., 2020). Water use agreements can be established between WAC and water users. Taking action to look after water places is an ongoing part of life and is also a critical part of the Nyikina Mangala Rangers' work. Advocating for cultural governance is a statement of authority and self-determination. It is also an invitation for Australia to engage in frameworks other than the NWI.

4.11.3 Bridges

Scholarship, advocacy and First Peoples' policy documents continue to propose pathways forward. Yet, the Australian government has been reticent to engage with the substance of First Peoples' water discourses, particularly with aspects that implicitly or explicitly refute settler state authority. Indeed, colonial logic precludes these discourses (Scholtz, 2008; Morris & Ruru, 2010). Transformative change starts with dialogue that engages with First Peoples' discourses and that does not restrict the terms of debate to colonial mindsets.

WAC wishes to bring together Australian and First Law water governance systems. In a post-determination native title era, Traditional Owners are redefining and reasserting their rights, interests and responsibilities. On the national level, further work is needed to bridge the conceptual 'gaps' and create a contemporary Australian framework for water governance.

Based on our reading of the NWI and WAC's policy position, we suggest some concepts that could form 'bridges' between knowledges (Anderson & McLachlan, 2016; Camkin & Neto, 2013; Abu, Reed, & Jardine, 2019). These include sustainability, environment, benefits and responsibility. The list of potential 'bridges'

is non-exhaustive. The important thing is not the 'bridge' itself but starting productive dialogue that leads to meaningful action.

Both the WAC and NWI frameworks assume that water use needs to be sustainable. Both representations link water usage to potential benefits, including economic benefits. Both aspire to protect the environment. Under the NWI, water users and the government have responsibilities (clause 2). Living Waters, Law First is strongly focused on responsibilities.

Using responsibilities as a 'bridge', could shift discussions away from securing rights to take water. There could be opportunities to reframe what water responsibilities and water 'ownership' look like based on Living Waters and reciprocal relationships.

These bridges are accompanied by invitations to see 'water development' and 'economies' differently (Gibson-Graham, Cameron & Healy, 2013). WAC's framework cultivates space for alternative economies, such as the culture conservation economy (Poelina, Taylor & Perdrisat 2019). Supporting WAC's vision is the economic case for developing human, cultural, natural and social capital in the Kimberley, rather than intensive industries that deplete the environment and under-deliver local benefits (Connor, Regan & Nicol, 2019). Asking, 'what types of economies are compatible with Living Waters?' promote economic possibilities and alternative 'development' paths.

Flipping the policy 'problem-solution' framing around, we could instead ask 'what are we trying to cultivate/grow?' What policies support renewal, responsibility, reciprocity, and restored relationships? This reframes water as a space of dialogue and invitation.

Caution is required to avoid false equivocation, tokenism and perpetuating colonial assumptions. Colonial thinking can sanitise, co-opt and rebrand "…even ideas that are a threat to the settler state" (Yunkaporta, 2019, 74). For example, excellent research on cultural values exists in which Traditional Owners share their water wisdom and perspectives (Examples: Toussaint et al., 2001; Barber & Woodward, 2018; Rea & Anmatyerr Water Project Team, 2008; Jackson, 2015; Moggridge, Betterridge & Thompson, 2019). And yet, looking at water through lens of 'values' can exclude or depoliticise questions of rights, interests and authority (Hemming et al., 2019).

Assessments of ‘cultural values’ has tended to essentialise, focusing on the symbolic, rather than the material, and thereby marginalising Indigenous interests within environmental evaluations and technical processes (Jackson, 2017b).

Changing the discourse presents a significant challenge. The Productivity Commission’s current review of the NWI’s Issues Paper, for example, frames First Peoples’ ‘water needs’ narrowly (Productivity Commission, 2020). It focuses on an agenda set by the NWI’s existing clauses that are demonstrably inadequate. The authority of the Australian government is unquestioned. The inquiry specifically asks for information about how states and territories include ‘Indigenous cultural values in water plans’ (Productivity Commission, 2020, 19), rather than how they include Indigenous peoples’ rights, interests and objectives. The NWI explicitly provides for native title rights and Indigenous objectives, so it is curious that ‘values’ is used as a catchall term. The PC Issues Paper indicates that the NWI policy settings may be revised and enhanced but avoids structural change. The terms of reference for debate remain narrow and centre settler perspectives.

‘Bridges’ need to work towards the more ‘unsettling’ questions. That is, questions that disrupt settler narratives. Undoing colonisation, returning lands and waters, and changing the story about water in Australia are challenging ideas. Unsettling questions seek to respond to, rather than avoid, these challenges.

4.12 *Future research*

An agenda for future research might explore conceptual tensions starting with the ‘bridges’ of commonality identified earlier. From there, more unsettling questions can be asked. Some suggestions are provided to go beyond colonial water frameworks. This list builds on previous recommendations for progressing reform (such as Taylor, et al., 2016; Marshall, 2017; Nelson, Godden & Lindsay, 2018; Morris & Ruru, 2010; O’Bryan, 2019) and the ongoing work within the literature to deconstruct and reframe water governance, such as the Indigenous water quality principles developed by Moggridge and Mihinui (2018). The list is not definitive. Our intent is to stimulate discussion rather than provide a complete list of steps forward for water reform for decolonisation.

Sustainability:

- What does ‘sustainability’ of water resources look like when reframed as the wellbeing of Living Waters?

Benefits:

- How could water distribution processes change if the principle of ‘sustainable life and livelihoods’ is prioritised over water market value?
- How are the NWI’s ‘environmental and public benefit outcomes’ distinct from outcomes for Living Waters?

Responsibilities:

- What are the responsibilities to Living Waters under First Law that are held by different people(s)? (By Traditional Owners, settlers, visitors, farmers, scientists and peoples upstream/downstream etc.)
- How would Australian concepts of water governance and property change if rights were de-emphasised, and water responsibilities and reciprocity given greater priority? For example, if Marshall’s ‘web of interests’ conceptual model was adopted (2017).

4.12.1 Co-governance

Achieving equitable co-governance can be difficult, particularly when power is asymmetric (Wilson, 2020). WAC’s position on co-governance raises further questions:

- What are the advantages and disadvantages of co-governance as a strategy for water decolonisation? What are the practical considerations, such as sharing water management costs and regulatory activities?
- What are the other decolonising options?
- What are the policy positions on water governance taken by Traditional Owners in different regions?

Exploring these questions cannot be done unilaterally. Here, we used WAC’s framework as a case study but there are more than 50 native title Prescribed Bodies Corporate in Western Australia, and more than 200 in Australia (PBC, 2018). Native title claims are ongoing, and First Peoples’ sovereignty exists regardless (Césaire, 2000; Christie, 2014). Governance occurs at multiple scales, including the local level and the regional level. In summary, as Australia works towards water justice, the water reform agenda needs to respond to the diversity of First Peoples’ water governance systems.

4.13 *Conclusions*

First Law tells us that Law is in the land, and that Law is in Living Waters. Since the *Bookarrarra*, First Law has provided a framework for understanding water and relationships to it. According to First Law, Nyikina and Mangala peoples have responsibilities, duties and rights to water which are embedded in water governance and management systems. In this chapter, we call it a 'Living Waters, Law First' water governance framework, and provide a case study describing its application.

By examining water policy problem representation, we have highlighted the conceptual incommensurability between Living Waters, Law First and colonial frameworks. Nevertheless, 'bridges' could be built between knowledges to facilitate dialogues and transformative change in water governance. We propose several such bridges and a research agenda to reimagine water governance in Australia. In our view, the paths forward must support First Peoples' resurgence, revitalisation of Law and the well-being of Living Waters and people.

Indigenous wisdom and leadership informed WAC's water governance framework. It is based on collective, continuing, deep and enduring relationships with the Martuwarra and Living Waters. Traditional Owners are keen to hear the stories of how Indigenous peoples and First Peoples around the globe are protecting their waters and reclaiming First Law.

WAC's longer term broader aspiration is to contribute to the revitalisation of *Warloongarriy* Law is a vision of First Peoples' working together to sustain their collective health and wellbeing. Their vision is to uphold their duty as guardians to protect their sacred spiritual ancestor serpent, *Yoongoorrookoo*. This level of unity and organisation is strengthening their collective resilience. Water decolonisation is already happening. Complementing the work of WAC, the Martuwarra Council seeks to achieve the Traditional Owners' vision: Living Waters, Law First values and strengthens the health and wellbeing for both human and non-human beings within the lands and waters.

4.14 *Chapter 4 Summary*

Chapter Four presented a First Law cultural governance groundwater policy framework for maintaining water quality and volume for the health and wellbeing

benefits of Nyikina and Mangala people and Country. In this chapter I explored emerging conceptual challenges regarding a problem-based approach to a co-governance model. Furthermore, it provides a pathway for regional Australians to consider in regard to how we live, work and recreate together. In the following Chapter 5, I discuss establishing Indigenous vehicles such as The Fitzroy River Declaration and Martuwarra Fitzroy River Council to create an Indigenous cultural approach to collaborative water governance.

Notes:

- *Bookarrarra* is a Nyikina concept without an English equivalent. *Bookarrarra* is the beginning time (Hattersley, 2014, 44). *Bookarrarra* integrates the past, present and future. Some people call this concept the dreaming or dreamtime; it is everywhere, a complex of meanings with sacred authority connecting land and people (Stanner & Manne, 2011).
- The NWIs eight key elements are; 1. Water access entitlements and planning frameworks, 2. Water markets and trading, 3. Best practice water pricing and institutional arrangements, 4. Integrated management of water for environmental and other public benefit outcomes, 5. Water resource accounting, 6. Urban water reform, 7. Knowledge and capacity building and 8. Community partnerships and adjustment.

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5 CHAPTER FIVE: Collaborative Water Governance

Martuwarra Fitzroy River Council: An Indigenous cultural approach to collaborative water governance

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5.1 *Preface*

My Indigenous heritage is Nyikina, 'ngajanoo Yimardoowarra marnin', which in our language means 'a woman who belongs to Mardoowarra' (Fitzroy River). My heritage centres me as being from and of the land and belonging to the Mardoowarra. My co-authors, Kat Taylor and Ian Perdrisat are PhD students living in the Kimberley.

Building upon the previous chapter outcomes of conceptual incommensurability of Living Waters, Law First, and colonial water frameworks, in this chapter I continued the story of Traditional Owner discussions expressed in the Fitzroy River Declaration (2016). This liberation and consciousness raising generated and strengthened cooperation, unity, organisation, and cultural synthesis (Freire, 2005). This engagement became a moral and cultural contract whereby six Indigenous nations signed a Memorandum of Understanding to build an alliance to form the Martuwarra Fitzroy River Council (MFRC). Indigenous leaders personally and collectively committed to maintain the spiritual, cultural, and environmental health and wellbeing of the Fitzroy catchment.

Through all of its reports, media releases and letters to government, the MFRC advocated the need to establish a Fitzroy River Catchment Authority as a statutory body to monitor and regulate potential cumulative impacts from development. The MFRC has always maintained the need for the Authority to be inclusive of all stakeholders and ensure informed consent in decisions regarding development. This article articulates a local critique of water resource development as an alternative model developed by Indigenous leaders of the West Kimberley.

Keywords: Liberation, wellbeing, cumulative impacts, cultural governance.

"Voices for the Mardoowarra" is a film made by and during the legal formation of the Martuwarra Fitzroy River Council. The film shares multiple stories for bridging culture and nature and new economies which starts with explaining and sharing on Country, showing how and why management and protection of the landscape and eco-systems are integral to human heritage, culture, and survival. This is important when investigating and understanding the cumulative impacts of both human and 'wealth creation' combining all forms of capital.

5.2 *Film 'Voices for the Mardoowarra'*

Citation: RiverOfLife, M., Poelina, A., & McDuffie, M. (2020a, May 25). Voices for the Martuwarra (Online Film). Doi:10.5281/zenodo.3831836. See Film link: Voices of the Mardoowarra - https://vimeo.com/360548345 https://vimeo.com/387436447 Password: Kimberley

5.3 *Introduction*

The first author, Anne Poelina, begins the chapter in her traditional language Nyikina:

> *Mardoowarra walboorran makoorr yingan.2016kan Yimardoowarra mandajarrani yirrwoondamany; Mardoowarra yirrjinbiny. Bana kaliya boojoo yirrmanyjarri nganka, dirrk yirrandiny bangarriykan nyardoo nganka. Nya nganka bangarriykan nilawal kinyjina Mardoowarra Fitzroy River Declaration.*
>
> *Nyardoo Mardoowarra Fitzroy River Declaration mandajarra wanarralingarranganymirri, wayarrajalajala mardoowarra.*
>
> *Nyardoo Mardoowarra Fitzroy River Declaration yijib yindin, minirli yindin international water governance principles.*
>
> *Yimardoowarra mandajarrani wamboorr yirrin jida wangarama nganka mardoowarraji, rules mardoowarraji. Nyardoo Martuwarra Fitzroy River Declaration wanalingarrangany mandajarra mardoowarra-ji booroo wayarrajooloojooloomayina.*
>
> *Martuwarra Fitzroy River Council wanajalajamamayina mardoowarra.*
>
> *Martuwarra Fitzroy River Council yingngankanbarri government. Wangarrangankangkaya mardoowarra-ji booroo wangarrajalajalamayina***.**

Kinyaboo, Martuwarra Fitzroy River Council ngajak yirrin governmentkaboo. Wangarra-jooba government Martuwarra Fitzroy River Catchment Authority wani. Nyardoo Authority, mardoowarraji booroo wanajalajalamayina.

The Martuwarra (Fitzroy River) is an iconic, heritage listed river system. Management of its catchment is at a crossroads, with diverse and conflicting visions for its future. In 2016, Traditional Owners of the Fitzroy catchment formally affirmed their shared commitment to working together for the river, detailed in the Fitzroy River Declaration (here-after the Declaration) (Lim, et al., 2017).

The Declaration was signed by seven Traditional Owner nations. It is a historic statement by native title holders from along the river who have agreed to work together to protect and manage the river as a single living system. (Lim, et al, 2017)

The Declaration is grounded in ancient First Law (Traditional Law, Customary Law, or Aboriginal Law) which promotes the holistic natural laws for managing the balance of life. Given this foundation in First Law, we refer to the governance framework it foreshadows as a cultural governance framework. First Law is eternal and intrinsically linked to the land. Indigenous lawyer, Irene Watson, explains that: "the laws of the land are ancient and as old as the continent itself; they continue to exist" (Watson, 2017, 215).

The cultural governance framework proposed in the Declaration represents a model whereby Traditional Owners manage potential individual and cumulative impacts in collaboration with the government and other stakeholders. To implement the Declaration, Traditional Owners established a new water governance body, the Martuwarra Fitzroy River Council (MFRC) in 2018. We conceive of the MFRC as an opportunity to develop a model of 'better-practice' for water management for the West Kimberley: a locally designed collaborative solution that is based on cultural governance.

From within the field of water management there has been much interest in collaboration as a process that improves planning practice and facilitates more equitable outcomes (Tan, Bowmer, & Baldwin, 2012).

There is a growing number of accounts that focus specifically on collaboration involving Indigenous peoples (Ayre & Mackenzie, 2013; Cranney & Tan, 2011; Hughey, Jacobson, & Smith, 2017; Jackson, 2019; Maclean & The Bana Yarralji Bubu Inc., 2014; Simms, Harris, Joe, & Bakker, 2016; von der Porten & de Loe, 2014).

According to Jackson (2019), in a number of regions of Australia research projects have been designed to facilitate group processes in ways that promote exchange of understanding, encourage deliberation, build trust and deal with conflict between members of Indigenous groups, government agencies and others see (Tan, et al., 2012; Jackson & Douglas, 2015; Ayre, Wallis, & Daniell, 2018). Many of these projects have however taken government processes as the standard model into which the rights and interests of Indigenous people must fit.

Here we are more interested in examining models of Indigenous-led water governance that draw on Indigenous law and practice as a source of legitimacy. Approaches such as those emerging from the Whanganui River Claims Settlement (The Waitangi Tribunal, 1999) that granted legal personhood to the Whanganui, and the *Yarra River Protection (Willip-gin Birrarung Murron) Act 2017* (Yarra River Protection Ministerial Advisory Committee, 2016) have been a source of ideas (O'Bryan, 2019).

This chapter is based on 'reframing, sharing and envisioning', drawing inspiration from Smith's (1999) *Decolonising Methodologies*. Deliberate reframing allows Indigenous counter-narratives about water management and governance to emerge. The MFRC's story necessarily reframes Australian state water governance as a product of colonisation. Furthermore, sharing the MFRC's positive story is a counter-narrative to the 'deficit discourse' that problematizes indigeneity, framing Aboriginal identity around negativity, deficiency and disempowerment (Fforde et al., 2013). Thus, reframing the dominant narrative is an important step towards decolonisation. As Tuck and Yang (2012) remind us, however, decolonisation is not a metaphor.

Undoing colonisation requires substantive changes to the relationship between Indigenous Australians and other Australians particularly in regard to law and policy, social and economic structures that generate material outcomes. Although decolonisation must necessarily involve change in the political relationship between

the state and Indigenous peoples, including to institutions, here we refer to decolonisation as a process that requires dialogic action based on mutual respect involving action and critical reflection (Poelina, 2009, 2016). The process and outcome of creating dialogue for building hope, and the capacity to reach our full potential as Indigenous peoples, is a process and outcome of decolonising (Smith, 1999).

The unchartered territory of water decolonisation in Australia also requires a vision for the future (Marshall, 2017). A central step in the decolonising project is to 'dream a new dream' and to 'envision' (Smith, 1999). The vision of the MFRC described in this article is not the 'only' vision. The MFRC example demonstrates the role of water governance in providing earth-centric local community driven economic development pathways.

The article is structured as follows. We first provide a description of First Law, arguing the health and wellbeing of the land, water and biosphere in the Kimberley have priority over human interests. We then trace the recent history of state and federal water resource development in this region, characterising it as a form of invasion, before turning to our methods. Later we outline the potential benefits of a model of management that is based on cultural governance: facilitating participatory natural resource management, addressing cumulative impacts, and creating a mechanism for Traditional Owners to make decisions about the Martuwarra, as they have done through the laws of the land, earth-centred governance for thousands of years. Many Kimberley Traditional Owners have expressed the desire to 'set the agenda' for development by cultivating a culture conservation economy (Hill, 2006).

We suggest that structures such as the MFRC are crucial for supporting Indigenous people to develop models, like the culture conservation economy, which facilitate sustainable economic development. In the last section, we propose that implementing the Declaration and the MFRC is essential to maintaining Indigenous peoples' self-determination in the catchment, and to the river's life itself. This article explicitly links the role of water governance frameworks with economic development pathways. This broadens the conversation from 'best practice' environmental and water management outcomes to exploring new socio-economic contexts for environmental management.

5.4 *First Law*

First Law is the system of governance and law that Indigenous Australians developed over tens of thousands of years. The river continues to be a sacred living ancestral being in First Law (Hattersley, 2009). The river comes from the creation time when Woonyoomboo (the first Nyikina man) speared Yoongoorrookoo (the rainbow serpent) and created the Martuwarra. Traditional Aboriginal law focuses on maintaining the balance of the earth so that all things can prosper. This sustainable model is known as earth-centred law and is the basis for the Declaration.

Two traditional First Laws - Warloongarriy and Wunan – are ancient laws for a holistic approach to water stewardship and regional governance that continues to be shared and respected by the Indigenous nations within the catchment. According to Lim, Poelina, and Bagnall (2017), since Bookarrarra (the beginning of time) these First Laws ensured the health of the living system of the Mardoowarra. These laws are founded on the principle that the priority of law is to protect and manage the sustainable harmony of the land over the self-interests of humans.

First Laws are framed around values and ethics of co-management and co-existence, which continue to facilitate inter-generational relationships between the shared boundaries of all the river nations through ancient songlines, contemporary customs and practices. Lim, Poelina, and Bagnall state that "Under Warloongarriy law, the Traditional Owners of the Mardoowarra regard the River as a living [sacred] ancestral being (the Rainbow Serpent), from source to sea, with its own 'life-force' and 'spiritual essence'" (2017, 18). It is the 'River of Life' and has a right to Life. (Poelina & McDuffie, 2017).

5.4.1 Invasive Water Development in Northern Australia

The legitimacy of British colonisation of Australia is questionable, with some legal experts declaring it an "illegal invasion [equivalent to] trespass, under their own law" (Lilienthal & Ahmad, 2017, 87). The appropriation of water has had, and continues to play, a central role in colonisation/invasion throughout Australia's history and continues to the present (Marshall, 2017); (Morgan, 2015); (Langton, 1999). Although Indigenous people continue to advocate for their water rights and interests, Australia's

recent water reform agendas have not produced substantive changes (Taylor, et al., 2017)

Mining, fossil fuel extraction, including unconventional gas, and large-scale irrigated agriculture are some of the invasive development proposals that threaten water security for Indigenous peoples' land and life in the Kimberley region. We use the word 'invasive' deliberately in recognition of the pervasive 'frontier mentality' that still exists. The false idea of an 'empty north' continues to resonate today (McGregor, 2016). McGregor explores the anxieties and champions the need to be develop river regulation, especially dams, on the basis that invasive and unjust development remains rooted in the myths of Terra Nullius (land belonging to no one) (Reynolds, 1981) and Aqua Nullius (water belonging to no one) (Marshall, 2017). Northern dams are a "symbol of white settler progress" (Jackson & Barber, 2016, 399), with the federal coalition government claiming it would be "negligent if we did not strive to capitalise on the opportunities within northern Australia" (The Coalition, 2013, 7).

For all the talk of 'opportunity', the north presents intractable challenges to agricultural development (Grice, Stone & Watson, 2013). Further large scale, centralised irrigation schemes are unlikely to be economically feasible or environmentally acceptable (Northern Australia Land & Water Taskforce, 2009) - The 'northern myth' of untapped economic potential that was so severely critiqued by Davidson (1965), continues to fuel overly optimistic schemes. The Ord River and Camballin (Fitzroy River) irrigation schemes of the 1960s and 1970s are example of huge investments that have not realised the economic potential identified in the justification for the extent of the investment (Grudnoff & Campbell, 2017).

As we will show, they have also left a legacy of problems for Traditional Owners and others to address. In our view, northern development can break with the invasive models of the past by acknowledging and celebrating the globally unique cultural and natural history of the Martuwarra (Fitzroy) catchment. Countless generations of Aboriginal people have been constantly shaping and reshaping the landscape. Aboriginal people have managed the land over millennia. Traditional Owners along the Martuwarra continue to maintain these natural assets for sustaining life and livelihoods (Gammage, 2011; Pascoe, 2014; Watson et al., 2011).

Knowledge and practices are handed down by Traditional Owners from past generations, which are then maintained for the benefit of future generations. Aboriginal leadership is essential to contemporary land and water management practices. In northern Australia, Aboriginal people are leading a growing land management sector that includes Indigenous community-based ranger groups and Indigenous Protected Areas (Jackson, Pusey, & Douglas, 2011; Morgan, 2015; Altman & Kerins, 2012). Western science is slowly acknowledging the value of traditional knowledge; for example, of wetland maintenance (Pyke, Toussaint, Close, Dobbs, Davey, George, Oades, Sibosado, McCarthy, Tigan, Angus, Riley, Cox, D., Cox, Z., Smith, Cox, P.,Wiggan, Clifton, 2018) or environmental river flow assessments (Jackson & Douglas, 2015). New sustainable development models being considered in the Kimberley require great collaboration between Western science and traditional knowledge.

5.5 *Threats to The Life of the Martuwarra*

Traditional Owners maintain that the Martuwarra is everything. It is the life-force that sustains ancestral spiritual beings, cultural heritage, education and health systems and their supply of food and medicine. Customary First Law continues as a guide for responsibly managing the guardianship of the Martuwarra in the modern era. Given the essential need to maintain the sustainability of the river, the fundamental principle of the First Law is to do no harm to the Martuwarra (Poelina & McDuffie, 2017).

However, the river faces many threats. Traditional Owners from along the river have raised concerns regarding the potential impacts of ground water extraction and surface water harvesting on the river, culture and society which sustain local Indigenous life, life- style and country (Toussaint, 2008; Jackson, 2015; Liedloff, Woodward, Harrington, Jackson, 2013). Other threats include proposals for industrial development and the ongoing effects of poor land management (e.g., weeds and feral animals).

Over many decades, there have been numerous proposals to dam the river to provide water for local irrigation or to transport water to Perth. The viability of proposals for both surface water capture and storage and ground extraction are questionable. Traditional Owners are concerned about the cumulative impacts of industrial projects

on the quality and volume of the groundwater and salination of the soil. River values rely on groundwater (Liedloff et al., 2013).

Although there are knowledge gaps about the hydrology (Vogwill, 2015), connectivity between surface water and groundwater is certain. Groundwater fulfils an essential need, as it is responsible for sustaining the springs, soaks and billabongs that provides life for many species, such as the endangered sawfish.

A CSIRO review of the Fitzroy catchment reported that off-stream storages such as farm dams were likely to be less reliable, and twice as expensive, as the use of groundwater (CSIRO, 2018). The draft Kimberley Regional Water Plan also suggests that groundwater has the greater potential, "when weighed against the challenges of surface water storage and capture options in a climate with high evaporation and water limitations for a large part of the year" (Western Australian Department of Water 2010, 8).

The draft Kimberley Regional Water Plan further notes that surface water "is already being used to support industry, local communities and other significant economic, eco- logical, social and cultural values" (Western Australian Department of Water 2010, 9). Dams, however defined, on the Fitzroy would change flow regimes, impacting on fish migration and breeding cycles (Morgan, Allen, Bedford, & Horstman, 2004). Wet season flooding is the key driver of river and floodplain wetland ecosystems (Bunn & Arthington, 2002) and is therefore crucial to the catchment's ecology. As demonstrated above, there is a case against using the Martuwarra's groundwater or surface water for irrigation within the catchment. Likewise, a proposal for a canal from the Kimberley to Perth was found to be unfeasible and economically unviable (Appleyard, et al., 2001). In recognition of these issues, the current WA government has a policy of no dams on the river (Western Australian Government, 2018).

Despite the inherent constraints and some sizeable local opposition, proposals to dam the river and its tributaries continue. Some proposals have been implemented; others have failed. For example, the 1997 proposal to dam Diamond Gorge (known in the local Bunuba language as Jijidju) to grow cotton did not go ahead, in part due to opposition by Traditional Owners and environmental advocates (Toussaint, 2008). By

contrast, the Camballin Irrigation Scheme constructed a barrage across the river to dam water for irrigated agriculture. The scheme was, however, abandoned in 1983, due to flood damage and crop pests that saw it move from “disaster to disaster” (Yu 2000a, 32).

In addition to water abstraction, the river faces ongoing land management issues that would benefit from a catchment scale approach. Many of these issues are linked to wide- spread cattle grazing. Grazing of native vegetation is considered one of the greatest immediate environmental threats to northern Australia’s rivers, followed by feral pigs and altered fire regimes (Bartolo, Bayliss & van Dam 2008). Grazing pressure increases erosion and nutrients from cattle impact on native fish populations (Morgan et al. 2004). Other threats include weeds, feral animals, alteration of water regimes and habitats, pollution and inappropriate tourism and recreational activities (Douglas, Fletcher, Gower, Jenkins, Kennett, Lehman, Walker, 2013).

Pastoral lease land condition across northern Australian is in slow decline (Office of the Auditor General, 2017; Jackson & O’Leary, 2006). Altered landscapes can change flow regimes, which results in erosion and other impacts. For example, the scouring of Mt Anderson Pastoral Station’s topsoil after a major flood in 1986 is vividly recounted by Nyikina Elder Ivan Watson in Raparapa (Marshall, 1989). In 2000, locals reported that land conditions continued to deteriorate (Yu, 2000a). This legacy of poor land management has yet to be addressed. Further pressure on the Martuwarra would exacerbate existing threats.

Industrial development is another threat. Current proposals include coal mining and unconventional shale gas extraction using hydraulic stimulation (hydraulic fracturing, or ‘fracking’). So far, fracking activity is limited to exploratory fracks at Buru’s Asgard and Valhalla wells near the Noonkanbah Aboriginal community on the Martuwarra (Collins 2015). Traditional Owners and environmentalists have raised concern regarding the significant extent of existing petroleum leases that could be fracked and negatively affect the river and its catchment.

5.6 *The Martuwarra: Country and Ancestral Being*

In several of the Indigenous languages in the catchment Martuwarra is the generic name for what has come to be known as the Fitzroy River (Pannell, 2009). The

Martuwarra is a significant entity in local customary First Law. Individual Indigenous nations govern particular sections of the River (see Figure 4). Collectively they have native title rights and interests for the entire length of the river and its catchment (Geospatial Services, 2019). The details of each nation's rights and interests can vary, reflecting on the details of their Native Title determination. In general, Native Title recognises rights to take and use water for personal, social, domestic and cultural purposes, but not a right to take water for commercial purposes (O'Donnell, 2013).

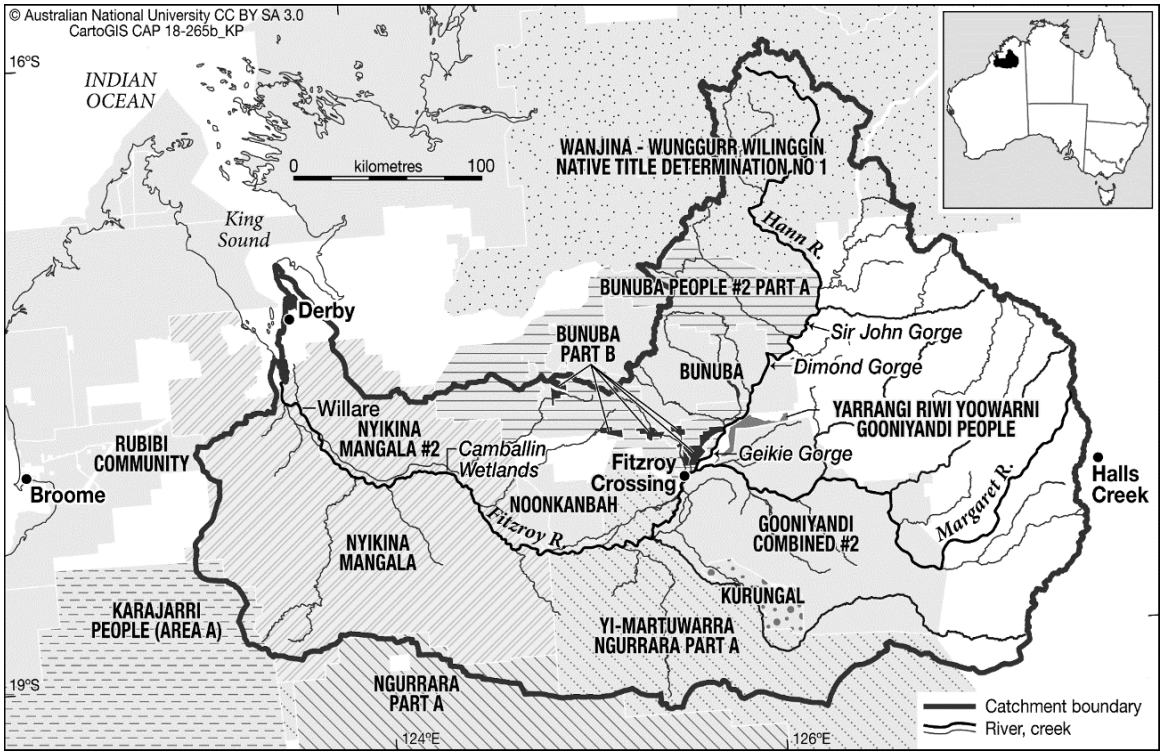

Figure 4: Native title determination areas, in the Fitzroy Catchment, July 2018. Note that native title claims are ongoing. Source: National Native Title Tribunal http://www.nntt.gov.au

Traditional Owners are the original people who continue to live on their original land, speak their original language, and practise their original culture. Traditional Owners consider the river to be a living ancestral being that is the source of their culture and spirituality, food and medicine, health, ceremony and recreation (Toussaint et al., 2001; Toussaint, 2008).

The Martuwarra, the longest river in the Kimberley region of WA, has its source in the King Leopold Range. Its catchment area is almost 100,000km2 and the (Pepper & Keogh, 2014), floodplains are up to 15 km wide. The Kimberley is one of Australia's 15 biodiversity hotspots (Humane Society International, 2018). The river provides life

to the West Kimberley. From the ranges it winds its way through the remote tropical savannah region on the edge of the desert, passing through the rich floodplain riparian vegetation before branching into a vast delta that merges into the King Sound south of Derby.

The river has many values, "support[ing] industry, local communities and their customary economies, and significant ecological and cultural values" (Western Australian Department of Water, 2010, 8). 'Values', however, can be seen through many lenses and are defined differently in the academic disciplines of anthropology, ethnography, ecology, human geography, and economics, to name a few. Comprehensive reviews of the values Indigenous people hold for the river exist elsewhere, for example, Jackson (2015); Barber & Woodward (2018). In this section we briefly describe values in relation to our themes of culture conservation economy and development alternatives.

The ecological and cultural values of the Martuwarra to Australia are recognised through several formal listings. There are 1. National Heritage Listing in 2011, 2. Geikie Gorge National Park and 3. Listing under the Western Australian Aboriginal Heritage Act 1972 (Government of Western Australia, 1972). The landscape is rich with meaning. The National Heritage listing recognises the catchment's significance as a cultural landscape, particularly the four distinct representations of the rainbow serpent. The listings show that the Martuwarra is a treasure for all, its ecological, cultural and heritage values are significant at the local, state and national levels.

As a relatively unmodified river, the Martuwarra supports an abundant ecology. By Australian standards, the number of fish species—at least 37—is high. The river is globally important as it is the most important refuge for significant endemic species such as the prized barramundi (Lates calcarifer) (Morgan et al. 2004) and the endangered Largetooth Sawfish (Pristis pristis) which is "one of the planet's largest fish, growing to over 6.5 m in length" (Kyne, 2018, 1). Furthermore, the sawfish is described as a local "cultural and spiritual icon" (Thorburn, Morgan, Gill, & Johnson, 2004, 8).

In 2017, the V & C Semeniuk Research Group (VCSRG) reviewed the environmental values and the archaeology of the Martuwarra valley tract and tributaries from its mid

reaches to the King Sound as a basis for recognising the significance of Martuwarra. This review confirmed the globally unique cultural and archaeological significance of the Martuwarra catchment (Jackson 2015; Yu, 2000a).

River health is vital to the well-being of Indigenous communities in the catchment (Yu 2000a). River knowledge and practices are central to life in river communities (Toussaint et al., 2001). This strong link between people and place is seen in the Kimberley Caring for Country Plan and its land management vision: "Healthy country, healthy people" (Griffiths & Kinnane 2011, ii). As Kimberley Elders say, 'if you look after country, country looks after you'. Importantly, bridging the false divide between culture and nature starts with explaining and sharing on country, understanding how and why management and protection of the landscape and eco-systems are integral to human heritage and culture (Poelina & Nordensvärd, 2018).

The river provides vital resources such as fish, prawns and mussels (Yu, 2000a), which have cultural as well as economic value to households (Jackson, et al., 2014). These resources are integral to the customary economy, which contributes, along with market and state components, to a 'hybrid economy' (Altman, 2001). Altman argues that hybrid economies are poorly understood, and that "important Indigenous contributions remain unquantified and unrecognised in mainstream calculations of economic worth" (2001, 5). Consequently, it is difficult to quantify the river's current economic value in dollar terms. Projections of the river's future economic potential also vary based on the assumptions embedded in particular development pathways. A recent cost–benefit analysis suggested that developing the human, cultural and social capital had greater economic growth potential than developing irrigation (Connor, et al., 2019).

Bringing these threads together, a picture of the river emerges: an international treasure with ecological, archaeological, heritage and cultural significance. For local communities, the river is a vital cultural cornerstone intrinsically linked to wellbeing and livelihoods. These values could form the basis of the culture conservation economies envisioned later in this article.

5.7 *Governance Gap*

In large catchments like the 100,000km2 Fitzroy, cooperation is especially important. Traditional Owners recognise that collaborative governance processes are needed to manage the Martuwarra. There are several plans that tackle aspects of catchment management, for example, the Fitzroy Catchment Management Plan (CENRM 2010), the Kimberley Aboriginal Caring for Country Plan (Griffiths & Kinnane, 2011) and the Nyikina and Mangala Mardoowarra Wila Booroo Natural and Cultural Heritage Plan (Watson et al., 2011). Furthermore, responsible management of the National Heritage Listing will need a management plan to be developed, resourced and implemented. Conservation management needs to incorporate Aboriginal cultural, legal, political, social, governance and environmental management knowledge (Lim, 2016; VCSRG, 2017; Douglas et al., 2013; Jackson, Pusey, & Douglas, 2011).

WA legislation provides limited options for protecting and managing the river on a catchment scale. Water allocation planning and licensing is regulated through the *Rights in Water and Irrigation Act 1914* (WA). As the water use regulator, the Western Australian Department of Water and Environmental Regulation (DWER) has a significant role. DWER also manages waterways through its policies, advice, and by coordinating cross-government efforts (Western Australian Department of Water & Environmental Regulation, 2018).

Notwithstanding the central role of water allocation plans and water licensing, other catchment management and natural resource management (NRM) functions are spread across several statutes in a "complex and not-well-integrated" way (Pannell, Ridley, Seymour, Regan, & Gale, 2008, 5). The six regional bodies for NRM that develop management strategies in WA are non-statutory. There are limited legal avenues for addressing catchment scale issues (other than water allocation) or establishing catchment authorities. One exception is the Swan and Canning Rivers Management Act 2006 (WA), which established a trust to protect the Swan and Canning rivers in WA's south-west.

In addition to the existence of complex NRM legislation, a legal analysis found that WA legislation provided no legal duty to maintain and/or restore waterways, nor wetlands (Jensen & Gardner, 2016). Furthermore, although environmental water

requirements (EWRs) are provided for by water planning policy, EWRs have insufficient statutory protection (Jensen & Gardner, 2017).

Despite the formal governance gap, an informal management body for the Fitzroy Catchment existed for a short period of time. The Fitzroy Catchment Action and Management committee, known as FitzCAM, was established in 2007. Although the committee had no statutory authority, the strength of FitzCAM was its whole-of-catchment, cross-industry, multi-stakeholder representation (Dale, Pressey, Adams, Álvarez-Romero, Digby, Dobbs, & Gobius, 2014). FitzCAM provided a forum for knowledge sharing and forming stakeholder connections. The work of FitzCAM informed the Fitzroy Catchment Management Plan (CENRM 2010). FitzCAM was disbanded in 2008 due to lack of funding despite being considered to be very successful by a wide range of members for achieving its object of generating constructive dialogue across disparate and conflicting interests. The plan it developed was not implemented. FitzCAM's disbandment left the river with no formal nor informal management group.

5.8 *Story of the Fitzroy River Declaration and Martuwarra Fitzroy River Council*

5.8.1 The Fitzroy River Declaration

The KLC convened a meeting of Traditional Owners in 2016 to discuss managing the whole catchment as a single integrated system, a living ancestral being that has a right to life. This resulted in The Fitzroy River Declaration (2016b).

The purpose of The Declaration is to protect the cultural and environmental values that underpin the river's national heritage listing for future generations. Through it, Traditional Owners express their concern regarding potential risk to the unique national and international cultural and environmental values of the river catchment from the cumulative impacts from invasive development. The Declaration is significant because it is based on both cultural and environmental values and reflects the commitment of Traditional Owners throughout the catchment to work together to ensure the survival of the river and to maintain Warloongarriy, First Law.

A key role of The Declaration is to articulate a joint position on the catchment. It outlines an action plan, agreed to by all parties to the Declaration. The Declaration proposes a buffer zone to prevent mining, fracking, irrigated agriculture and dams

within vulnerable sections of the catchment. The actions promoted by The Declaration are consistent with the outcomes from previous water meetings.

A key difference between previous meeting and the Fitzroy Declaration is the explicit agreement among Traditional Owners to work together. At the time the Declaration was made, Tyronne Garstone, Acting Chief Executive Officer of the KLC, said "Kimberley Aboriginal people have made a strong statement that they will not be ignored or divided when it comes to the interests of the Fitzroy River" (KLC 2016a, 1).

5.8.2 Government Response to the Declaration

In 2016 the WA Labor party made a pre-election commitment pledging support for The Declaration. Soon after winning the election, the new WA Labor government set about reforming the state's development agenda. On the 9th March 2018, stakeholders in the catchment, including Traditional Owners and Indigenous community agencies, pastoralists and irrigators, miners and drillers, tourism representatives, public servants and conservationists met with four WA government ministers in Fitzroy Crossing. The ministers announced the new government's proposed 'visionary' (Western Australian Government, 2018) multi-departmental response to fulfilling electoral promises by:

- extending the Geikie Gorge National Park to create a Fitzroy River National Park in the upper part of the catchment;
- developing a surface and groundwater allocation plan for the Fitzroy Catchment;
- developing an economic development and land plan; and
- confirming the 2016 election policy of no dams on the Fitzroy River.

Traditional Owners have requested that the WA government recognise the Fitzroy River Declaration in state law. While many at the meeting acknowledged the potential benefits of the government's current commitment, they remained concerned the plans were insufficient to achieve key objectives of The Declaration. The government's national park proposal would provide some river protection; however, the area is limited to a portion of the upper catchment, leaving much of the river at risk. Furthermore, some Traditional Owners are concerned about WA's joint management model. Joint management of national parks between Native Title holders and the WA

government is perceived as a process that would weaken Traditional Owner decision making authority (Grace, 2016; Kerins, 2015).

An alternative is to increase the recognition of Indigenous Protected Areas in WA by amending relevant WA legislation (Grace, 2016). A further option is to enact new WA legislation that provides an environmental protection option for Aboriginal land that is equivalent to national parks (Grace, 2016).

5.8.3 Cultural Solutions: Martuwarra Fitzroy River Council; a dialogue for collaboration

Traditional Owners met again on the 15th and 16th May 2018 in Fitzroy Crossing. They agreed to put the principles of The Declaration into action through the formation and establishment of the MFRC. The rationale for the MFRC is described in a statement (MFRC, 2018). At their inaugural meeting on the 19th June 2018 twelve representatives from nine Registered Native Title Body Corporates (PBC's) met in Perth with the director generals of key portfolio areas such as water, Indigenous affairs and environment. At that meeting, Indigenous representatives urged the WA government to commit to a collaborative approach and promote an inclusive water governance model and a whole of catchment management plan.

The MFRC provides a structure for the collaborative cultural governance processes that will in our view lead to cultural solutions. Identifying and implementing 'cultural solutions' is the central pillar of the Kimberley Aboriginal Law and Culture Centre (KALACC) (KALACC 2017). KALACC has operated as the Kimberley region's peak Aboriginal cultural agency since 1985. Its mandate is to protect, preserve and celebrate First Law and culture across the Kimberley region. An Indigenous cultural approach to collaborative water governance pathway is outlined in Figure 5. below.

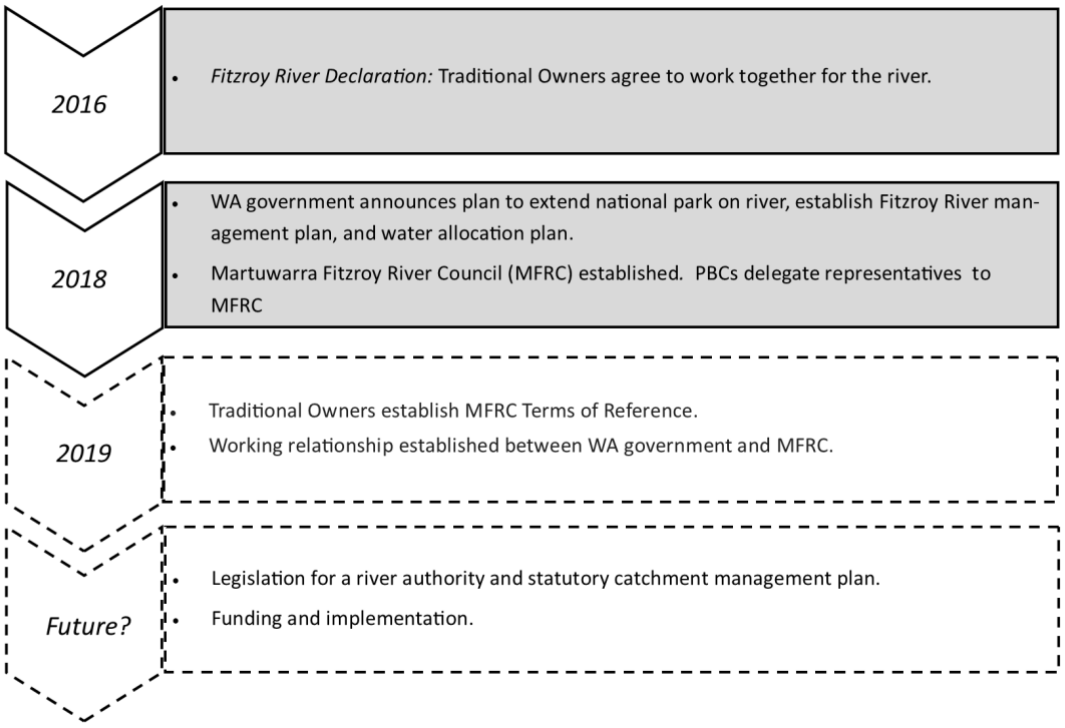

Figure 5: Possible governance and management pathway for Martuwarra Fitzroy River.

5.8.4 Envisioning Future Opportunities

Sustainable culturally sensitive industries are required to strengthen Aboriginal peoples' capacity to shift from poverty to wealth creation in order to improve holistic health and wellbeing outcomes. The culture conservation economy as described by Ro Hill has exciting potential (2006). Peter Yu, a former CEO of the KLC and current CEO of the not-for profit company belonging to the Yawuru Traditional Owners of the Broome area, Nyamba Buru Yawuru, critiqued the government's Northern Australian White Paper as having an old economy bias, i.e., a bias towards primary industries such as mining and agriculture (Yu, 2016). However, the emerging Indigenous cultural economy should be seen as "fundamentally important" to northern Australia (Yu 2016, 8).

Kimberley people have spent considerable time analysing, discussing and researching economic alternatives that look to develop the region's natural competitive advantage in the people, landscape, culture and proximity to Asia. Their insights and ideas are put forward in forums such as the Kimberley Appropriate Economies Roundtable (Hill, Harding, Edwards, O'Dempsey, Hill, & McIntyre-Tamwoy. 2008). Sustainable economic development opportunities include wilderness parks, cultural tourism,

bushwalking and trail riding, geo-tours, archaeological tours, carbon farming, health, education and other services (Poelina & Nordensvärd 2018).

The Kimberley Aboriginal Caring for Country plan's vision for 'healthy country, healthy people' is aligned with priorities such as jobs, access to country, and respecting cultural protocols (Griffiths & Kinnane, 2011). A salient example is the Indigenous Ranger program. Environmental and cultural monitoring is aligned with the vision, as are knowledge economies such as land management research and education. The majority of Indigenous land and sea management programs undertake commercial activities that create jobs and generate revenue (Jarvis, Stoeckl, Addison, Larson, Hill, Pert, & Lui, 2018). Furthermore, these programs are thought to indirectly stimulate other Indigenous business activities in the same region, although the evidence is not yet conclusive (Jarvis et al., 2018).

5.9 *Conclusion*

Since the beginning of time when Woonyoomboo speared Yoongoorrookoo and created the Martuwarra, the river has continued to be a sacred living ancestral being in First Law. Today, the Martuwarra – Fitzroy River is an iconic national and Indigenous heritage listed river system. First Law continues to provide Traditional Owners with a framework for their united approach to catchment management and governance.

The values and unity of First Law are reflected in the Fitzroy River Declaration and the Martuwarra Fitzroy River Council. Together they are a 'cultural solution' for decolonisation. These are historic developments that reframe Traditional Owners' colonial relationship with the state. They assert that the Martuwarra is not merely a 'resource,' but an ancestral spirit that is a single living system.

The Declaration provides a pathway for river management that respects First Law and strengthens culture. It is a powerful statement of Traditional Owners' leadership, unity, vision, and enterprise. Strong contemporary governance based on First Law provides accountability, transparency, and a method for conflict resolution. It promotes a decision-making authority for collaborative planning and explores a model of Indigenous-led water governance for their native title lands and waters based on free, prior and informed consent.

The MFRC promotes inclusive collaborative long-term planning, and sustainable development that incorporates the ongoing needs of humans, the environment and culture. This contrasts with the current government model. The state and federal governments' focus on invasive development options has reduced opportunities to explore more sustainable industries that generate income through economic development options that align with Traditional Owner values and priorities.

To decolonise water will require attention to more than matters affecting access to water. It will also require that we undo colonial narratives about water and Indigenous peoples. Indigenous wisdom is critical for envisioning a positive future, and guiding pathways to achieving it. By sharing the MFRC's story, we provide a positive counter-narrative moving beyond the 'deficit discourse' of negativity, deficiency and disempowerment.

Traditional Owner wisdom is grounded in their deep relationship with their river country. Through the MFRC, they promote a new way of doing business in northern Australia by genuine and fair recognition of First Law. This approach nurtures economic alternatives such as the culture and conservation economy. Sharing the Martuwarra Traditional Owners' collaborative governance model, illuminated by First Law, provides an option for other Traditional Owners and environmental managers to consider.

5.9.1 Notes

- In this section, including the abstract, the principal author has used her Nyikina language orthography. As the river passes through Nyikina country it is spelt Mardoowarra. As a Traditional Owner, the lead author is a custodian and guardian of Nyikina country, including the Mardoowarra. In the article we refer to the Fitzroy River as 'Martuwarra' to reflect the generic term and orthography used by many Traditional Owners. The historical name for the river changes as it weaves its way through the different Indigenous nations. We recognise the right of each nation within the catchment to speak for their country in their own language. Europeans renamed the Martuwarra; is now known by them as the Fitzroy River.
- For example, the Kimberley Water Forum (Western Australian Department of Water 2008) recommended statutory protection for the river: recognising native title rights and associated Traditional Owner interests; establishing a governance framework based on partnership; and prohibiting some damaging activities in Fitzroy River Catchment.

- Grace (2016, 5) calls this model an ‘Aboriginal National Park’, suggesting that “Key features of this [proposed] legislation should include the ability to limit certain activities without Parliamentary approval (similar to a Class A Reserve); the ability to regulate certain activities and manage visitors – with approval coming back to the native title holders as opposed to the Minister; the ability of rangers to enforce plans of management; and an avenue for the WA Government to invest resources ... ”.

5.10 *Chapter 5 Summary*

The Fitzroy River Declaration raised Traditional Owners sense of liberation and collective consciousness for advocating on behalf of the River. Six Indigenous nations signed the Memorandum of Understanding to form the Martuwarra Fitzroy River Council as an Indigenous cultural approach to collaborative water governance. The Council identified the need to establish a Martuwarra Fitzroy River Catchment Authority as a statutory body to monitor and regulate potential cumulative impacts from development. The following Chapter 6 looks at good governance in regard to cultural tourism as an innovative and constructive way to build sustainable authentic cultural industries that ensure economic opportunities for Indigenous people.

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6 CHAPTER SIX: Sustainable Luxury Tourism

Sustainable Luxury Tourism: Indigenous Communities and Governance

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6.1 *Preface*

Building upon the thesis development to this point, we describe cultural tourism as an innovative and creative way to build sustainable authentic cultural industries, between non-Indigenous and Indigenous people within and on their cultural landscapes. The authors champion the need to ensure cultural tourism is regarded as an important social, spiritual, cultural, economic opportunity for Indigenous and First Nations people. The study revealed there are many challenges and opportunities facing Indigenous sustainable luxury tourism. The first is an understanding that Luxury Tourism in this context is not about '5 star ratings', rather it is about the opportunity to go with Indigenous and First Nations people on their 'Country' to see and feel and learn how to become 'family' within the context of our home, Australia (Poelina et al., 2020;Wooltorton et al., 2020). Importantly the study revealed these types of industries need to be centred around Indigenous governance to prevent destructive intrusions, invasions of privacy and trespassing. Most importantly, for the 'season' to be contained to optimum times of the year when visitors seek to spend time in northern Australia.

The study affirmed this type of commercialism requires a good relationship between the industry, other tourism operators and local organisations to invest in working with Indigenous people to develop authentic and innovative shared creative and authentic tourism experiences.

Keywords: Sustainable luxury tourism, Indigenous communities, Indigenous governance

6.2 *Introduction*

The global population of Indigenous people still suffers today from discrimination, marginalisation, extreme poverty and conflict. Indigenous Australian people have and are still facing overall social, economic, juridical and political disadvantages in

Australian society (Aboriginal and Torres Strait Islander Affairs, 2003; Ivory, 2003; Fuller, Buultjens & Cummings, 2005; Pink & Allbon, 2008; SCRGSP, 2016). This illustrates higher unemployment vis-a-vis non-Indigenous groups, and that average income and rates of business ownership are significantly lower than among non-Indigenous groups (Aboriginal and Torres Strait Islander Affairs, 2003; Fuller, et al., 2005; Pink & Allbon, 2008; SCRGSP, 2016). There are major challenges to remove barriers of discrimination, and to access and increase the quality of social services available to Indigenous communities.

A large part of the Indigenous population lives in regional and remote areas with fewer prospects of employment, which has led to an interest from Australian government agencies to regard tourism as a viable route to promote Indigenous entrepreneurship and employment (Commonwealth of Australia, 2011a; Butler & Hinch, 2007; Steering Committee for the Review of Government Service Provision (SCRGSP), 2016). A major priority has been to increase tourism investment in regional and remote areas through a diverse array of Federal and State government programs (Buultjens, Waller, Graham, & Carson, 2005; Ivory, 2003; Whitford & Ruhanen, 2009).

There are many obstacles such as lack of land tenure, difficulties in raising finance, the design of tourist itineraries, and a lack of market profile and market skills that have undermined and are still undermining the prospects of Indigenous tourism (Altman, 1993; Altman & Finlayson, 1992; Dyer, Aberdeen, & Schuler, 2003; Zeppel, 2001). Schmiechen and Boyle argue that Indigenous tourism "remains an extremely fragile and tenuous sector of the tourism industry" (2007, 60). Higgins-Desbiolles, Trevorrow and Sparrow (2014) have highlighted the importance of including and incorporating an understanding of Indigenous culture and Indigenous community aspirations.

Socially Sustainable luxury tourism could become an important part of empowering and life-sustaining activities for remote Indigenous groups and unique habitats such as the Mardoowarra, Kimberley, and its unique environmental assets. Sustainable luxury can not only be understood as a vehicle for more respect for the environment and social development, but also as a synonym of culture, art and innovation of different nationalities and maintaining the legacy of local craftsmanship (Gardetti & Justo,

2017), which becomes even more important for Australian Indigenous culture and communities.

Our argument in this article that the ethos and practice of sustainable luxury tourism could be a vehicle to incorporate an ethic of care for visited places (Mair & Laing, 2013; Miller, Rathouse, Scarles, Holmes, & Tribe, 2010) while providing Indigenous employment. This could be achieved through a focus on small and community-based sustainable luxury tourism aimed at overseas visitors. This might be essential in developing Indigenous tourism to combat some of the fundamental problems such as remoteness (access to resources/ travel costs of tourism). Mass tourism tends not to benefit local communities and there is a lack of interest from the nation's tourist markets.

We will redefine what we mean as luxury in sustainable luxury, focusing on the uniqueness of access to a spiritual and environmental experience created through the Indigenous understanding of the environment. The Kimberley region in the North West of Western Australia, our primary focus, is considered to be one of the last great wilderness areas of the world, and it was listed as an area of National Heritage in 2011. We argue that such development can bridge the divide between culture and nature and explain how and why management and protection of landscapes and eco-systems are integral elements of human heritage, culture and a new wave of sustainable luxury tourism. The value of Indigenous governance and the rights to their land is central to building a case for sustainable luxury, and to promoting multi-layered ethical care of the places people visit and of becoming part of both the protection of the land and their cultures.

The chapter will be divided into four main parts. The first part will provide the background around the concepts and the chosen case study. The second will briefly discuss the issue of land rights for Indigenous people. The third part will discuss the importance of Indigenous governance. The fourth will aim to analyse the potential for sustainable luxury tourism for Indigenous communities and then conclusions will be drawn.

6.3 *Background*

6.3.1 *Mardoowarra (Fitzroy River)*

The Mardoowarra (Fitzroy River) is the mightiest river in the Kimberley with a length of 733km, and when in flood during the wet season, it carries so much water that it is second only to the Amazon River for volume (Watson et al., 2011). Mardoowarra, or the Fitzroy River, Valley Tract, is located along the contact of the Kimberley Region and Great Sandy Desert. The Fitzroy River empties into King Sound to form the largest tide-dominated delta in the World. The total valley from Fitzroy Crossing to King Sound is globally unique in its biotic and abiotic diversity, remoteness, and arid setting (Brocx & Semeniuk, 2011, 151-160). The river originates in the King Leopold Range and comprises a vast catchment area of almost 100,000km2. This encompasses more than 20% of the Kimberley region. The river is up to 1km wide in parts and is flanked by a 300km long floodplain spanning up to 15km wide, before finally emptying into King Sound south of Derby. The Mardoowarra is one of the most mega-diverse regions in the world from a biogeographic perspective (Pepper & Keogh, 2014).

Vogwill highlights how the pristine river cuts through a variety of ancient terrain, including sandstone plateaux, and 350 million-year-old Devonian limestone of former barrier reefs that has eroded into deep and dramatic gorges. Vogwill highlights further significant fauna in and around the river which includes 18 endemic fish species found nowhere else in the world such as the endangered freshwater Sawfish and freshwater crocodiles, sharks, rays, turtles, mussels, waterbirds, falcons, bats and quolls (2015: 6-11). The fluvial vegetation, such as freshwater mangroves, also provides rich sources of food and traditional medicines (Watson, et al., 2011).

In 2011, the Australian Government announced the National Heritage Listing of 19 million ha of the West Kimberley including the entire Mardoowarra for its outstanding cultural significance to the nation. The river Mardoowarra:

> demonstrate[s] four distinct but complementary expressions of the Rainbow Serpent (Yoongoorrookoo) tradition associated with Indigenous interpretations of the different ways in which water flows within the catchment. The value of the river system lies in its exceptional ability to convey the connectivity of the Rainbow Serpent tradition within a single freshwater hydrological system (Pannell, 2009).

The exceptional natural and cultural value of the river not only added a qualitative dimension to the Kimberley and Western Australia, but also to the nation. The entire Fitzroy River catchment was added to the National Heritage Listing in 2011 by the Australian Government. The Fitzroy River is also listed as an Aboriginal Heritage Site, Site No. 12687 under the Western Australian Aboriginal Heritage Act 1972 (Government of Western Australia, 1972).

6.3.2 Social innovation

Innovation systems are highly complex and need to reconcile socio-economic development, environmental sustainability and technological and innovation capabilities, in both developed and developing countries (Stamm, Dantas, Fischer, Ganguly, & Rennkamp, 2009; Urban, Nordensvärd & Zhou, 2012). Social innovation has become a separate stream of literature that focuses on the social and political organization of society.

Ockwell and Mallett regard 'social innovation' as "recognizing new ways of organizing or doing things through social dimensions" (2013, 118). Andersen, Larsen, & Møller (2009) define social innovation as "the ability to organise bottom linked collective action/empowerment (including efficient political representation)", and state that this "is a condition for reaching sustainable democratic and social development" (2009, 283). They argue further that "[S]ocial inclusion and integration are impossible without both social conflict and democratic dialogue" (2009, 283). We argue that sustainable luxury tourism that is socially just needs to take into account redistributive, procedural justice and in particular inclusive participation and rights and responsibilities under guardianship and custodial considerations, along with key principles of Indigenous ownership of both governance process and the benefits of development.

We argue that a transfer towards small-scale sustainable luxury tourism and Indigenous governance promoting David corporations and overseas guests could be a disruptive innovation (Christensen, 1997). Disruptive innovation could help create new markets and potentially disrupt the mainstream tourism market by implementing different value sets (Christensen, 1997; Christensen & Raynor, 2003; Christensen & Overdorf, 2000). Sustainable luxury tourism based around Indigenous environmental

governance could add an important and educational element to visitors engaging these types of experiences in remote communities.

6.3.3 Sustainability

Sustainable development and environmental management discourses try to bridge tensions between humans and the habitats that humans live in. Kearin, Collins and Tregidga argue that sustainability is "a systems concept that has at its heart ecological sustainability and the longevity of biophysical systems that support human life." (2010, 519). Sustainability was popularized by the Brundtland Report in 1987 which became synonymous with "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (World Commission on Environment and Development 1987, 43).

There is an interest in integrating cultural, social, economic and environmental dimensions of development. These dimensions are regarded as the core pillars of sustainable development, and sustainability has become one of the most important environmental concepts in development. Still, the social pillar was often seen as a lower priority than both the environmental and economic dimensions. There have been ongoing attempts to link social sustainability to the other dimensions of sustainable development and wider policy issues (Littig & Grießler, 2005; Davidson, 2009; Dillard, Dujon, & King, 2008; Vifell & Thedvall, 2012; Dempsey, Bramley, Power, & Brown, 2011).

Marcuse argues that sustainability should not be thought of as conceptualising the current global status quo with all of its inequalities (1998). There has been an attempt to link social sustainability to the concept of environmental justice. Agyeman and Evans argue that "just sustainability" needs a clear linkage between sustainable development and environmental justice to prevent the social pillar from becoming one-sided (2004). Harvey points out that environmental injustices need to be a first priority on the sustainability agenda (Harvey, 1997, 385).

Schlosberg and Carruthers stress that Indigenous demands for environmental justice are not just about distributional equity but also the functioning of Indigenous communities, which highlights traditions, practices, and protecting the essential

relationship between Indigenous people and their ancestral lands and waters (2010). The link to the capability/functioning approach of Sen and Nussbaum has also meant an expansion of the original scope on individuals towards the functioning and capabilities of Indigenous communities and their environment (Schlosberg & Carruthers, 2010).

Schlosberg argues further of the need to add a capability dimension to the environment in environmental justice. This would "enrich conceptions of environmental and climate justice by bringing recognition to the functioning of these systems, in addition to those who live within and depend on them" (Schlosberg, 2013, 44). Tourism based on Indigenous governance in Australia will go further than just seeing places, but understanding the underlying relationships between humans, culture and the environment in one of the oldest continuously existing cultures.

6.3.4 Why sustainable luxury might play an important role

Luxury is seen by De Barnier as having seven culturally specific common characteristic elements, which are exceptional quality; hedonism (beauty and pleasure); price (expensive); rarity (which is not scarcity); selective distribution and associated personalised services; exclusive character (prestige, privilege) and creativity (art and avant-garde) (De Barnier, Falcy, & Valette-Florence, 2012). Luxury has been defined by Klaus Heine (2012) as something desirable which goes beyond being merely a necessity. Kapferer and Bastien depict luxury to signify prosperity, power and social status (2012) and luxury is constant in change and reflects the social norms and aspirations of different times and societies (Berry, 1999).

The term 'luxury' must not be seen as opposing ideals or ethics but could actually be turned into ethical production and consumption. "Luxury is also associated with high quality, know-how, slow time, the preservation of hand-made traditions, transmission from generation to generation of timeless products: these associations will be in agreement with sustainability" (Kapferer & Michaut, 2015, 5). A luxury strategy often involves locally produced products that respect sources of raw materials (Kapferer, 2010). Problems have occurred when prestigious brands have abandoned the luxury route for second and third tier products produced often under similar but non-luxury conditions. As the world faces overconsumption, there is an imperative that we

consume less of lesser quality and more of higher quality, in terms of shared and valued experiences.

There has been discussion of how some emerging disruptive and innovative companies within the luxury industry embrace values in a more fundamental way (Bendell, 2012). Often defined as David against Goliath, these companies are based on a pronounced value approach that aims to support social and environmental changes (Hockerts & Wüstenhagen, 2010). Traditional luxury companies have encountered problems in implementing sustainability in their business and in their products (Bendell, 2012). Jen Morgan expressed this when she stated that "[t]o leapfrog ahead, we need pioneering and brave people, communities and organizations who are willing and able to challenge that status quo and to experiment for change" (cited in Gardetti, 2014, 32). Sustainable luxury is an important endeavour to integrate the knowledge and craftsmanship of Indigenous people to ensure that Indigenous communities and future environmental capabilities are supported.

6.3.5 Indigenous tourism in Australia

Indigenous groups in Australia face higher unemployment vis-a-vis non-Indigenous groups and the average income and rate of business ownership is significantly lower than among non-Indigenous groups, which explains why tourism is seen as a development tool and a way to create "much needed opportunities for employment, social stability and preservation of culture and traditions" (Australian Department of Industry, Tourism & Resources, 2005, 41). Tourism has become a viable option for Indigenous people to establish themselves in the economy (Fuller, Antella, Cumming, Scales, & Simon, 2001; Australian Department of Tourism & Resources, 2005).

Cultural tourism has been regarded as important as it would involve the land and Indigenous cultural assets, but Altman & Finlayson (1992) highlight the importance of balancing cultural integrity with concepts of commercialisation. Therefore, it is important to create tourism centred around Indigenous governance to prevent destructive intrusions, invasions of privacy and trespassing.

There are many challenges and opportunities facing Indigenous sustainable luxury tourism and the remainder of the chapter discusses some of the more significant issues and topics. Fletcher, Pforr and Brueckner (2016), for instance claims that there are

three major challenges that could undermine Indigenous tourism endeavours, such as control or security of tenure and recognition of legal rights to ancestral or traditional lands on one side, and the management of the land on the other; the overall governance situation, and finally the policy context. Concentrating on the Mardoowarra as an example, our discussion is furthered developed.

6.4 *Control, tenure and legal rights vis-a-vis management responsibilities*

Coria and Calfucura (2012), Bunten (2010), Weaver (2010) and Colton and Whitney-Squire (2010) have argued "that control or security of tenure and recognition of legal rights to ancestral or traditional lands and waters is a key issue influencing the success of Indigenous tourism enterprises" (Fletcher, Pforr & Brueckner, 2016, 1106). Coria and Calfucra (2012) argue that if Indigenous communities cannot assert control over land and resources, investment in tourism is prevented, and has the potential to limit the possible social and economic benefits of such projects. Langton, et al., (2005, 24) argue that such "guaranteed land security and the ability of Indigenous and local peoples to exercise their own governance structures is central" to maintaining traditional knowledge systems upon which Indigenous livelihoods depend.

The recognition of Native Title in 1993 following the momentous Australian High Court Mabo decision in 1992, was a significant advance in the position of Indigenous people, as their rights to land and waters was interpreted by Australian law on the basis that it recognised that prior to colonisation Indigenous Australians had their own laws and customs. It is important for Indigenous people to build upon these rights as recognised within the *Native Title Act 1993* (Cth) to ensure all Indigenous peoples can benefit from the commercial use of traditional lands and waters. Furthermore, traditional owners have an inherent right to make decisions about customary cultural and native title rights and responsibilities on and for country. Tran (2015) champions this right in accordance with Article 19 of the UNDRIP, which states that any policies and legislation developed need to ensure that Indigenous rights and responsibilities towards guardianship and custodianship for their lands and living waters are paramount. Article 26 of the UNDRIP states that:

> Indigenous peoples, have the right to own, use, develop and control the lands, territories and resources that we possess by reason of traditional ownership or other traditional occupation or use, as well as those which we have otherwise acquired ...

> States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous peoples concerned (UNDRIP, 2007).

Tran (2015) asserts that in accordance with Article 32 of the UNDRIP, that:

> States shall consult through our representative institutions in order to obtain our free and informed consent prior to the approval of any project affecting our lands or territories and other resources, particularly in connection with the development, utilisation or exploitation of mineral, water or other resources ... States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact (Tran, 2015, 304).

All negotiations and decision-making agreements must be engaged through a free, prior and informed consent. It is therefore paramount that Aboriginal people must have a central role in the development, implementation and evaluation of policy and legislative or administrative measures that impact on their lives.

A right to sustainable life and sustainable development must be grounded in an Aboriginal context, and it is important to increase an understanding around complex relationships of sites, or land, or country, which cannot be separated from the people, or custodians, who live there and care for them. These principles of justice can lead to an improvement of living standards and allocation of resources to rural and remote communities in a more entrepreneurial, economically sound and environmentally just way.

In 2011, the Australian Government announced the National Heritage Listing of West Kimberley, including the entire Mardoowarra. The Australian Government has recognised that Indigenous people have "long engaged in productive activities in and around wild rivers, with a deep knowledge base, awareness and attachment to the life of the river" (Australian Government, 2015, 7).

Mardoowarra (Fitzroy River) is one of Australia's few remaining wild rivers, "relatively unaltered by modern human development, and exist[ing] in [its] natural condition – to flow freely without dams or other barriers" according to the Australian

Government (2015, 7). On the 2nd and 3rd of November 2016, guardians and custodians of the Fitzroy River Catchment met in Fitzroy Crossing to champion the Fitzroy River Declaration (2016). The Declaration is the mechanism for Indigenous governance to develop a Management Plan to respond to the growing concerns of the extensive development proposals facing the Fitzroy River. The unique cultural and environmental values of the Fitzroy River and its catchment are of national and international significance. The Fitzroy River Declaration (2016) sets a national standard for Native Title as well as enshrines the UNDRIP for self-determining responsibilities as guardians of the Fitzroy River as being fundamental to the management of this globally unique river system.

The Declarations send a strong message to the Federal Government to endorse the *Environmental Protection and Biodiversity Conservation (EPBC) Act 1999* Draft Referral Guidelines for the West Kimberley National Heritage Places (Australian Department of the Environment & Energy, 2017) as the guiding principles for development within the Fitzroy Catchment. The Declaration explicitly encompasses the diversity of Aboriginal peoples, groups and communities who live along the Mardoowarra (Fitzroy River) and continue to maintain a special relationship with this sacred river. The Fitzroy River is also listed as an Aboriginal Heritage Site No. 12687 under the Western Australian Aboriginal Heritage Act 1972. The guardians and custodians believe the Fitzroy River is a living entity and an ancestral being and has a right to life. It must be protected for current and future generations and managed jointly by the Traditional Owners of the river. What binds Kimberley's Indigenous peoples is the stories and wisdom and the collective and continuing responsibility the guardians and custodians have to maintain custody and guardianship of the Mardoowarra/Fitzroy River as an asset in Common, registered and endorsed as National Heritage (Poelina & McDuffie, 2016). The Indigenous governance approach is regulated under Aboriginal law and an Indigenous management regime that expects that both cultural and legal responsibilities on the country are implemented, evaluated and that the learning is shared.

At the same time, the Mardoowarra is under threat from direct and indirect development to transform sections of the river into intensive farming areas, with large scale land clearing and water extraction, and there is the ever-growing threat of coal

mining and gas fracking in the Mardoowarra catchment area (Carwardine et al., 2011). Using Indigenous tourism products in Mardoowarra will provide not only an ethical and commercial support of Indigenous native title rights but is also supporting Indigenous communities' management of the environment in a sustainable way.

6.5 *Indigenous governance*

There has to be a discussion of how conceptualising and implementing an Indigenous governance within sustainable tourism could support positive returns and minimise negative effects through long-term strategic planning, stakeholder collaboration and community empowerment (Whitford & Ruhanen, 2010). Bennett, Lemelin, Koster, & Budke (2012), Colton and Whitney-Squire (2010) and Bunten (2010) emphasise that governance processes provide a cultural authority with the means of ensuring legal recognition, accountability, inclusiveness, participation and conflict resolution with the presence of formalised bodies supporting economic development, access to and decisions on the use of land, living waters and natural resources. There is a need for governments to take a new approach to researching, planning and development which impacts on the right to life for the Mardoowarra. This relationship must be a partnership based on principles that recognise the continuing cultural and economic rights of Aboriginal people, a commitment to democratic process, and to improving leadership, governance and entrepreneurial capacity.

There are attempts to link Indigenous entrepreneurs as described in Freire's discussion of praxis: transforming situations through action and critical reflection (Freire, 2005). In his dialogic action theory, Freire distinguishes between dialogical actions which promote understanding, cultural creation, and liberation; and non-dialogic actions, which deny dialogue, distort communication, and reproduce oppressive power structures. The 'strength-based' approach rejects narratives that promulgate inferiority.

This approach has a greater focus on innate ability, the advantages of Indigenous culture (rather than framing it as disadvantageous), dialogue, and 'hopes and aspirations' for 'how we want to be' (2005). Research that employs this strengths-based approach is consistent with Smith's (1999) call for Indigenous communities to reframe how Indigenous nations are connected physically, culturally, spiritually, entrepreneurially and economically to re-build their cultural governance relationships

in their protection and sharing of cultural and environmental knowledge, practice and assets, to ultimately promote sustainable life and sustainable development across the generations and across the world.

It is vital to see Indigenous tourism as going further than sustainable development and seeing the need to create sustainable life. Poelina discusses how one needs to link the rights of human beings with the right to life for nature (Poelina & McDuffie, 2016).

One could link such an approach to a more extensive understanding of environmental justice which also concerns the functioning of Indigenous communities, which highlights traditions and practices, and protects the essential relationship between Indigenous people and their ancestral lands and waters (Schlosberg & Carruthers, 2010).

By utilising the principles of Indigenous Nation Building, the evidence emerging in Australia suggests that culture (the beliefs, practices, and ethics of law and custom) is the mechanism that Indigenous peoples use to participate in the world around them, or to 'be with' and 'act as' guardians for their tribal lands and living waters. Regional and collaborative governance must be determined by the people most affected. Indigenous peoples are key stakeholders in such partnerships and come to share their lived and rich experiences from their deep inter-generational relationship with nature. Sustainability is very much a part of Indigenous governance. According to the Northern Australian Indigenous Land and Sea Management Alliance :

> Indigenous Peoples have rights, responsibilities and obligations in accordance with their customary laws and traditions, protocol and customs to protect, conserve and maintain ecosystems in their natural state so as to ensure the sustainability of the whole system (NAILSMA, 2009,1).

If Indigenous nations are to rebuild enduring governance and wellbeing; on the social, cultural, human and environmental assets these types of entrepreneurial, innovative ways of doing business provides their citizens and their nations. It is the process of dialogue to action through collaborations with others to build trust, sustainable tourism, environmental protection and justice.

6.6 *Overall policy context for sustainable luxury tourism*

Much of the dominant discourse around Indigenous tourism in Australia has been based around marketing, product development and economic benefits as to why Indigenous tourism development should be supported. Few have paid attention to Quality of Life of Indigenous communities or to their role as environmental stewards (Whitford & Ruhanen, 2010). If we look at the different factors presented earlier such as both tourism as a way to combat social exclusion, strengthen the capabilities of Indigenous remote communities and protect the environment and eco-systems, it becomes apparent that a classical understanding of tourism might fall short in reaching these goals. Sustainable luxury tourism opens up new possibilities in reaching these goals.

6.6.1 *6.6.1 High costs*

One of the many challenges that Indigenous tourism faces is often the discrepancy between the perception of a high demand for Indigenous tourism (Australian Department of Industry, Tourism & Resources, 2005; Tourism Research Australia, 2010) and actual national demand. The potential market for Indigenous tourism is predominantly international visitors, which means that visitors will go to some lengths both in terms of cost and transport to reach remote Indigenous communities. This remoteness also leads to higher costs such as remoteness from suppliers and markets (Young, 1988). There are other issues such as access to start up and developmental capital (Finlayson & Madden, 1995; Fiszbein, 1997) and government schemes have been difficult for Indigenous people to access (Buultjens et al., 2005).

This becomes even more salient if many visitors were international rather than national. “Conventional wisdom is that Indigenous tourism is much more popular among international tourists, especially from Northern European countries, than among domestic tourists. Moreover, Indigenous ecotourism enterprises are to some degree protected from competition due to their relative remoteness” (Coria & Calfucura, 2012, 51). Ryan and Huyton have found in a study of visitors to Katherine that only about a third of tourists indicated a high level of interest in Aboriginal tourism products, whereas those who are younger, often female, better educated and from North America or Northern Europe indicated high interest (2002). This

argument highlights the fact that sustainable luxury tourism might not just be desirable, but also necessary.

To create Indigenous tourism that is both sustainable and lucrative according to high ethical, social and environmental standards is challenging as it goes beyond our standard understandings and experiences of tourism, implying that the ethos of sustainable tourism could be an option to inculcate an ethic of care for visited places (Mair & Laing, 2013; Miller et al., 2010).

6.6.2 Redefining luxury

Luxury does not have to mean a standardised understanding of comfort and service, but unique and bespoke itineraries that are constructed with environmental and spiritual knowledge of Indigenous communities and entrepreneurs. If people travel to eat luxury degustation A1 menus in remote areas such as Fäviken in Sweden or Awasi in Chile, there are good arguments for understanding Indigenous tourist experiences as degustation experiences in remote and unparalleled wilderness. Just as in Haute Cuisine restaurants, much effort is put into the craftsmanship and use of resources. Indigenous governance and management are similar in managing the environmental resources in an ethical and sustainable way. Indigenous management and governance should therefore be seen as central elements of any tourism products in remote areas.

In many ways Indigenous governance and management of the Mardoowarra could work if it emphasised sustainable luxury tourism as part of a society of experience (Erlebnisgesellschaft). People do not see their lives as part of a struggle to survive, to follow duties and principles from a divine source, but as a search for variety, interesting experiences and self-fulfilment (Selbstverwirklichung). “Consumption and communications are the main lines of this new search for identity and self-realisation” (Ludes, 1997, 89). Girón, Han, Levine, O’Shea, Sapey, Taub, & Fisas see in luxury a human striving for beauty, refinement, innovation, purity, the well-made and the aspiration for perfection and what is the best experience (2012).

It is therefore important to reconnect to artisanal luxury craftsmanship and a move from quantity of consumption towards higher quality in a time that mass-consumption is becoming highly unsustainable. There have therefore been attempts to rethink both the nature and goal of luxury, such as Bendell and Kleanthous (2007) who argue that

luxury products and services are intertwined by both consumers' aspirations and could embody values such as environmental and social issues. Gardetti argues that to "achieve a profound social change, the role of personal values is very important: idealistic values regarding environmental and social goals can be translated into value economic assets" (2014, 26) The values expressed in the two previous sections on Indigenous Native Title and Indigenous governance of the Mardoowarra, express values that the tourist could align to and also use to find their own identity and self-realisation.

6.6.3 Scaling down

According to Mowforth and Munt (1998, 127), "if sustainable tourism policies and measures are not established early on to manage the possible negative effects of tourism, initial tourism development can become a political and marketing gimmick that opens the door to unwelcome mass tourism". Two cases from China have shown that for Indigenous communities, they need to be involved if the tourism is to have any substantive impact on reducing poverty. An interesting example is by comparing Indigenous tourism in Yunnan and Guizhou, where tourism has been promoted on a large scale in already relatively well-off areas in the former, whereas the latter has focused on low-key tourism in relatively poor areas. "Overall, in Guizhou, the distribution and structure of the tourism industry contributed directly to reducing rural poverty in the province and to a greater extent contributed directly to reducing rural poverty in the province to a greater extent than it did to economic growth" where "Yunnan's extensive tourism industry, by contrast, promoted the province's rapid growth, while contributing surprisingly little towards eliminating Yunnan's poverty" (Donaldson, 2007, 36).

The structure of Guizhou's tourism encourages the participation of the poor, while in Yunnan poor people are often excluded. The focus on upscaling has ensured higher economic growth in already non-poor areas, whereas smaller groups of tourists have contributed less to economic growth but more towards poverty reduction in poor rural communities that directly participate in tourism. This case shows that focusing on smaller groups of tourists where the benefits go directly to remote communities is more desirable than large tourist developments.

6.6.4 Indigenous entrepreneurs

Tourism is seen as income generation for Indigenous communities that demand relatively low levels of government intervention and support. Often this could promote Indigenous participation in the hospitality and retail services area, in cultural, safari, wilderness and bush tucker tours or in making and selling arts and crafts. Moreover, Indigenous people could be employed through their organisations to facilitate tourism (Fuller, et al., 2005). This shies away from the fact that the Indigenous tourism undertaken that is nation-building, increases indigenous capacity and protects the environment will not be a mass-produced, mainstream endeavour.

There is a good argument that we will need to redefine how we understand Indigenous tourism as a high-end product with high costs for both entrepreneurs and visiting tourists. It becomes important to discuss how Indigenous innovation and entrepreneurship could be promoted to "break the rules" and to "promote disruptive solutions" to both environmental and social issues. To understand social change one needs to start with understanding the role of personal values. One could assume that idealistic values concerning both the environment and social goals could potentially be translated into valued economic assets (Dixon & Clifford, 2007).

In the best cases, Bennett et al. (2012), Bunten (2010), Colton and Whitney-Squire (2010), Fuller, et al., (2005) and Turner, Berkes and Turner (2012) highlight the fact that tourism can build capacity, foster the integration of economic, social, cultural and environmental objectives and support Indigenous community development. Still the success of these endeavours will rely on peoples' willingness and ability to be able to take risks. There has been discussion of how some emerging disruptive and innovative companies within the luxury industry embrace values in a more fundamental way (Bendell, 2012). Entrepreneurs must undertake fundamental transformations if their activities will become deemed as sustainable (Egri & Herman, 2000). It is therefore important to support active participation of Indigenous people as entrepreneurs who actively participate in securing investment for the implementation and evaluation of Indigenous Tourism Nation-Building Projects.

An example of Indigenous Tourism Nation-Building Projects is the World Indigenous Tourism Alliance (WINTA) which was formed in 2012 by the collective action of Indigenous tourism organisations from Australia, Canada, Nepal, New Zealand,

Sweden and the USA. The formation of WINTA, in turn, supported a global dialogue in Darwin, Australia when 191 delegates from 16 countries representing Indigenous communities, the tourism industry, government agencies and other supporting bodies, came together at the Pacific Asia Indigenous Tourism Conference 2012, to commit to the development of Indigenous Sustainable Tourism and the promulgation of the Larrakia Declaration.

WINTA continues to evolve and to develop as an Indigenous-led global tourism network of Indigenous and non-Indigenous peoples and organisations. WINTA's objective is to collaborate with Indigenous communities, tourism industry entities, states and Non- Governmental Organisations which have an interest in addressing the aspirations of Indigenous peoples seeking empowerment through tourism and producing mutually beneficial outcomes (WINTA, 2012). The Larrakia Declaration was declared to give practical expression to the UNDRIP through Tourism.

The conference delegates resolved to adopt the Declaration as the principles to guide international policy and better practice to encourage higher rates of tourism among local Indigenous, Native peoples and First Nations to showcase and ground sustainable development of Indigenous tourism across the globe (WINTA, 2012). The principles of the Larrakia Declaration were subsequently recognised and supported by the UN World Tourism Organisation (UNWTO) which recognised the role of WINTA to facilitate, advocate and network with each affiliated Indigenous tourism body and with industry, governments and multilateral agencies.

WINTA builds upon US evidence which suggests that Native/Indigenous nations can progress towards their goals through 'nation building'—that is, by exercising genuine decision-making control over their affairs, creating or reinvigorating effective and legitimate institutions of self-government, setting strategic direction and developing public-spirited leadership (Jorgensen, 2007; Henson, Tatlor, Cornwall, Curtis, Grant, The Harvard Project on American Indian Economic Development, Jorgensen, Kalt, & Lee., 2008). Evidence from a growing number of other settings—including Australia (Hunt, Smith, Garling, & Sanders, 2008; Hemming & Rigney, 2008), Canada (Peeling, 2004), and New Zealand (Goodall, 2005), hints at the broader applicability of the results in transitioning Indigenous peoples from poverty to wealth creation. This also highlights the importance of developing education, vocational training and

business skills (Altman & Finlayson, 1992; Dyer et al., 2003; Fuller,et al., 2005; Zeppel, 2001).

6.7 *Conclusion*

It is the challenge and the opportunity for Indigenous groups around the Mardoowarra to develop both its management of nature and its model of governance. Luxury tourism via Indigenous governance could well be the disruptive innovation to counter unsustainable mass-consumption and a reason why international tourists will support these projects. Sustainable luxury tourism on Indigenous land will work best if it is achieved through a focus on small and community-based sustainable luxury tourism aimed for overseas visitors, where people can enjoy bespoke and unique access to an unparalleled wilderness. One of the most important aspects is to highlight the Indigenous values and the actual experience of these in a post and ongoing Native Title era.

Kleanthous argues that luxury is becoming more of a way of expressing deeper values which means becoming less wasteful. He notes that "sustainable luxury is a return to the essence of luxury with its ancestral meaning, to the thoughtful purchase, to the artisan manufacturing, to the beauty of materials in its broadest sense and to the respect for social and environmental issues" (cited in Gardetti, 2014, 32).

There needs to be an awareness that if Indigenous tourism should succeed, it will be dependent on a new policy context to support innovative indigenous entrepreneurs. Fletcher, Pforr and Brueckner (2016) argue that this could only happen when both Indigenous stakeholders and increased diversity within Indigenous tourism product development are supported. Sustainable luxury tourism must be one part of that increased diversity.

Arguments to enhance the claim that Indigenous sustainable luxury tourism could support a return to original roots of luxury, and create unique, spiritual experiences for tourists in an unparalleled vast and pristine landscape are many. That it would occur at the invitation and supervision of the traditional custodians of an area such as the Mardoowarra, adds a rich dimension to such and enlightened possibility.

6.8 *Chapter 6 Summary*

Chapter Six identified cultural tourism as an innovative and creative way to build sustainable authentic cultural industries that ensure economic opportunities for Indigenous people. In this context, Luxury Tourism is not about '5 star ratings', rather it is about the opportunity to go with Indigenous people to see, hear and feel Country, to learn how to become 'family' within an earth-centred context. The study affirmed this type of commercialism requires good governance, a constructive relationship between Traditional Owners, industry, other tourism operators and local organisations. The following Chapter 7, First Law focuses on the security of land tenure, natures rights and cultural investments required to response to unregulated commercialisation, including legal reforms for 'just' development.

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7 CHAPTER SEVEN: Creating Rights of Nature

Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature

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7.1 *Preface*

Building upon the previous chapters' contributions to the rights and responsibilities of Indigenous people, this Chapter examines the essential role of Indigenous law(s) in creating rights for Nature. These rights ground the need to secure land tenure to guarantee certainty for cultural investment, as 'just development' through Indigenous determined and managed commercialisation. The study moves towards the examination of what Indigenous and First Nations people are doing globally regarding protecting, promoting, and championing the legal reforms for ecological justice as a means for protecting and upholding their customary laws and multi-species justice. The rapid emergence of rights of Nature over the past decade across multiple contexts has fostered increasing awareness, recognition, and, ultimately, acceptance of rights of Nature by the global community. Yet, too often, both scholarly publications and news articles bury the lede, namely, that the most transformative cases of rights of Nature have been consistently influenced and often actually led by Indigenous peoples. In this article, we explore the ontologies of rights of Nature and earth jurisprudence, and the intersections of these movements with the leadership of Indigenous peoples in claiming and giving effect to their own rights (while acknowledging that not all Indigenous peoples support rights of Nature). Based on early observations, we discern an emerging trend of increased efficacy, longevity and transformative potential being linked to a strongly pluralist approach of lawmaking and environmental management. A truly transformative and pluralist ecological jurisprudence can only be achieved by enabling, and empowering, Indigenous leadership.

This certainty ensures these cultural and ecological living communities can broker sustainable development on their terms. We then move from the global examination of Indigenous rights and justice to the Martuwarra Country to focus on

interdependence of Indigenous people's rights and the ability to transform and the reform legal pluralism.

Key words: Ecological jurisprudence, Indigenous, Rights, Nature, Rivers, Pluralism

7.2 *Introduction*

Since 2008, rights of Nature have rapidly progressed from an engaging but largely theoretical legal concept into actual legal outcomes. In 2008 and 2010, respectively, Ecuador and Bolivia recognized all of Nature as having legal rights, and in 2011, the first legal case testing these rights in Ecuador successfully confirmed that the rights of the *Río Vilcabamba* (Vilcabamba River) had been infringed by the construction of a new road (Daly, 2012, 63). Over the same period, the non-government organization (NGO) Community Environmental Legal Defense Fund (CELDF) has been assisting local communities throughout the United States (US) to develop local ordinances to recognize the rights of Nature.

These trailblazing examples initially had only limited on-ground outcomes for environmental protection. In Ecuador, enforcement of the original ruling in favour of the rights of the river was minimal, in part due to the costs of returning to court to seek an enforcement ruling (Daly, 2012, 63; Whittenmore, 2011, 670). In the US, the new local laws were deemed incompatible with state and federal laws responsible for approving development applications and have been consistently struck down by the courts (Burdon, 2010, 74).

In March 2017, the situation changed rather dramatically as Aotearoa (New Zealand), followed by India and Colombia, recognized rivers as legal persons with a range of legal rights (Te Aho, 2016; Macpherson & Ospina, 2018, 283; O'Donnell & Talbot-Jones, 2017, 159; Clark, Emmanouil, Page, & Pelizzon, 2020,787). By focusing on specific natural entities (typically, and significantly, rivers and their catchments), these new instances of rights of Nature were also accompanied by new institutional arrangements, such as the appointment of guardians to act on behalf of the rivers (including, in some cases, additional funding for these new bodies) (O'Donnell & Talbot-Jones, 2018, 6). These examples have stimulated renewed global interest in the

implementation of rights of Nature[4] and, in a number of cases, in the creation of rights for specific natural entities rather than generic rights for Nature as a whole.[5] This shift away from Nature as a single entity, and as separate from human culture, constitutes an important reframing which helps to move away from the Western construct of nature and creates space for a more pluralist legal paradigm that re-centres Indigenous worldviews.[6] However, as an example of the way this shift connects to Indigenous cosmologies, we draw on the work of Stephen Muecke, who acknowledges usually Indigenous societies have not operated with a nature-culture opposition. Typically, Indigenous people do not have a word for nature as a whole (Muecke, 2020; de Castro, 2013).

Rights of Nature are increasingly migrating into mainstream environmental law, especially over the past three years. Furthermore, each new natural entity to receive legal personhood attracts newspaper headlines around the globe, as well as increasing collective awareness, recognition, and, ultimately, acceptance of rights of Nature by the global community. Yet, scholarly publications and news articles often bury the lede: the most transformative cases of rights of Nature have been consistently influenced, and often actually led, by Indigenous peoples. Although Indigeneity remains a contested concept, in this article we draw on Kathleen Birrell's articulation of Indigenous peoples as:

> a multifarious yet globally cohesive marker of unity, defined in accordance with a cultural distinctiveness resistant to colonial imposition, spiritual and ancestral connections to land and waters, marginalisation and dispossession, and political agitation against neocolonial expansion (Birrell, 2016, 9).

Although the lack of recognized sovereign power on the part of many Indigenous communities often means that they may not be responsible for the formal enactment of these new rights, we argue that rights of Nature either simply would not have

[4] This is demonstrated in the exponential participation of scholars and NGOs at the anniversary gathering of the Global Alliance for the Rights of Nature held in Ecuador in 2018 (Global Alliance for the Rights of Nature, 2018).
[5] This has not been an absolute shift, as evidenced by the recent recognition of rights of nature for the entire state (departamento) of Nariño in Colombia, and a line of decisions by various state High Courts in India granting legal/living person status to all of nature (O'Donnell, 2018b, 136).
[6] We explicitly acknowledge that rights of nature are not universally supported by Indigenous peoples, and that using 'rights of nature' language is often an attempt by Indigenous peoples to avail themselves of Western legal mechanisms.

happened or would have been much less effective in delivering tangible environmental outcomes, without the leadership of certain Indigenous peoples. In making this argument, we first explore in Part 2 the relationship between rights of Nature and the theory of earth jurisprudence, as well as the intersection of rights of Nature claims with Indigenous law. We highlight the risk that rights of Nature advocates may obscure the role of some Indigenous people in driving legal reform, as well as romanticize Indigenous interests in and responsibility for environmental management.

In Part 3, we specifically examine the creation and implementation of rights of Nature by identifying how Indigenous peoples in multiple countries have actively coopted the concept of rights of Nature not only to further environmental protection, but also to progress a separate set of political rights and interests. We then make the case for the emergence of an *ecological jurisprudence* generally, and a rights of Nature doctrine specifically, which is more explicitly grounded in profound legal pluralism, based on an inter-normative dialogue between settler states and the law and values of Indigenous peoples. If ecological jurisprudence aims to be both effective and pluralist, it should seek recognition and validity *within* Indigenous law, as well as expanding dominant settler legal frameworks (the laws and legal systems of the settler colonial state) to *include* Indigenous law.

In Part 4, we examine five recent examples focused on legal personhood, paying particular attention to how, and to what extent, these interpretations of rights of Nature have been influenced by Indigenous participation in their creation and implementation. We then map, in Part 5, this wider experience onto the specific example of the Mardoowarra/Fitzroy River in Western Australia, to show that a more meaningful form of pluralism can be achieved through a pluralist legal dialogue articulated around a shared and negotiated understanding of rights of Nature.[7]

Throughout the chapter, in referring to the rights of Nature movement, we have adopted the capitalised version of the term Nature to indicate an ontological entity upon which subjectivity has been vested, in accordance with the reasoning of the

[7] Anne Poelina, one of the authors of this article, is a Nyikina woman and a Traditional Custodian of the Mardoowarra/Fitzroy catchment, as well as being a member of the Martuwarra Fitzroy River Council.

Ecuadorian Constitution of 2008, the *Universal Declaration of the Rights of Mother Earth*, the United Nations *Harmony with Nature* programme, and the Global Alliance for the Rights of Nature. In all these emblematic instances, the capitalisation of the term Nature is explicitly used to convey a meaning of subjectivity separate and distinct from the idea of nature as a mere collection of objects, resources, or even ecosystem services. Similarly, throughout the chapter we adopt the capitalised version of the term Indigenous, in accordance with the UNDRIP.

7.3 *Rights of nature, wild law and ecological jurisprudence*

7.3.1 Rights of Nature rising

> The universe is a communion of subjects, not a collection of objects (Berry, 2006, 296).

Earth jurisprudence is a relatively recent legal movement, at least within contemporary Western legal tradition (David & Brierley, 1985); (Zweigert & Kotz, 1998); Glenn, 2014). The paradigm is also referred to as 'wild law' (Cullinan, 2011b), or, more recently, 'earth law(s)'; it places humans within an interconnected web of other species and landscapes, de-centring human interests (Schillmoller & Pelizzon, 2013), and, consequently, seeking to adapt law to planetary boundaries and ecosystem functions, including multi-species justice (Pelizzon, 2014).

There are multiple ontological origins for this emerging legal paradigm. Following the transcendental tradition initiated by John Muir and Henry David Thoreau (Nash, 1989), the writings first of Aldo Leopold and then of Thomas Berry focused on philosophical shifts required to alter the understanding of the place of humanity within the world. These writings explicitly sought to weaken traditional narratives of human dominance (Berry, 1999; Leopold, 1949). Other authors, such as Christopher Stone, strove to alter the law more directly, by conceiving of Nature as a legal subject capable of bearing rights, and thus directly able to challenge human actions that infringed those rights (Stone, 1972, 458). Cormac Cullinan captured this emerging paradigm by describing it as:

> a philosophy of law and human governance . . . based on the idea that humans are only one part of a wider community of beings and that the welfare of each member of that community is dependent on the welfare of the Earth as a whole. From this perspective, human societies will only be viable and flourish if they regulate themselves as part of this wider Earth

> community and do so in a way that is consistent with the fundamental laws or principles that govern how the Universe functions (Cullinan, 2011a, 24).

The pursuit of rights of Nature is just one element of this emerging legal paradigm, as it is arguably the most straightforward way in which to use the law to begin to give immediate effect to the broader concepts of an earth jurisprudence. However, straightforward is not the same as easy or quick: Stone was decades ahead of his time, and it took thirty years before his ideas were taken up seriously in the Western legal world. It should be noted that eco-theologian, Thomas Berry, did further advance Stone's philosophical arguments in the late 1980s and 1990s (Berry, 1988; Berry 1999). In 2002, the work of Cormac Cullinan more firmly established rights of Nature as a much-needed legal reform to better acknowledge human dependence on the health of the Earth as a whole (Cullinan, 2011b). Since then, there has been movement on many fronts to incorporate rights of Nature from municipal ordinances to legislation and constitutional reform.[8] As these legal changes have spread and accelerated, there has been a growing acceptance, including within case law, of Stone's once 'unthinkable' proposal: to acknowledge natural beings and features as living entities with legal rights (Stone, 1972, 453).

The experiences of multiple jurisdictions in recognizing and implementing rights of Nature have also helped to mature and diversify the concept. Rights of Nature can now be considered in two rather distinct forms. Firstly, there has been the creation (or recognition) of broad 'existence rights' for Nature, such as the right for species to exist, or the right for ecosystems to function (Cullinan, 2011b). While these 'rights' most directly reflect the broader project of an earth jurisprudence, their implementation has been challenging, as it is not always clear when (or if) they give rise to a cause of action in law, or what kind of remedies they afford. In the case of the Río Vilcabamba in Ecuador, the rights of the river were ultimately balanced against the rights of humans to economic development, and the remedy ordered by the

[8] Examples of this are provided in the Ley De Derechos De La Madre Tierra (Law of Mother Earth) 2010 (Bolivia), the Ley marco De La Madre Tierra y Desarrollo Integral Para Vivir Bien (Law of the framework of Mother Earth and Integral Development for Living Well) 2012 (Bolivia), the Te Urewera Act 2014 (New Zealand) and Te Awa Tupua (Whanganui Claims Settlement) Act 2017 (New Zealand) as well as the Constitutions of Bolivia (2008, see art 33-34) and Ecuador (2008, preamble and art 71-74).

court was for the human road developers to fund restoration of the river, but not to halt the construction of the road (Cano Pecharroman, 2018).

Secondly, rights have crystallized around recognition of natural entities as legal persons.[9] Legal personality is articulated as the capacity to bear rights and duties in law (Naffine, 2003), however, it is worth noting recent endeavours to re-articulate personhood with a greater emphasis on competence to undertake specific actions (see Kurki, 2019). Legal personhood typically confers three specific rights:

1. the right to enter into and enforce contracts;
2. the right to own and deal with property; and
3. the right to sue and be sued in court (known as legal standing) (O'Donnell & Talbot-Jones, 2017, 1).

Although it can be challenging to relate legal personality to the Western concept of nature as a whole, it can be more easily applied to specific, clearly defined natural entities, such as rivers. This also aligns more closely with some Indigenous ontologies of the nature-human relationship, as discussed above. Furthermore, while the conferral of legal personhood is indeed a profound statement about who matters to the law, it does not necessarily confer any moral worth (Naffine, 2009).

The two forms of legal rights of Nature – 'existence rights' and the conferral of legal personality – are still inherently anthropocentric: Nature has no need of these particular rights unless it is participating within human legal systems. Legal personhood constitutes a powerful transformation of Nature from object to subject in the eyes of the law, but in this process, the very personification of Nature can also help frame it as a competitor with humans (O'Donnell, 2017, 519). Equally, Nature's rights can be seen to come at the expense of the rights of humans. Far from enabling a new, more 'fraternal' relationship between humans and Nature (Tribe, 1974), legal personhood can end up entrenching pre-existing narratives of human dominance (O'Donnell, 2018a).

At a deeper ontological level, however, a corollary to the growing acceptance of the need for rights of Nature has been an increasing acceptance of the fact that humans

[9] Most countries include legislation to create corporations, for example, although legal personality for natural entities may require legislative reform.

are fundamentally dependent on the overall health and wellbeing of the planet. This has led to a deeper understanding of interdependence between humans and Nature, which was previously ignored within most of the recent Western philosophical tradition (see Gare, 2016). Such a conceptual shift can be seen in the recent 'greening' of international human rights law, particularly in the increasing recognition of the human right to a healthy environment (see Knox & Pejan, 2018; Bratspies, 2015, 42), and most recently, the recognition of the rights of the environment itself (Galárraga, 2018, 105).

The emergence of rights of nature and legal personhood for Nature within the Western legal tradition over the past few decades can thus also be seen as part of a deeper transformative trend within Western jurisprudence toward what some authors have termed an 'ecological jurisprudence', as distinct from earth jurisprudence, and which more explicitly acknowledges Indigenous laws (Pelizzon, 2014). This important relationship is discussed in more detail in the following section. Examples of this movement, which aims to transcend anthropocentric boundaries, include the emergence of Ecological Constitutionalism and advocacy for the inclusion of a crime of ecocide (Bosselmann, 2016). While a deeper analysis of an *ecological jurisprudence* is beyond the scope of this article, this trend offers an intriguing ontological window into the normative worlds of many non-Western legal traditions, particularly those Goldsmith defines as 'chthonic', as living in close harmony with the ecosystems within which they exist (Goldsmith, 2008).

7.4 *Ecological jurisprudence and Indigenous laws*

> This story is not simply about introducing an alternative view of the environment into a legal framework. The case [of Ecuador] represents an instance in which indigenous politics influenced nonindigenous systems of state authority (Akchurin, 2015, 939).

Over the past decade, many rights of Nature initiatives have explicitly introduced Indigenous and non-Western principles into both international law and the broader discourse of ecological jurisprudence. Within the context of international law, the introduction of rights of Nature has often been facilitated by the right of Indigenous peoples to self-determination, which incorporates a right to sovereignty over natural resources UNDRIP. In turn, this has enabled some Indigenous peoples to influence the development of environmental law to encompass First Law (also known as

Traditional Law, Customary Law, or Aboriginal Law). Deborah Bird Rose's construction of totemism as an 'ecological management system' for distributing rights and responsibilities links humans with non-humans in specific ways (Bird Rose, 2013). This is a profound ontological shift for Western environmental law, enhancing its capacity to recognize and respect the relationship between Indigenous (and eventually, non-Indigenous) people and Nature (Galárraga, 2018, 97).

However, environmental legal scholars and advocates frequently frame the shifts towards ecological jurisprudence and the accompanying changes to environmental law as specific adaptations to the current crisis. David Takacs, for example, asserts that "[w]e have no choice but to manage the planet intensively *in the Anthropocene*, which means careful planning for the needs of interrelated human and nonhuman communities" (Takacs, 2017, 217). The underlying assumption that this intensive management represents a radically *new* way of engaging with the environment obscures the contributions made through the specific laws of Indigenous people, who have managed Country[10] in this way for millennia.[11] Typically, however, environmental movements continue to exclude the contributions of non-Western peoples, particularly Indigenous peoples (Scott, Takacs, Bratspies, Perez, Craig, Hirokawa, Hudson, Krakoff, Fischer, Owley, Powers, Roesler, Rosenbloom, & Ryan, 2019). As Elizabeth Macpherson has argued: "the rights of nature movement has grown out of, and is still driven principally by, a non-Indigenous perspective as a 'western legal construct'" (Macpherson, 2019, 41).

Furthermore, a number of authors alert us to the risk that the discourse of 'climate crisis', and specifically the declaration of a 'climate emergency', opens the door for a state of environmental exception, with the ensuing suspension of democratic protocols and hostility toward the active and participatory role of all humans in finding a collective way out of this crisis (Sparrow, 2019). This risk is particularly acute when it comes to Indigenous peoples, and already apparent when proponents of rights of Nature seek to manage humans out of Nature in order to protect its wilderness values

[10] Country is the culturally specific term adopted by Australian Aboriginal peoples to refer to the 'nexus of being', the matrix of interconnectedness, identity and belonging (Bird Rose, 1992), within which they are inscribed.
[11] See, for example, the Māori decision making framework for sustainable development (Te Aho & Morgan, 2013; Kahui & Richards, 2014). See also Pascoe's work on Australian Aboriginal land management (2014).

(Carter, 2010, 398; Godden, 1998, 724, 738), thus running the risk of environmental colonialism (Nelson, 2003; Scholtz, 2008; Suchet, 2002; Langton, 2003, 79). Environmental colonialism is here characterized as the imposition of a culturally specific construction of 'nature', as well as a set of related normative and ethical assumptions, by those in a position of dominance upon those who are in a subordinate power relationship. In Foucauldian terms, Michael Cepek defines such an operation of disciplinary power as 'environmentality' (Cepek, 2011).

Finally, the uneven distribution of sovereign power between internationally recognized nation states and Indigenous peoples whose ancestral territories are located within the boundaries of those colonial nation states exerts subtle, yet constant, pressure toward a reductive appraisal of the ontological plurality of non-colonial traditional worldviews (Davis, 2009). The result is a plethora of often unquestioned ontological and epistemological assumptions about the very concept of 'nature' on the part of all interlocutors (sometimes including Indigenous peoples who lack the necessary sovereign power to counter such assumptions), with the ontologically violent result of reducing Indigenous ideas about nature and humans' interactions with the non-human world to a globally familiar, yet extremely reductive, dominant paradigm (Pelizzon, 2014; Muecke, 2020). As Nopera Dennis-McCarthy argues: "[t]here is an inherent tension between Western and Indigenous legal traditions. This tension arises from the divergent worldviews propounded by either normative system, which are often difficult to reconcile" (Dennis-McCarthy, 2019, 2).

It is also important to note that the concept of *Indigeneity* is complex and not necessarily the appropriate lens through which to identify peoples and law and custom in all cases. For example, in former colonial countries such as India and Bangladesh, Indigeneity may be a less relevant criterion for ecological jurisprudence than the interests of local people who continue to embed a responsibility requirement into land and water management. The critical issue is one of interdependence, and an ethic of land management centred on responsibility and stewardship or guardianship – see, for example, writings on the "ecosystem people" (Gadgil, 2018, 48).

Therefore, we argue that the emergence of an ecological jurisprudence currently faces four challenges: firstly, acknowledging the role of *Indigenous peoples as leaders* in the movement to create rights of Nature (whilst also acknowledging that not all

Indigenous peoples support or accept rights of Nature); secondly, acknowledging the role of *Indigenous laws* in shaping a truly universal – and thus inherently intercultural – ecological jurisprudence, and explicitly reflecting this role within rights of Nature; thirdly, moving beyond traditional concepts of weak legal pluralism (Griffiths, 1986) by *seeking recognition* of rights of Nature reforms in Indigenous law by Indigenous peoples as a measure of validity for ecological jurisprudence; and fourthly, relatedly and potentially most challengingly, reconceptualizing law's nature in order to overturn a 'key feature of western thought since the Enlightenment, the disjunction between nature and culture' (Bird Rose, 1992, 132). In Part 3, we examine how rights of Nature laws are addressing these four challenges to date.

7.5 *Rights of nature and Indigenous peoples*

Notwithstanding the political difficulties discussed in the previous section, Indigenous worldviews have enabled, shaped and defined the recent transnational emergence of an ecological jurisprudence in recent years. In this section, we focus on legal developments in the period 2008 – 2019, dating from when Ecuador amended its constitution to when Bangladesh recognized all rivers as living entities. We look at how some Indigenous peoples have chosen to use 'rights of Nature' to achieve discrete political goals. In so doing, we acknowledge the long history of Indigenous laws that recognize Nature as a living being, towards which humanity has obligations and responsibilities (Morris & Ruru, 2010). These examples highlight the ways in which some Indigenous peoples have made strategic use of settler legal frameworks and concepts of the legal person to establish independent rights and interests, and to attempt to fundamentally reframe natural resource management law in settler contexts to include an Indigenous world view. Our discussion also acknowledges that attempts to map Indigenous legal and philosophical concepts into settler legal frameworks are imperfect, and that the concept of rights of nature is far from universally supported by Indigenous scholars and communities (Eckstein, D'Andrea, Marshall, O'Donnell, Talbot-Jones, Curran, & O'Bryan, 2019).

The amendment of the *Montecristi* Constitution of Ecuador in 2008 marked the first example of rights of Nature being enshrined within a national legal document. Indigenous presence was very much at the centre of that process. The amendment of the Constitution of Ecuador, with its primarily theoretical articulation of an ecological

jurisprudence within contemporary legal institutions, arguably represents the point of origin for a cascade of constitutional, legislative and judicial initiatives which has unfolded in a number of jurisdictions over the past eleven years.

In Ecuador, the *Movimiento Unidad Plurinacional Pachakutik* (MUPP, Pachakutik Movement for Plurinational Unity), created in 1995, aimed to "form a new political movement in which Indigenous peoples and other sectors of Ecuador's popular movements organized together as equals in a joint project to achieve common goals of a new and better world" (Becker, 2010), xi). After the 2006 election, MUPP, together with a great number of Indigenous groups and activists, became central to the drafting of the momentous Chapter Seven of the Constitution (the role of NGOs was also important here, and it is worth acknowledging the influence of CELDF and their work on the articulation of rights of nature within local ordinances in the US). The Chapter's four articles (Articles 71-74) are entirely dedicated to the rights of Nature, and begin by stating that "Nature, or *Pacha Mama*, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes" (*Constitution of Ecuador 2008* (Ecuador), article 71). While the language adopted by the Constitution is still reflective of a colonial and somewhat materialistic worldview in relation to the articulation of 'Nature', the influence of Indigenous voices not only was palpable throughout the drafting process and its momentous outcome, but also can be evinced in the equation of Nature with the more complex Andean concept of *Pacha Mama*.

The concept of *Pacha Mama* has been further articulated in Bolivia, both in amendments to its Constitution as well as in legislative documents (*Ley de Derechos de La Madre Tierra (Law of Mother Earth) 2010* (Bolivia), Statute number 71). Of particular significance, in this case, is the focus on the Andean concept of *sumaq kawsay* (living well). This concept underscores the 'socio-communitarian productive education model' that enshrines, within legal institutions recognisable as colonial in their apparent structure, a worldview profoundly steeped in pre-colonial Andean traditions (Zambrana, 2019). These Andean worldviews were equally central to the drafting of the *Universal Declaration on the Rights of Mother Earth*, which was the outcome of the World Peoples' Conference on Climate Change and the Rights of

Nature convened by Bolivian President Evo Morales, an Aymara man himself, in Cochabamba (Bolivia) in 2010 (Global Alliance for the Rights of Nature, 2010). In the case of Bolivia, the departure from colonial assumptions – if not necessarily from colonially-derived political and legal institutions – is more apparent than in the case of the Ecuadorian Constitution, although implementation of these new laws has remained challenging.

In Aotearoa (New Zealand), the legal personification of both *Te Urewera* (a national park) and the Whanganui River were achieved through an ongoing negotiating process between Māori Iwi and the colonial government (Ruru, 2014). In 2017, in legislation arising from a negotiated agreement to settle a dispute under the Treaty of Waitangi, the Whanganui river was recognized as a person, including all of its physical and metaphysical elements, in explicit acknowledgement of the Māori understanding of the river as a living being (*Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* (New Zealand), ss 12, 14(1)). Linda Te Aho has argued that the "personification of the natural world is a fundamental feature of Māori tradition" (Te Aho, 2010, 285). In particular, Māori recognize rivers as having their own 'mauri (life force) and spiritual integrity' (Te Aho, 2010), and "all tribes have these geographical identity markers linked to water" (Ruru, 2018, 216). In insisting that the settler law incorporate this concept, Māori negotiators not only forced settler laws to acknowledge the river as a legal person, but also ensured that their own values and language would guide the future management of the river (Roy, 2017), and future reform of water law (Ruru, 2018).

The Aotearoa (New Zealand) example of *Te Urewera*, as well as the ongoing negotiations on the Whanganui, inspired the recognition of the Río Atrato in Colombia as a legal person (Macpherson, 2019, 290, 291), whose representation is vested in 15 'river guardians' deemed to voice the concerns of Indigenous and afrodescendant communities. In addition, the experiences of Aotearoa inspired a series of state High Court decisions in India, beginning with the High Court of Uttarakhand's decisions in relation to the Ganga and Yamuna rivers (*Mohd Salim v State of Uttarakhand & Others*, 2017), explicitly recognized by the Court as legal/living persons based on Hindu beliefs, for which the rivers are the embodiment of the gods (Srivastav, 2019, 162). In all cases, there has been a push to embed local

and Indigenous values and worldviews into settler legal frameworks by existing legal institutions. This approach seeks to recognize and thereby confer validity upon some parts of Indigenous laws, and to transform settler law legal theory to draw on Indigenous values and traditions (Gover, 2019). While such attempts are representative of the increased *auctoritas* granted to Indigenous legal traditions, the partial incorporation by public authorities of discrete elements of Indigenous law in Aotearoa New Zealand, Colombia, and to a lesser extent, India, runs the significant risk of coopting, appropriating and ultimately reductively simplifying much more complex Indigenous legal structures.

The initial inclusion of Indigenous worldviews within colonial structures in South America likely happened as a result of the unique socio-political history of the Andes. While both South America and Aotearoa New Zealand present a set of clearly strategic choices on the part of Indigenous actors in general, in the case of the Whanganui River such a strategic approach is more explicitly articulated than the case of the Río Atrato (where the impetus for the case rested more strongly on the human right to a healthy environment). More recent initiatives in the US further suggest that Indigenous peoples are strategically using 'rights of Nature' laws to enable specific legal actions within land held by Indigenous people. In 2017, the Ponca Nation of Oklahoma agreed to create a statute to enact rights of Nature within their Tribal Lands, enabling a plaintiff to approach a tribal, rather than a state or federal, court to seek redress for alleged violations of rights of Nature (Biggs, 2017). In 2018, the White Earth band of Ojibwe enacted legislation to formally recognize the rights of *Manoomin* (wild rice) (Bibeau, 2019) and the General Council of the Ho-Chunk Tribe voted to amend the Tribal Constitution to enshrine rights of Nature (CDELF, 2018). Most recently, in May 2019, the Yurok Council voted for a resolution to recognize the Klamath River as a legal person (Schertow, 2019).

The recent emergence of rights of Nature initiatives in the US is significant, as it represents a profound shift within the public discourse on rights of Nature in the US. While the numerous local ordinances on rights of Nature have been consistently struck down by state and federal courts (Burdon, 2010, 74), it now appears that the unique structure of tribal sovereignty within the US empowers tribal authorities to be simultaneously the custodians and current torchbearers of an ecological jurisprudence,

and the promoters of a more pluralistic and ontologically diverse interpretation of ecological jurisprudence.

It appears, thus, that the emergence of an ecological jurisprudence that is beginning to address the four challenges we identified in Part 2 (notwithstanding the ever-present risks of cultural and normative appropriations and exclusion), has indeed created a pluralist space, one that has been shaped, deeply transformed, and profoundly led by pre-colonial world views capable of articulating the eco-cultural transformation desired by Earth Jurisprudence advocates within the current global discourse. Within such space, some Indigenous peoples have demonstrated a nuanced strategic approach to using 'rights of Nature' as a way to support a collective approach to environmentally sustainable and culturally appropriate development by raising the profile of both natural entities *and* Indigenous peoples.

7.6 *Rights for rivers and lakes*

We now turn to consider five recent cases in which rivers and lakes have received legal rights across multiple jurisdictions. This section uses these five cases to examine whether the new rights of nature for rivers and lakes are delivering ecological jurisprudence (which addresses the four challenges we identified), and the response that these new rights have received so far. The attribution of legal personhood to rivers and lakes has occurred in the past three years, so we acknowledge that it is still too early for a comprehensive analysis of cause and effect. However, by exploring a range of examples across multiple jurisdictions, colonial histories and legal systems, it is possible to identify some emerging trends.[12]

The five recent examples of creation and implementation of rights of Nature have been selected to include all jurisdictions which have recognized specific natural entities as having legal rights (and in most cases, personhood), and to reflect a wide range of roles for Indigenous peoples in the creation/recognition of these rights, including the complexity of 'Indigeneity' itself. Indigeneity is a complex and fraught

[12] We note that these examples do not seek to cover the field in relation to all of the different permutations of rights of nature, as this would be beyond the scope of this article.

space in the Indian and Bangladeshi contexts, and often difficult to define (Karlsson & Subba, 2006; Parmar, 2015).

Since 2017, water management has been the locus for the creation and implementation of leading international examples of rights of Nature (O'Donnell, 2018a). Water management globally has shifted dramatically since the United Nations' 1992 Dublin Statement (World Meteorological Organisation, n.d.), which formally embedded a cost-recovery and water pricing principle, leading to the marketization of water management (Bakker, 2007). One of the impacts of water markets has been a 'double dispossession' of water rights from Indigenous peoples (O'Bryan, 2019), and this has correspondingly seen the embrace of market mechanisms to recover water for Indigenous peoples (Macpherson, 2017), as well as Indigenous peoples seeking to use rights of nature to establish and entrench their claim to water rights (van Meijl, 2015). The proliferation of examples in which rivers and lakes have been recognized as legal persons or living entities with legal rights led Macpherson and Ospina to argue that there is an "emerging transnational idea that a river can be a person" (Macpherson & Ospina, 2018, 293). The five examples in Table 2 have been selected in order to engage with this emerging idea, across multiple legal contexts in both the global north and south, and there are some emergent trends are apparent (Table 2).

The specific legal status created for the water bodies (rivers and a lake) include a legal person without property or water rights (as in Colombia and Aotearoa New Zealand); a hybrid legal/living person (India and Bangladesh); and an entity with existence and ecosystem rights only, without explicit personhood (US). This variety correlates with a differentiation in motivation behind the creation of these rights of nature (see footnotes in Table 1 for details). As noted above, the examples in Aotearoa New Zealand and Colombia acknowledged the human rights of Indigenous peoples (and other local peoples in Colombia), as well as the belief systems of these peoples, as central to the decision to define the rivers as legal people (Table 1) (*Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* (New Zealand), s 13; Macpherson & Ospina, 2018). In both India and Bangladesh, the clear intent is environmental protection, and the recognition that legal personhood is a last resort, after earlier attempts have failed to protect the health of the rivers, but with an emphasis on the

role of the state appointed guardians to deliver this protection (Table 1) (*Mohd. Salim v State of Uttarakhand & Others,* 2017*; Human Rights and Peace for Bangladesh v Government of Bangladesh and Others,* 2016). Similarly, in the US, environmental protection was the major driver for creating legal rights for Lake Erie, with the intent to rely on these rights to support future legal action by third parties on water pollution (Table 1) (*Toledo Municipal Code,* 2021, Chapter XVII, 'Lake Erie Bill of Rights', 253).

The five cases highlight a range of legal and policy responses to the problem of creating a guardian to speak for the river or lake. In Colombia and Aotearoa (New Zealand), the role of the guardians has been embedded within a new co-management framework, and the guardians themselves have been appointed in an open, responsive manner demonstrating dialogue between Indigenous (and other local) communities and the national government (although as Dennis-McCarthy argues, *Te Awa Tupua* is only a partial progression to reconciliation and sovereignty) (2019). By comparison, the appointment of guardians in India, Bangladesh and the US has been less successful. In India, court-appointed guardians did not accept their responsibilities, and appealed the decision (*Mohd Salim v State of Uttarakhand & Others* 2017. In Bangladesh, the court-appointed guardian requires further legal reform before it has the legal powers required to effectively undertake its duties on behalf of the rivers (*Human Rights and Peace for Bangladesh v Government of Bangladesh and Others* 2016). Lastly, in the US, all citizens and the city of Toledo are empowered to enforce the rights of Lake Erie – but no one is specifically responsible for doing so (*Toledo Municipal Code,* 2021; Eckstein et al, 2019).

Examining these five cases together demonstrates the varied response to the four key challenges of ecological jurisprudence that rights of Nature laws must meet. As Table 1 illustrates, we can observe a spectrum of Indigenous peoples' involvement in the recognition of rivers and lakes as legal people. At one end are the Indigenous-led legal reforms of Colombia and Aotearoa New Zealand, where Indigenous worldviews have been explicitly embedded in the law, and where the legal and institutional frameworks have sought some forms of validity in Indigenous laws, as well as including ongoing co-management arrangements. In India and Bangladesh, environmental advocacy and local values have been embraced by the courts as a

reason for strengthening legal rights and protections of rivers, particularly in the acknowledgement of the sacred status of the rivers. However, in India particularly, this was grounded in Hindu religious beliefs, and elevated the relationship of Hindu practitioners with the river above those of non-Hindus, thus excluding all other religious ontologies of the river. Lake Erie in the US appeared to be centred on environmental advocacy only, with no evidence of engagement with Indigenous people (*Toledo Municipal Code*, 2021). Recognising the rights of a river or lake will not necessarily produce an inter-cultural *ecological jurisprudence* that centres Indigenous laws and reconnects humans and Nature.

Granting legal personhood and legal rights to rivers and lakes has captured the public imagination. When rivers become 'people', this can transform settler-colonial relationships with rivers, in ways that can help to centre the interests of the river in water management (such as the Whanganui in Aotearoa New Zealand), but can also frame the river as a potential adversary. One of the most common responses that we have observed to a river gaining rights is to question whether this enables human beings affected by the actions of the river (such as flooding) to sue the river and its guardians for damages. In Uttarakhand (India), the court-appointed guardians in the state government cited the fear of being sued when the Ganga and Yamuna rivers flood as one reason for immediately appealing the decision to appoint them (O'Donnell, 2018a, 142). Thus, the conferral of legal rights of Nature has the capacity for both great improvement in river protection, as well as the power to undermine the recognition of the interdependence of humans and rivers (O'Donnell, 2018a, 195). Although it is still too soon for definitive evidence, Table 1 indicates that when Indigenous leadership drives reform in settler legal frameworks to embed Indigenous values (creating an *ecological jurisprudence* described in Parts 2 and 3), it works to create a less competitive approach to recognizing Nature's rights and a more sustainable legal personhood for rivers (Table 1). This sustainability is reinforced in those cases where Indigenous leadership has led to the creation of institutional arrangements that enable guardians to empower and protect rivers.

Table 2: Legal rights for rivers and lakes: five recent examples

Legal and institutional attributes	**Colombia (2016)** ***Río Atrato*** **((Macpherson & Ospina 2018)**	**Aotearoa (New Zealand) (2017)** ***Whanganui River (Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*** **(New Zealand); O'Donnell & Macpherson, 2019).**	**India (Uttarakhand) (2017)** ***Ganga and Yamuna rivers (Mohd. Salim v State of Uttarakhand & Others,*** **2017*;* O'Donnell, 2018a).**	**Bangladesh (2019)** ***Turag River and all other rivers (Human Rights and Peace for Bangladesh v Government of Bangladesh and Others,*** **2016)**	**US (Ohio, City of Toledo) (2019)** ***Lake Erie (Toledo Municipal Code*** **2021)**
Legal rights	River recognized as a legal subject with rights (but not property rights)	River recognized as legal person (but does not hold rights to water in the river)	Rivers were given rights and duties of a legal/living person, but rivers were constituted as legal minors	Rivers recognized as legal/living/juristic persons, but rivers were constituted as legal minors	Lake has 'right to exist, flourish, and naturally evolve' (*Toledo Municipal Code* 2021, Chapter XVII § 254).
Method of creation/recognition	Ruling of Constitutional Court of Colombia	Legislation in response to Treaty of Waitangi Settlement	Ruling of state High Court (currently pending appeal to Supreme Court)	Ruling of High Court division of Supreme Court	Local ballot (community initiative)
Aim of creation/recognition	To protect (among others) the human right to a healthy environment of Indigenous and afrodescendent people, and in recognition that current laws failed to address the problems of illegal mining in the river catchment, leading to the court's articulation of 'biocultural rights' ((Macpherson & Ospina, 2018, 291)	To reach agreement on dispute settlement by vesting ownership of the river in the river itself; and to acknowledge Māori relationship with the river (Talbot-Jones, 2017, 178)	To address extreme environmental degradation and failure of previous protection measures (*Mohd. Salim v State of Uttarakhand & Others (2017)*).	To address extreme environmental degradation and failure of previous protection measures (*Human Rights and Peace for Bangladesh v Government of Bangladesh and Others (2016))*	To address pollution and blue-green algal blooms and failure of previous laws to address these problems (*Toledo Municipal Code* 2021, Chapter XVII § 253)
Legal representative	River guardian, comprising 14 people from seven local communities and one	*Te Pou Tupua*, the guardian of the river (*Te Awa Tupua (Whanganui*	Guardians as declared by the court (including director of NAMAMI	National River Protection Commission appointed as guardian (subject to new	City of Toledo or any resident of the city (*Toledo Municipal*

Legal and institutional attributes	Colombia (2016) *Río Atrato* ((Macpherson & Ospina 2018)	Aotearoa (New Zealand) (2017) *Whanganui River* (*Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* (New Zealand); O'Donnell & Macpherson, 2019).	India (Uttarakhand) (2017) *Ganga and Yamuna rivers* (*Mohd. Salim v State of Uttarakhand & Others,* 2017*;* O'Donnell, 2018a).	Bangladesh (2019) *Turag River and all other rivers* (*Human Rights and Peace for Bangladesh v Government of Bangladesh and Others,* 2016)	US (Ohio, City of Toledo) (2019) *Lake Erie (Toledo Municipal Code* 2021)
	representative for the President, which was chosen to be the *Ministerio de Ambiente y Desarollo Sostenible* (Ministry for Environment and Sustainable Development) (Macpherson & Ospina, 2018, 290).	*River Claims Settlement) Act 2017* (New Zealand), ss 18-20).	Gange and other state government representatives) (*Mohd. Salim v State of Uttarakhand & Others*, 2017)	legal powers being conferred on this organisation)	*Code*, 2021, Chapter XVII § 256 (b)).
Role of Indigenous peoples	Tierra Digna, an NGO, filed petition on behalf of seven communities to enforce their rights under the Constitution of Colombia, explicitly including Indigenous people of the river as well as other local communities (Macpherson & Ospina, 2018, 290).	Māori rights and interests under Treaty of Waitangi were central to this legislation, which embeds co-management, and Māori cosmology as intrinsic values (*Tupua te Kawa*) (*Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* (New Zealand), s 13).	Not specified. Environmental advocates filed original petition.	Not specified. Human Rights and Peace for Bangladesh, an NGO, filed the petition on environmental protection grounds.	Not specified. Local NGO drafted ballot initiative.

We now turn to recent developments in Australia. The Wurundjeri people of Naarm (Melbourne) have influenced the development of a new legal framework governing the Birrarung/Yarra River: the *Yarra River Protection (Wilip-gin Birrarung Murron) Act 2017* (VIC) and protective management plans for the river (Yarra River Protection Ministerial Advisory Committee, 2016, iv, 12). Although falling short of granting the Birrarung/Yarra River legal rights, this legislation centred the worldview and values of Traditional Owners, created a new framework for sustainable development, and created a voice for the river (O'Bryan, 2017).13 In the north-west of Australia, the Mardoowarra/Martuwarra/Fitzroy River14 is an example in which Indigenous people are strategically adopting a range of legal and policy tools to showcase their leadership in environmental management, as well as raising the profile of their worldview on the obligations humanity owes to Country. Significantly, in this case, the concept of personhood is further tested by moving beyond the existing boundaries of artificial – and even environmental – personhood, and rather proposing the category of 'ancestral' personhood to refer to the spiritual, ontological and relational connotations of what is otherwise still cast as a 'natural' feature. Although this example is still in the formative stages, the active role of multiple Traditional Owners coming together to develop new governance arrangements, and engage with the opportunities of rights of nature, makes this a compelling case for detailed analysis.

7.7 *Mardoowarra/Martuwarra/Fitzroy River*

> Everyone who has an association with the river, whether Indigenous or not, talks about how important it is. It is the River of Life (Poelina, 2017a, 217).

The Mardoowarra is a free-flowing river over 733km long, with a catchment of almost 100,000 square kilometres (Connor, el al., 2019). The Kimberley region in north-west Western Australia is recognized for its outstanding natural and cultural heritage values, but debate is now underway about the future of the region, what

[13] One of us, E. O'Donnell, is a member of the Birrarung Council, the voice for the Birrarung/Yarra River, which includes mandatory representation of at least two Elders of the Wurundjeri Woi-Wurrung people.
[14] For simplicity, we refer to the river by the Nyikina name of Mardoowarra, but we acknowledge all Traditional Owners of the Martuwarra/Mardoowarra, including the members of the Martuwarra Fitzroy River Council: the Wilinggin, Kija, Bunuba, Walmajarri, Nyikina Mangala and Warrwa peoples.

sustainable development will involve, and how the rights and interests of Indigenous people will be protected (Poelina, Taylor and Perdrisat, 2019, 237).

Figure 6: Location of the Martuwarra (Fitzroy River) Catchment, Western Australia, showing the general location of Indigenous nations

For Indigenous, First Nations and Australia's original peoples of the Mardoowarra, the river was formed in the beginning of time by the Nyikina ancestor, Woonyoomboo. Woonyoomboo is the human face of the Mardoowarra and in partnership with Yoongoorrookoo, the sacred ancestral spiritual living being, together they formed the valley tracts (Milgin, 2008, 6-15; Hattersley, 2009). Woonyoomboo was a mapmaker and scientist who named the places, animals, birds, fish, plants and living water systems. These names validate a property right inheritance that continues in the contemporary lives of Aboriginal people according to senior Nyikina elder, Annie Milgin (Martuwarra Fitzroy River Council, Jones, Nicol, & Poelina, 2021; Australian Department of Infrastructure, Transport, Regional Development, Communications, 2019). Lim, Poelina and Bagnall state that:

> The First Laws that govern the river include Warloongarriy law and Wunan law (the Law or Regional Governance). Since Bookarrakarra (the beginning of time) these First Laws have ensured the health of the living system of the Mardoowarra and facilitated relationships between Mardoowarra nations and peoples…regarding the

> river as a living ancestral living being (Rainbow Serpent) from source to sea, with its own 'life-force' (Lim, et al., 2017, 18).

Traditional Owners of the Mardoowarra are actively exploring opportunities created by the global movement to extend legal rights to rivers, and the specific opportunities to protect the lifeways and values of Indigenous and First Nations people (Clark, et al., 2020; Macpherson, 2017; O'Donnell, 2018a). Traditional title for Traditional Owners in Australia is grounded in the *Native Title Act 1993* (Cth), which recognizes that prior to colonization traditional owners had, and still continue to have, their own laws and customs. Native title is complex, and in many ways has simply operated to preserve the status quo, in a process that is entirely regulated and controlled by the Australian state (Short, 2007) - native title is also extremely limited when it comes to water management (Macpherson, 2019). Regarding the Mardoowarra, multiple Traditional Owners have native title for the whole of the river (Geospatial Services, 2019). Where native title is held on trust, a prescribed body corporate (PBC) will be established to formally hold the title on behalf of each of the Traditional Owners, and manage the traditional lands, waters and natural resources (*Native Title Act 1993* (Cth), ss 56, 57).

In 2016, Traditional Owners expressed a collective vision for the Mardoowarra in the Fitzroy River Declaration and, in 2018, established the Martuwarra Fitzroy River Council (MFRC) as a "collective governance model to maintain the spiritual, cultural and environmental health of the catchment" (Poelina, et al., 2019, 237). The MFRC members, which include the majority of native title holders in the Mardoowarra catchment, assert that each PBC owes a fiduciary duty to the individual Traditional Owners to protect Country (Blowes, 1993). As a result, the MFRC considers that the river is communal property that is held beneficially for present and future generations of Traditional Owners. Yet in First Law, the river is also recognized as a living being. The place of the Mardoowarra in the heart, lives and family of the Traditional Owners is akin to both an elder and a beloved *jarriny* (totem), and the guardianship responsibilities of both the PBCs and the MFRC extend to the care of the river as a living entity. As guardians of the Mardoowarra, the PBCs and the MFRC cannot break First Law, and must therefore protect the river's right to life.

Traditional Owners of the Mardoowarra believe that First Law stories are the 'statutes' or 'the rules', as the elders say, for teaching ethics and values as the codes of conduct for maintaining civil society and the balance of all life, human and non-human (Poelina, 2017b), These ancient First Laws promote holistic natural laws for managing the balance of life. First Law is eternal and intrinsically linked to the land and living waters. The laws of the land are ancient and as old as the continent itself (Watson, 2017, 215) and continue to be practiced in the Kimberley region of Western Australia (KALACC, 2017). By drawing on rights of Nature, Traditional Owners are seeking ways to centre these teachings within legal frameworks, and further strengthen the legal rights recognized in native title.

By embedding First Laws within settler legal frameworks, Traditional Owners are also working to shape the future of sustainable development for all people who live in the river catchment (Ruru, 2018). Current development proposals in the Mardoowarra have the capacity to cause severe environmental degradation, as well as to continue to deprive the river and the people who depend on it of sustainable livelihoods (Connor, et al., 2019). Traditional Owners are of the view that commercial and economic rights are consistent with the guardianship duties in relation to the living river (Poelina & Fisher, 2020). Having the right to live in harmony with the Yoongoorrookoo, the sacred ancestral spiritual living being, in a sustainable manner is critical, and there is also a duty of care to above all protect the life and wellbeing of the river and all the species which depend on it.

However, the concept of legal personhood is also challenging on multiple levels. Firstly, Australia has not formally recognized any natural entity as having legal rights of its own, which means that the concept of rights of nature may not be powerful enough to move the needle in this jurisdiction.[15] Secondly, there is ambivalence among Traditional Owners about the usefulness of this concept. There are questions about how Indigenous people can assert their rights when Nature is recognized as a rights holder itself (Eckstein et al., 2019). There is also a question regarding the role of law: from an ontological perspective, the river does not *need* to be incorporated as

[15] The Birrarung/Yarra is recognized as a living entity, but not a legal one; and although environmental water management includes legal persons that can indirectly act on behalf of rivers, this is not formally acknowledged in legislation (O'Donnell, 2018a).

an entity; the river is a tangible, real, whole, integrated, complex, spectacular, special, precious living thing (Lim, et al., 2017, 18-19). It already is an entity, and should not have to depend on the specific actions of settler law to achieve this status. Amongst Traditional Owners, there is also an unease in referring to Yoongoorrookoo, their sacred spiritual ancestor, creator of the Mardoowarra, as having 'personhood', a distinctly Western legal concept. In the end, the question of whether the Mardoowarra will eventually be recognized in settler law as an ancestral legal person will be a question of practicality for the MFRC, as they explore all options from legal personhood through to a deed of agreement between the multiple PBCs to reflect and formalise the existing relationship of shared ownership and guardianship. How this is then reflected in state law will determine whether the case of the Mardoowarra becomes an example of Indigenous-led ecological jurisprudence that addresses the four challenges identified in Part 2.

7.8 *The way forward: conclusion*

> [R]egulatory models that protect the rights of rivers have been largely driven, not by environmentalists, but by Indigenous and tribal communities, who claim distinct relationships with water based on their cosmovision of guardianship, symbiosis and respect (Macpherson, 2019, 41).

In settler states, there is a clear justice imperative to empower Indigenous peoples on the basis of their right to self-determination, and respect for their law. Enshrined in the UNDRIP, the empowerment and increased self-determination of Indigenous peoples should be a goal in its own right (Davis, 2012). In addition to this primary goal, however, multiple outcomes can be concurrently achieved by requiring settler legal frameworks to more actively engage with Indigenous laws, including better environmental protection. Firstly, settler states can begin to de-colonize environmental law by engaging with Indigenous law. In doing so, they can begin to address one of the most fundamental challenges facing environmental law: the transcendence of a historically situated divide between 'nature' and 'culture' (Descola, 2013), and the consequent reconnection of people and nature, which requires a redefinition of both nature and humanity's relationship with it. Recent work by Muecke, for example, revives the concept of totemism as an 'expert Indigenous scientific construction pertaining to the crucial importance of the continuity of

"nature" and "culture"' (Muecke, 2020). This way of thinking includes the river as a part of the political collective previously reserved to (some) humans. As a result, the river's extant legal rights are conceived of as central to a river's needs and interests, rather than adapting the notion of the river to fit the Western concept of personhood. Dennis-McCarthy also underscores the importance of this difference between Indigenous and Western framings of nature, when he states that '[t]he Indigenous perspective recognizes nature as a living entity, which gives rise to obligations that are centred around nature, rather than humans' (Dennis-McCarthy, 2019). Of the five examples of rivers as legal persons explored in Part 4, only Aotearoa New Zealand has so far produced something that most resembles a trajectory toward an ecological jurisprudence and goes furthest in addressing the challenges set out in Part 2 (although it still has far to go, most specifically in relation to the rights to water in the river, which was not included in the treaty dispute settlement).

The colonial process, which in its wake dispossesses not only Indigenous lands but also entire Indigenous ontologies, is thus both laid bare and radically challenged by the emergence of an ecological jurisprudence. While Western ontologies underpinning a dominant articulation of rights of Nature and earth jurisprudence have often obscured both Indigenous rights as well as Indigenous ontologies, the leading role of some Indigenous peoples in engendering transformative environmental protections of rights and personhood for Nature is undeniable. Importantly, in obscuring the leadership role played by Indigenous peoples, the deeply transformative potential of rights of nature is also diminished, as settler colonial legal frameworks often lack the nuance with which to both raise the profile of Nature in the law, while at the same time strengthening the interdependence of human relationships with, and within, Nature.

It is, therefore, essential to acknowledge the ever-present risk of environmental colonialism, which can occur in two distinct ways. Firstly, by erasing people, particularly Indigenous peoples, from the concept of 'nature.' This has been a consistent problem with respect to settler colonial environmental laws (Scott et al., 2019; Pelizzon, 2014). A specific example is provided in Queensland's now appealed *Wild Rivers Act 2005*, which attempted to limit all human activity, including that of Indigenous people, within designated river catchments, (Neale, 2012). Secondly, and

more insidiously, settler colonial laws may seek to embed Indigenous values within existing colonial legal frameworks, in the attempt to attain some form of weak legal pluralism in which the Indigenous legal 'other' is reinscribed and ultimately assimilated within the colonial project. This could occur in the most well-intentioned cases, such as, for example, in the attempt to acknowledge an Indigenous conception of a river as an ancestral being by incorporating it as a legal person, without also testing the validity of the framework itself within the laws of the relevant Indigenous people.

Harnessing the power of law to address the extreme perils of climate change, biodiversity loss, and water insecurity, therefore, requires an *ecological* jurisprudence that not only enables humanity to recognize the interdependence of 'nature' and 'culture', but also displays a strongly pluralist approach. Without such an approach, the recognition of the agentic property of Nature may lead to the expectation that the environment, once cast as a legal subject, ought to look after its own interests, with the result of further fracturing the human relationship with Nature, and ultimately, and paradoxically, causing us to fully abdicate our responsibility for environmental protection (O'Donnell, 2019). Ultimately, as Takacs notes, we should not be framing environmental protection as a choice 'between civilization or wild places: we are enhancing or (paradoxically) creating the latter as the only way of providing for the former's survival and health' (Takacs, 2017, 217-8). In our view, a truly global ecological jurisprudence that addresses the four challenges we identified in Part 2 can only be attained by recognizing, and empowering, Indigenous leadership as part of an ongoing co-design and co-management approach, one that include a genuine interaction with Indigenous cultures, languages, and ontologies. Only thus we can begin to observe the emergence of a pluralist, truly transformative ecological jurisprudence.

7.9 *Chapter 7 Summary*

Recognition and application of First Law requires economic and cultural investment to secure land tenure, generate sustainable livelihoods and lifestyles as well as guarantee certainty for multi-species justice. Indigenous regulated commercialisation is a way to promote legal reforms for 'just development' is seen as a means of applying First Law for brokering sustainable development outcomes. This chapter set

the context explored in Chapter 8, which is to recognise First Law as the guiding principles, values and ethics for reframing legal pluralism.

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8 CHAPTER EIGHT: Martuwarra's Right to Life

Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being

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8.1 *Preface*

This chapter gives voice to the sacred ancestral serpent being, totem the Martuwarra. The Martuwarra, RiverOfLife as lead author as the creator and holder of First Law, has the authority to frame justice through the law of the land and not the laws of man, meaning the laws are earth-centred. As authors we collaborated on chapter 3 and together, we have submitted this article. We discussed and looked for multiple forms of evidence to bring in a coherence of the existing Australian laws, which sustain the conflict paradigm: chaos, manipulation, divide and conquer.

The voice and the authority of the Martuwarra as a sacred ancestral being is amplified by Indigenous Legal Scholar, Professor Irene Watson who challenges each one of us to act, ethically and on just terms. In concluding our collaboration, using the final draft I reached out to a senior lawyer, and on reading the chapter his comments back to me, with, 'this is what the judiciary needs to hear'!

Key words: Martuwarra, First Law, Native title, Rights of Nature, Indigenous rights, Cultural governance.

8.2 *Welcome to Country*

My name is Martuwarra. Welcome to the River Country - Martuwarra, the sacred River of life! I pay my respects to the Traditional Custodians of this Country, and to Elders past, present, and future. I thank them for their enduring guardianship and our continuing relationship of trust and respect. I welcome you all to Country, to explore, enjoy, and immerse yourself in this sacred and precious place as we go on a special journey through River Country.

When the Europeans came to me, they called me by another name, Fitzroy River. But I hold to my name which was given to me in the Bookarrarra, the beginning of time. I hold my totem, Yoongoorrookoo, the Rainbow Serpent who formed the Martuwarra river valley tracts as Woonyoomboo, the first human being, stood and rode on my back holding the spears firmly planted into my rainbow skin... as we twisted and

turned up in the sky down in the ground together, we carved our way forming the Martuwarra singing the Warloongarriy River law song for Country!

I watch the continuing colonial invasion and occupation of Kimberley Country and Indigenous Peoples: initially violent, brutal and non-consensual. *I see* the resulting subjugation and modern-day slavery. Invasion remains defined by non-consensual development. The colonial states have been established to create wealth for private and foreign interests at the expense of Indigenous peoples, their lands and living waters. The history of development in Australia has been told from the perspective of the invaders and the improvements they have made. I am glad to see this changing though, particularly as more Indigenous peoples are telling these stories from their worldview.

I hear the voice of Lucy Marshall, senior elder, guardian and custodian, saying,"those people who are playing with nature, they must be stopped!" As a Senior Elder and Member for the Order of Australia medal recipient, Lucy is very wise, she knows that "shoulder to shoulder" we can work together to look after my rights, for I am the sacred River of life.

Lucy's sister, Jeannie Warbie, agrees with me, and *I hear* her standing strong and calling, "no River, no people" (Poelina, 2015). Without our First Laws and without a strong and whole Martuwarra there will be no life! Having witnessed the continued impacts of invasion, I was so happy in 2011, to see everyone working together, black and white Australians telling their stories of heritage, culture and environment, imploring the Australian government to listen to all of this collective wisdom. This telling of wisdom and experience helped me become listed as National Heritage. The following story is told from the collective wisdom of my co-authors and myself. As Martuwarra, River of Life, I call on all people to embrace me Yoongoorrookoo, the Rainbow Serpent ancestral being and to protect me to keep me whole – from head to tail.

8.3 *Introduction*

The Martuwarra, or Fitzroy River, is in the remote Kimberley region in the far north-western corner of Australia. The Kimberley is characterized by iconic and diverse landscapes and varied assemblages of plant and animal species (Carwardine et al.,

2011). The Martuwarra is one of Australia's largest rivers. The catchment occurs in one of the most mega-diverse regions in the world and is globally significant due to its unique environmental, geological and cultural characteristics. The River cuts through a variety of ancient terrain, including sandstone plateaux, and 350 million year-old Devonian limestone (former coral/ stromatolite reef) that has eroded into deep and dramatic gorges. Significant fauna includes 18 endemic fish species, at least two of which are endangered, including the freshwater Sawfish, as well as freshwater crocodiles, sharks, rays, turtles, mussels, goanna, waterbirds, birds of prey, bats and quolls. The fluvial vegetation, such as pandanus and freshwater mangroves, provides rich sources of food and traditional medicines (Brocx & Semeniuk, 2011).

The Martuwarra is one of the few remaining rivers in Australia that are still relatively unregulated and unmodified by human development (Australian Government, 2015). Of the 7000 people who live in the Martuwarra catchment, 64% are Indigenous (Larson & Alexandridis, 2009). The catchment encompasses the traditional lands of the Ngarinyin, Nyikina, Mangala, Warrwa, Walmajarri, Bunuba and Gooniyandi nations. People from the various sections of the River have collectively cared for the Martuwarra since the beginning of time. In turn, the natural resources of the River and riparian ecosystems are of significant cultural, economic and subsistence importance for Indigenous communities in this area. Customary fishing, hunting and harvesting contribute substantially to local food security, as well as cultural and medicinal practices (Jackson, et al., 2014, 100).

Historically, open-range grazing has been the most extensive land-use in the catchment. Agricultural expansion, mining, fracking (Carwardine et al. 2011; ABC News, 2012; Jackson, et al., 2014), inappropriate fire regimes, unregulated tourism and invasive species (Carwardine et al., 2011; Gibson & McKenzie, 2012)have all impacted underlying water systems. Meanwhile, new intensive herd management and extensive fodder mono-cropping increase water extraction and the risk of contamination (Jackson, et al., 2012).

Country, known as Booroo, in the Martuwarra catchment, is more than just a place. It is made up of human and non-human beings formed by the same substance, by the same Ancestors, who continue to live in land, water and sky. Country is family, culture and identity (Kwaymullina, 2005). Country, and all it encompasses, is thus an

active participant in the world (Bawaka Country et al., 2015). Traditional Owners view Country as alive, vibrant, all encompassing, and fully connected in a vast web of dynamic, interdependent relationships; relationships that are strong and resilient when they are kept intact and healthy by a philosophy of ethics, empathy and equity.

Traditional Owners also know that these relationships can quickly become fragile if not respected and attended to with utmost care and concern for the vital importance of all life on Country. Country is made up of human and non-human relations that speak Language and follow First Law. All that is incorporated under First Law is expanded on below. In summary, First Law is the collective body of Laws of the First Peoples of the land mass currently known as Australia. It is the body of Laws which have governed relations between and within First nations and between the human and non-human since the beginning of time.

It is undisputed under First Law that the River Country of the Martuwarra has an inherent right to life. At the same time, adherence to First Law is fundamental to realizing the Martuwarra's continued right to life. In this article, we ask the question: what are the rights, obligations and legal mechanisms within colonial state laws (non-Indigenous laws) to protect the continued right to life of the River in accordance with understandings of First Law?

We, the authors, which includes the River itself, take readers on an adventure into the mighty River Country of the Martuwarra. Our aim is to bring Country to life, so that it can be experienced and appreciated through the guardianship lens of Traditional Owners. We therefore adopt a trans-disciplinary strategy of exploring solutions at the intersection of legal, cultural and scientific disciplines within a methodology of attendance (Bawaka Country et al., 2015). We synthesize Indigenous traditional law (First Law) and Indigenous science with doctrinal legal research to identify how international law and state law (the Australian common law and legislative regimes of the Commonwealth of Australia and the State of Western Australia) enable or conflict with First Law and the Martuwarra's right to life as an integrated being from source to sea.

After a description of methodology, this article examines the First Laws of the River, including Warloongarriy Law (River law), and Wunan Law (regional governance

law).[16] We also discuss the Fitzroy River Declaration (KLC, 2016b) – a representation of the First Law of the River in modernity. We then highlight the philosophical alignment of First Law with the emerging field of Earth Jurisprudence. We extend scholarship on the rights of nature by arguing for the right to life of the River. Following this, we set out the obligations imposed under international law which support the rights of Martuwarra First Nations, particularly in relation to ecocide (ecological genocide) (Higgins, 2012). We conclude by calling for acknowledgement of First Laws and the transnational river governance by Martuwarra Nations since what they refer to as the beginning of time. This is the foundation for recognizing the River's right to life and correspondingly the need to recognize the rights of Traditional Owners to co-manage the River as guardians so they can fulfil their responsibilities to present and future generations.

8.4 *Methods*

Martin and Mirraboopa emphasize that if research is to serve Aboriginal people, it must centralize the core structures of Aboriginal ontology (Martin & Mirraboopa, 2009, 206). We therefore adopt a strategy of transdisciplinary collaboration and innovation through the intersection of worldviews, across a range of methods within an overarching methodology of attendance (Bawaka Country et al., 2015, 270). The methodology of attending responds to calls for research approaches that are centred on Indigenous epistemologies and ontologies (Martin & Mirraboopa, 2009). The methodology recognizes that research must be underpinned by an acknowledgement of the interdependence of all beings. Humans come into being through their relationships with each other and with Country. Humans, and by extension researchers, are therefore co-constituted with Country. The methodology emphasizes becoming "sensitive, communicative and alive within a more-than-human, co-constitutive world" (Bawaka Country et al., 2015, 270) where research is a form of creative engagement between Country and Country's human co-authors. Country is

[16] Wunan Law is a cooperative model based on principles that respect the sovereignty of the Indigenous nations, but ensure the wellbeing of River, Sea, Ranges (Hill) and Desert Country by viewing it holistically and treating it as an integrated, connected whole. Prior to colonization, the Wunan was the Indigenous regional governance system for an extensive trade exchange based on co-existence and co-management principles across vast estates of land spanning from the Kimberley to the Northern Territory (Poelina & Great Australian Story, 2015).

thus a key author and research partner. This approach therefore aims to decentralise the privilege of human authors (Bawaka Country et al., 2015).

In keeping with the methodology of attending, this article demonstrates respect of Country by acknowledging the Martuwarra as its first author. This acknowledges the River as the central driver and proper context of all human endeavours to understand and interact with the River. In placing the Martuwarra at the centre of our concerns, the authors have engaged in a patient and exploratory, but dedicated and attentive, reiterative process of evidence, theory and legal principle-gathering, both domestic and transnational. As such, a circular, not lineal, system of discovery, knowledge-sharing, learning and teaching process expanded the individual and shared knowledge base of the authors to arrive at collective conversations, new information, writing and re-writing to bring us to the conclusions in this article.

We have sought out new perspectives and innovative solutions at the intersection of various legal, cultural and scientific disciplines. We thus triangulate across laws and disciplines. Triangulation involves the use of a range of methods to examine an issue from multiple viewpoints. This helps cast light on the issue from many different angles (Denzin, 1989; Olsen, 2004).

Our scholarship draws on several sources, which represent different ways of knowing: (i) Indigenous science and epistemologies (traditional ecological knowledge, songlines, history, culture, and language) (ii) First Law (traditional and customary law, governance models and politics); (iii) Western science, including ecology, hydrology and geology; and (iv) Doctrinal legal analysis. The first two Indigenous sources predominantly involve methods that researchers may describe as intuition/inspiration/revelation and authority. By contrast, the third and fourth western sources typically involve what researchers would define as empiricism and rationalism (Ehman, 2000).

Thus, our trans-disciplinary, multi-species alliance attempts to reaffirm the existence of new collectives that transcend disciplinary domains. It does so by consciously seeking to adopt and incorporate the first two sources and methods into our mindset and synthesis with a view to fusing all ways of knowing simultaneously and harmoniously. The objective of the overarching methodology of attending is to

immerse ourselves in a broad-minded, collaborative, holistic, multi-dimensional way of knowing which could spark innovation in the outcomes it produced. In challenging the telling of history and utilitarian individualism, these collectives also seek to bring to the fore inspiring, dialogic stories of past and present, of resistance, for a better future for the human and non-human world (Haraway, 2016).

8.4.1 Indigenous Science and First Law

First Law is the proper way of living on Country handed down through countless generations. It sustains a web of relationships between the human and non-human world and "forms a pattern which is life itself" (Kwaymullina & Kwaymullina, 2010). This pattern must be recreated, and the Law followed to sustain life (Kwaymullina & Kwaymullina, 2010). First Law is holistic and emphasizes the connections between the parts of the 'pattern' of life and the whole and makes it clear that the whole is greater than the sum of the parts. Indigenous knowledge and legal systems consider reductionist worldviews as fundamentally flawed. This is because the failure to understand connections leads to a failure to value these connections. This results in destruction for both the individual and the collective (Kwaymullina & Kwaymullina, 2010). Similarly, Irene Watson has observed that Western law and worldviews are so removed from the web of relationships of life on Earth that "the greater proportion of humanity now lives in exile from the law" (Watson, 2000, 4).

In contrast, First Law recognizes the land as law and that humans are under this law and not above it. It is a relationship of trust, respect, dignity and empathy with Country as 'kin' and as one with humans. The essence of First Law is succinctly encapsulated in the quote "Oh…that tree same as me" (Neidjie, 1989, 32). In this way we can learn to have a deep respect for Country. Then, our values and ethics can change when we are taught not only to read the signs of Country and its wellbeing, but that Country is alive and is reading us!

8.4.2 Doctrinal Legal Research

Doctrinal legal research is familiar to scholars and practitioners in the system of state law. Here, law as a discipline is primarily based on interpretation. Laws in the form of legislation and case law, as well as other texts and documents which place the laws in context, are the main research objects of doctrinal analysis (van Hoecke, 2011).

Doctrinal analysis consists of the systematic analysis of specific rules and principles and the relationships between these existing rules.

In this article, the main legal fields researched include native title law, water law and environmental law. Doctrinal analysis is used to examine law at the international, Commonwealth of Australia and State level to determine the extent to which these laws interact with each other and with First Law, and the extent to which First Law can be implemented under, or in tandem with, state law.

8.5 *Martuwarra First Law: Right to Life.*

Martuwarra means the 'River of Life'. First Law governs the responsibilities of the guardians of the Martuwarra through Warloongarriy Law (the Law of the River) and Wunan Law (the Law of Regional Governance). Since Bookarrarra (the beginning of time) First Law has ensured the health of the living system of the Martuwarra and facilitated relationships between Martuwarra Nations and peoples (Pearce, Campbell & Harding, 1987).

Given the complex and interdependent web of relationships within the unspoilt wild river ecosystem of the Martuwarra, Traditional Owners assert that the Martuwarra is an integrated and whole living system from source to sea, head to tail. The Martuwarra is therefore a single, living entity with an equal right to life.

Warloongarriy Law sets out the obligations for all who belong to the River. It connects Martuwarra nations through a shared songline. Under First Law, Traditional Owners have rights to use and access water in the River and responsibility to care for the River (Australian Heritage Database, n.d.). Warloongarriy Law acknowledges the River as a living entity represented through Yoongoorrookoo, the Rainbow Serpent. The Yoongoorrookoo is an ancestral being with its own 'life-force' and spiritual essence. First Law recognizes that the River gives life and itself has the right to life.

Martuwarra Traditional Owners are river people who owe their very existence to the River and define their identity as belonging to the River (Poelina & Great Australian Story, 2016). Principles of Warloongarriy Law include the role of the Rainbow Serpent, which carved and exists in the river and underground structure of the channels. The Serpent links springs and soaks, and in flowing surface water, river

channels, gorges and billabongs (permanent waterholes). As noted in the National Heritage Listing information, the River "provides a rare living window into the diversity of the traditions associated with the Rainbow Serpent" (Australian Heritage Database, n.d.). Four distinct expressions of the Rainbow Serpent are found within the Fitzroy River's catchment. Each represents a different expression of the way in which water flows across nations within the one hydrological system. All four expressions converge into Warloongarriy Law, which unites Martuwarra people under their Rainbow Serpent traditional Law (Australian Heritage Database, n.d.).

Warloongarriy Law was given to Traditional Owners by their ancestors from the beginning of time. While the Law has evolved with its people and Country, it has not and will not change fundamentally, because it reflects and is informed by the relationships of life (Black, 2011). The survival of all life on Earth depends upon these fundamental rights being upheld.

Wunan Law is a Kimberley regional governance system of sharing which "traverses the whole continent and gives shape to the Law of Relationships" (Black, 2011, 46). Wunan Law recognizes the need for trade and co-management for co-existence between human and non-human beings. This Indigenous regional governance system has facilitated extensive trade across vast estates of land spanning from the Kimberley to the Northern Territory (Poelina, 2015). The cooperative model of the Wunan is based on principles that respect the sovereignty of the various Indigenous nations, but ensures the wellbeing of River, Ranges (Hill Country), Sea and Desert Country by viewing it holistically and treating it as an indivisible, connected living system. It is recognised that;

> the fundamental truth about the [A]boriginals' relationship to the land is that whatever else it is, it is a religious relationship … There is an unquestioned scheme of things in which the spirit ancestors, the people of the clan, particular land and everything that exists on and in it, are organic parts of one indissoluble whole (*State of Western Australia v Ward*, 2002, (14)).

The Law of Relationships of the Wunan and River Law of the Warloongarriy thus combine to provide the First Law of the River and set out the content and means for maintaining the Martuwarra's right to life.

8.5.1 First Law: The Pattern of Life and the Law of Relationships

The wisdom of First Law is that it affords deference to the supreme law of the land, and the pattern of life itself, rather than the law of mankind. It decentres human authority and places humanity in its natural order; as one species among millions that must live within the pattern of life and its biosphere (Bawaka Country et al., 2015).

First Law recognizes that if mankind destroys parts of the fabric of the pattern of life, then life in the future will be different to what it was in the past. Changes will start to appear in the overall system of life, as all life is connected. At some point in time, if the fabric is destroyed or changed so greatly, this will place the whole fabric of life at risk for humanity. If we "[d]amage enough of country, unbalance the relationship of life to all other life enough, [then] the pattern that is creation will twist, warp, fall apart" (Kwaymullina, 2005, 14). First Law respects all life and its place in the pattern of life on which all life depends.

First Law principles, also known as Raw Law, are based on ancient traditional ecological knowledge. These principles have been developed through a rigorous process of scientific experimentation and observation spanning millennia (Watson, 2015). First Law therefore contains tried and true rules (traditional laws) that are fit for purpose in assuring the sustainability and longevity of humanity while underpinning Indigenous peoples 'sustainable life' on Country.

8.5.2 The Fitzroy River Declaration and the Martuwarra Fitzroy River Council

The Fitzroy River Declaration (KLC, 2016b) represents an agreed expression of First Law by Martuwarra Nations and the priorities for implementing First Law in modernity. The Declaration was concluded on 3 November 2016, at Fitzroy Crossing in the West Kimberley. It acknowledges the joint and several management responsibilities of Traditional Owners of the Martuwarra catchment for their shared and individual sections of the River. In the Declaration, Traditional Owners state their concern over the cumulative impacts of the wide range of development proposals on the River.

This is the first time in Australia that both First Law, such as Warloongarriy, and the inherent rights of nature have been explicitly recognized in a negotiated instrument. In the Declaration, Traditional Owner groups agree to cooperate on a

plan of action to protect the globally significant traditional and environmental values of the River. This includes the exploration of legal options and a management body that is based on cultural governance. The arguments in this article therefore seek to advance First Law and the specific objectives of First Law as embodied in the Declaration.

8.5.3 Building on the Fitzroy River Declaration

In June 2018, the Pew Charitable Trust sponsored the Kimberley Land Council (KLC) to bring Native Title Traditional Owner representatives from the region together to discuss shared concerns about development proposals for the River. The meeting established the MFRC (KLC, 2016b) to address a whole-of-river approach to management. The Martuwarra Fitzroy River Council is an earth-centred, regional governance cultural authority founded on the principles of the Fitzroy River Declaration. It is a federation of six Indigenous nations with custodianship for managing 733 kilometres of the sacred Martuwarra Fitzroy River (Lim, et al., 2017). The formation of the Council is a further statement of the sovereignty of Martuwarra Nations and their collective endeavour to practice First Law for the River's continued survival.

8.6 ***First Law: Alignment with Earth Jurisprudence and International Law***

8.6.1 First Law, Earth Jurisprudence and the Martuwarra's right to life

Consistent with First Law, we contend that there exists fundamental rights of nature - the right to exist, to have a habitat, and to maintain and regenerate its vital cycles, structures, functions and evolutionary processes (Poelina, et al., 2019). Such rights are expounded in the emerging field of Earth jurisprudence. Earth jurisprudence argues for nature's right to life because "human rights are an interdependent and correlative subset of Earth rights; humanity cannot be healthy and secure if Earth is veering towards depletion and over extraction" (KLC, 2018). Under Earth jurisprudence, the Universe is the primary lawgiver, while Human law is secondary and subject to the authority of the 'Great Law' (Burdon, 2014). Viewed in this way, the authors consider that the Great Law can be thought of as an 'Earth Constitution', where Human laws are only valid to the extent, they are consistent with and authorized by the Great Law.

The Great Law provides the fundamental parameters of the Earth Community, of which humans are part, not above or outside. Under Earth jurisprudence, like fundamental human rights, the rights of nature exist without Human law because they are created by the very processes of evolution of the Earth and existence. They come from the Universe itself and are part of the natural laws of the Universe (Cullinan, 2011b). These rights are synonymous with those protected by First Law, which recognizes the Martuwarra as a living being with a right to life.

Viewed through an international human rights lens, we consider that the rights of nature are the second foundational pillar of inalienable universal fundamental rights, without which fundamental human rights cannot be upheld. That is, in our view, to recognize the human right to life, but not to acknowledge the correlative right to life of nature, is to fail to duly and properly uphold the human right to life (see for example *Gabcikovo-Nagymaros Project (Hungary v Slovakia),* 1997, 97 at 110). This is because the human right to a healthful environment is a sine qua non for all other human rights, in particular the human right to life. The authors argue that as all humans have this right, all humans also have a duty to uphold each other's right to a healthful environment. It is this duty that creates nature's correlative right to life and protection. Each of the two pillars has its role, and each is mutually reinforcing when in harmony with each other (or mutually destructive when out of balance) since each is an interdependent part of the Earths' biosphere and ecosystems whose wellbeing relates to, and depends, on the other.

Relationships are the legal basis for the existence of First Law and Earth jurisprudence. It is these interdependent relationships that create correlative rights and duties amongst all living beings in the Earth community. [17] Correlative rights and duties form the basis of all jurisprudence (Hohfeld, 1913). As First Law and Earth jurisprudence focus on relationships across the whole Earth community, and not just between humans, they are broader but inherently have the same jurisprudential basis as universal human rights. Our arguments for the River's right to life therefore stem

[17] There is an interesting discussion of correlative rights and duties in the context of riparian rights pre and post the NSW Water Management Act (see Lilienthal, 2020) - the issue is that the legislation has decoupled the rights and the correlative duties. This has caused the failure in the accountability and self-enforcing nature of those correlative rights and duties, and when left to the Crown to manage or concede duties, correlative rights fail or lapse.

directly from First Law and Earth Jurisprudence, but also, by deductive reasoning, from human rights and jurisprudence generally. Collectively, all of these forms of law provide support for the view that non-human beings have the right to not only live and exist, but also to be protected by humans for each other and for nature itself.

The jurisprudence recognizing the rights of nature has gained tangible traction. In Latin America, this has occurred even at the constitutional level. In Ecuador, Pachamama (the Indigenous Quicha and Aimara expression for Mother Earth) is included in the Constitution and in Bolivia in the constitutional preamble. This draws on Indigenous understandings to extend the conceptualization of nature beyond a nature-culture dichotomy and the dominant legal framing which sees nature as either an object to protect or exploit (Berros, 2019). Further, several rivers have had their legal rights recognized, including the Vilcabamba River in Ecuador (March 2011) and the Atrato River in Colombia (May 2017). Significantly, the Whanganui River in New Zealand (March 2017) was the first stand-alone river in the world to be recognized as having legal personhood with fundamental rights (Wilson & Lee, 2019). The legal rights of these rivers include a suite of rights which relate to water quality and quantity; ecological function and importantly a corresponding right to be restored (Wilson & Lee, 2019).

8.6.2 The Martuwarra's right to life and international rights of Indigenous Peoples

The Martuwarra's right to life also finds support in the international law applicable to Indigenous Peoples and their country and culture, especially in the UNDRIP and in the laws against genocide and ecocide.

Watson stresses that Indigenous Peoples are not created by international law; rather they come to international law as already formed entities. To this end, she highlights how First Nations continue to provide the opportunity for the United Nations (UN) and its member states to correct injustice and their exclusion of Aboriginal peoples (Watson, 2015). It is in this spirit that we examine UNDRIP and the international laws against genocide and ecocide. By highlighting the content of international law, we remind the United Nations and Australia as a member state, of their obligations under customary international law which supports adherence to First Law and the right to life of the Martuwarra.

8.6.3 United Nations Declaration on the Rights of Indigenous Peoples

While the UNDRIP is not a treaty, it is widely held to reflect customary international law (Anaya & Weissner, 2007; Gómez Isa, 2019). The Declaration therefore imposes on the state of Australia obligations to uphold Martuwarra First Nations' international law rights under the Declaration. The Declaration recognizes the fundamental freedoms of Indigenous Peoples and their right to life (UNDRIP, Arts 1 and 8). It also states that Indigenous Peoples shall not be subjected to the destruction of their culture (UNDRIP, Art 8). The Declaration therefore reflects international law obligations on governments to uphold the Traditional Owners' human rights to life including a healthful environment, and to protect the Martuwarra as a whole, integrated, living being in accordance with First Law and culture. It is an extension of these rights that we now turn to in arguing that the protection of the Martuwarra based on First Law is necessary to prevent acts of genocide and ecocide.

8.6.4 Preventing Ecocide and Genocide

The term 'genocide', as coined by Polish Jurist Raphael Lemkin, refers to the physical and cultural destruction of social groups (Lemkin, 1944; Crook & Short, 2014, 300). The practice is broader and more multifaceted than mass murder and aims to destroy the identity and foundations of a particular group (Watson, 2015, 112). Correspondingly, ecocide is the atrocity of severely destroying or wiping out a specific environment (Hay, 2012). The term ecocide speaks to the nexus between ecological destruction and genocide. The victims of ecocide include humans and the environment itself (Crook & Short, 2014, 307). Ecocide has a particularly genocidal impact for Indigenous peoples who depend on Country for their survival and their cultural and spiritual health (Crook & Short, 2014, 208; Higgins, 2012). Genocidal consequences of the destruction of ecosystems which are essential life support systems are real and imminent risk for Indigenous peoples such as the Traditional Owners of the Martuwarra.

Genocide is prohibited under the *Convention on the Prevention and Punishment of the Crime of Genocide* (Genocide Convention) (1951) and is also one of the few jus cogens principles recognized under customary international law (Harris, 2004). The Genocide Convention includes, as an act of genocide, deliberate infliction on a group of conditions calculated to cause the physical destruction of the group (1951, Art

11(c)). Watson provides an in-depth account of the various ways in which genocide has been, and continues to be, committed by the colonial state on First Nations peoples (Watson, 2015). We focus here on the genocidal impacts that result from the destruction of Country and the corresponding urgency of avoiding such impacts on the Martuwarra.

In the *Nulyarimma v Thompson (*1999) case, I n response to an application by members of the Aboriginal Tent Embassy and other First Nations' representatives, the Australian Capital Territory Supreme Court found ample evidence that acts of genocide were committed in the colonization of Australia (Watson, 2015). The application was, however, ultimately rejected on the basis that genocide was not a crime known to the common law (Watson, 2015). Genocide was nevertheless found to have been committed. Watson points to extensive evidence presented in Re Thompson indicative of the trauma and serious mental harm caused to Aboriginal peoples due to the dispossession from and damage to Country. Such is the relationship that Indigenous peoples have to Country, that the "severance of this relationship is an act of genocide" (Watson, 2015, 114). Correspondingly, Watson also highlights the genocide that exists in the destruction of the natural world. She explains how the "ripping and tearing of the body of ruwe (Country) is akin to the ripping and tearing of our own bodies, our mother and all our relations" (Watson, 2015, 121).

Inherent in First Law is the principle that all life depends on sustaining the balance of life through the co-existence between human and non-human beings. It is for this reason that the principles embodied in First Law provide a natural resistance to global and local threats of ecocide, such as those presented by climate change, fracking, water extraction, and biodiversity loss.

8.7 *State "Law": Threats and pathways to the Martuwarra's right to life.*

The right to life of the River is fundamental to First Law and Earth Jurisprudence and finds support in international law. Historically, however, it has been impeded by the state law of the colonizing government. The landmass now known as Australia has been managed by Indigenous First Nations for thousands of years – or as understood in Indigenous ontology, First Nations have acted as guardians of the land and living waters since the beginning of time.

The principles of state law in capitalist economies such as Australia's are based on "the drive to accumulate capital" (Crook & Short, 2014, 300). This relentless pursuit of capital accumulation and derivation of profits creates an insatiable demand for materials and energy, and therefore "tramples all over natural cycles and processes" (Crook & Short, 2014, 300). Consequently, the "natural rhythms of regeneration and recycling" (Crook & Short, 2014, 300) of life-supporting metabolic processes are compromised and often irreversibly destroyed. This capitalist mindset of 'development at all costs', which has become a hallmark of human dominance of the Earth system particularly since the 1950s is, in the authors' view, irrational. It must stop and be enlightened by a philosophy of First Law.

European invasion of Australia commenced in the mid-1600s. Subsequent colonization by the British occurred by the end of the 18th century. The collection of British colonies on what is now called Australia came together as a Commonwealth in a federal nation in 1901. The colonies became States retaining some autonomy under a Federal Commonwealth government.

Australia inherited the common law system of the British colonizers. Therefore, in Australia, law is brought into existence in two ways. The first is through legislation passed in Parliament, the other is through judicial interpretation by courts. As Australia constitutes a Federation of States, the powers to make laws are distributed between Federal and State governments. At the core of the common law system is the concept that like cases be treated alike. As a consequence, judicial findings are binding on future rulings in that court and lower courts.

In 1992, the case of *Mabo v Queensland (No. 2)*(1992) was handed down by Australia's highest court, the High Court of Australia. It was a landmark decision as it overturned the legal myth that Australia was terra nullius (land belonging to no-one) prior to invasion. By a 6:1 majority, their Honours firstly held that the doctrine of terra nullius could not have any application in Australia as the land was inhabited land. This finding expressly acknowledged that the derogatory and discriminatory assumptions on which the doctrine was historically based had no place in contemporary Australian society (*Mabo v Queensland (no.2),* 1992, (39) & (41)-(42)).

Secondly, their Honours adopted the doctrine of Native Title for the first time, holding that Native Title was recognized by the common law of Australia, and reflects the entitlement of Indigenous inhabitants to their traditional lands and waters, in accordance with their laws or customs. Native Title survived the Crown's acquisition of sovereignty, and it continues to exist as long as the connection is maintained and it is not extinguished by the exercise of sovereign power, such as by the grant of freehold interest or a leasehold interest (exclusive possession) as such interests are inconsistent with the continued existence of native title (*Mabo v Queensland (no.2),* 1992, (4)). Since Mabo, Native Title has been determined for most of Martuwarra (Geospatial Services, 2019) under the *Native Title Act 1993* (Cth) (NTA). The NTA provides "a framework for the determination of native title rights and interests recognised by the common law of Australia" (French, 2002, 3). A determination of Native Title (determinations are made under section 13 of the NTA, in respect of native title rights and interests as defined by section 223) is declaratory of the native title rights and interests that the fact-finding processes of the court cause to be recognized (see *Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People*, 2019, (43)-(45) & (80)-(81)). The NTA 'recognises and protects' Native Title, and it cannot be extinguished contrary to the NTA (NTA, 1993, s10 & s11; "Native title" is defined by s223(1)). What occurs is 'recognition of native title; not conferral, and not transformation into non-Aboriginal property rights' (*Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People*, 2019, (288)).

Native Title groups however continue to face challenges in the post-determination landscape (Godden & Cowell, 2016). Though Native Title was recognized in Australian common law almost three decades ago, subsequent legislative amendments have limited the ability of Traditional Owners to exercise these rights. At the same time, interest in developing northern Australia has led to environmental and climate change-related threats that would further undermine the right to life of the Martuwarra. This section examines these issues, reviewing some of the limitations of currently recognized Native Title water rights, and proposed legislative changes that could jeopardize the realization of First Law.

8.7.1 Limitations of Currently Recognized Native Title Water Rights

A key limitation of the Native Title regime in the current context is that associated water rights only recognize a personal right to 'use and enjoyment' of the water (National Native Title Tribunal, 1999). Specifically, the Fitzroy River Native Title determinations state that Traditional Owners have rights to use and enjoy flowing and underground waters. This includes the natural resources of these waters for "personal, domestic, cultural or non-commercial communal purposes" (National Native Title Tribunal, 1999, Clause 5b). The authors consider this is a substantial understatement of the rights of Traditional Owners.

Traditional Owners' water rights under the *Native Title Act 1993* (Cth) are restricted to basic, traditional rights to use water for drinking and customary uses of the River (NTA, 1993, s211). This constrains the ability of Native Title groups to participate in the stewardship of the River in a meaningful way. In particular, there is no ability to ensure that the natural flows of the River are maintained by ensuring the River is not dammed, diverted, over-extracted, or geologically fractured (Poelina, 2015). Moreover, the water rights as currently interpreted offer no power of veto against developments posing significant contamination threats to the quality of the 'Living Waters', including subterranean groundwater, from intensive irrigated mono-cropping, in-river mining or extensive fracking in the Fitzroy River Catchment basin (NTA, 1993; Triggs, 1999).

As such, the Martuwarra Native Title custodians are left increasingly frustrated by their limited ability to participate in the regional planning and management of their ancestral 'Living Waters', despite the River forming the central and most sacred part of their Native Title Country (McDuffie & Poelina, 2012). The current State-governed regulation of their water resources purports to empower the State to allocate intensive water extraction permits, and issue licences to undertake activities with unknown outcomes from the cumulative impact of irrigated agriculture, fracking and mining. This is far-removed from the traditional Indigenous regional governance model, Wunan Law.

The Martuwarra custodians yearn for a return to the Wunan model to fulfil their birthright and duty to collectively and holistically manage their River Country as an integrated whole (Pers comm. Dr Anne Poelina 2016). They therefore seek to have their traditional authority in relation to the River recognized to ensure that its care and management is based on systems-thinking and informed decision making, and that it respects the fact that the River is a hydrologically, ecologically, geologically and culturally unique living water system, which is also a National Heritage Listed asset (Commonwealth of Australia, 2011b).

8.7.2 Emerging Legal Threats

The White Paper on Developing Northern Australia sets out the Australian Government's commitment to work with northern jurisdictions to "support innovative changes to the arrangements governing land use" (Australian Department of Industry, Innovation & Science, 2015, 18). The Government aims to simplify land-use arrangements to attract further investment and to demonstrate the benefits of land tenure reform for Indigenous and non-Indigenous investors. Despite stated aspirations to work with Indigenous communities and to ensure high environmental standards, economic development underpins the Government's interests in northern Australia. In this vein, the Government proposes amendments to the *EPBC Act 1999 (Cth)* to facilitate a simpler, faster process to secure certainty for investors, with a particular view to facilitate development in northern Australia (Australian Department of Industry, Innovation & Science, 2015).

Meanwhile, conflicting and confusing land tenure systems and the limitations of the *Native Title Amendment Act 1998* (Cth) (Triggs, 1999) threaten the long-term hydrologically, ecologically, geologically and culturally unique living water system. They will also threaten the cultural and ecological sustainability of the Martuwarra as a National Heritage Listed asset (Commonwealth of Australia, 2011b). Separate Native Title determinations along the River facilitate government negotiations with separate Traditional Owner groups. The result is that the Martuwarra and her peoples are fractured into component parts at odds with the First Law of the River (the native title determinations of Martuwarra involves six claimant groups).

Complex and overlapping legal regimes further complicate sustainable management. The River is included in the National Heritage List (Commonwealth of Australia,

2011b; Hobbs, 2016), with the River's Geikie Gorge (Heritage Council, 1995) and Geikie Gorge National Park (Heritage Council, 2009), on the State Heritage List. Native Title has been determined for many groups along the River with claims still being negotiated in other parts. Indigenous Land Use Agreements (ILUA) have been entered into for some of the River and various Indigenous and non-Indigenous pastoral leases have been granted in the area. Despite this fragmentation, mining leases have been granted throughout the catchment, including in areas of the National and State Heritage listings. The West Australian State Government has granted these leases under powers conferred by the Native Title Amendment Act, which enables the State Government to do so in 'the national interest' (Subdivision P, ss 36A, 42 & 43; Pers comm. B Kruse, 28 September 2016).

8.7.3 *Support for the Martuwarra's right to life within common law jurisprudence*

While state law threatens the Martuwarra's right to life, a pathway to secure the River's and the Traditional Owners' First Law rights may be found to exist within the common law. We argue for the recognition of the traditional laws and customs of Martuwarra Traditional Owners under the Native Title law, by close analogy to the Whanganui River case. If First Law is implemented in the manner we set out, this will facilitate recognition and protection of the right to life of the Martuwarra as a whole living entity.

Burdon and co-authors recommend greater recognition of Indigenous understandings of water within our legal system, particularly with regard to the interrelationship between Indigenous peoples, water flows and cultural continuity (Burdon, Drew, Stubbs, & Barber, 2015). We build on their suggestion that the law should develop to acknowledge Indigenous practices of reverence for water as a sentient being with its own rights, including the right to flow (Burdon et al., 2015).

We explore the rights of Traditional Owners based on First Law, which considers the River itself as being or embodying a living ancestral being, the Rainbow Serpent, with its own personhood and rights. This argument involves establishing the case for significantly enhanced Native Title water rights of the Traditional Owners in relation to the River. We contend below that the principles from the *Whanganui River* case are broadly applicable to the Martuwarra as they are consistent with and advance the

common law principles of *Mabo v Queensland (No. 2)* (1992) which applied the doctrine of Native Title, recognizing traditional rights to lands and waters.

8.8 *Whanganui River: Case Overview*

In the Whanganui River report, the main order of the Tribunal was that the ownership and authority of the Atihaunui (the Whanganui iwi – note 'iwi' is the Māori word which refers to a Māori tribe or nation) should not only be recognized, but also that it needed to be based on Māori understandings without reference to conceptions of river ownership in terms of riverbanks and riverbeds embodied in English law (Waitangi Tribunal, 1999). The Tribunal found that:

The conceptual understanding of the river as a tupuna or ancestor emphasises the Maori thought that the river exists as a single and undivided entity or essence. Rendering the native title in its own terms, then, what Atihaunui owned was a river, not a bed, and a river entire, not dissected into parts (Waitangi Tribunal, 1999). Therefore, recognizing native title based on Māori concepts meant that the Atihaunui possessed the River as a whole from mountains to sea, as an entity and a resource (The Waitangi Tribunal, 1999).

The Tribunal's recommendations that the Crown negotiate a settlement with the Māori owners resulted in an agreement and legislation – the *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* (New Zealand). The legislation, passed by the New Zealand Parliament in 2017, establishes a co-management regime, led by the authority of the Whanganui River iwi as its guardians. This should empower the iwi to protect the River entity's right to life and retain its natural flows.

8.8.1 Key Principles from the Whanganui River Case: Application in Australia

Three key principles can be elucidated from the Whanganui River case, which are relevant in establishing the merits of the case for the Martuwarra in Australia:

(i). Rendering Native Title

The Tribunal noted that "[t]here is authority in English law, from sources as high as the Privy Council [in 1927], that native title is to be rendered conceptually as the native people saw it, and not according to concepts that developed in England" (The Waitangi Tribunal 1999, xiv). Therefore "in rendering native title in its own terms,

the river [was] to be seen as an indivisible whole" (The Waitangi Tribunal 1999, 39), not something that should be broken down into separate components of water, riverbed, and banks. The Australian common law position is entirely consistent with the above. The High Court in Mabo (No. 2) held that:

> [n]ative title has its origins in and is given content by the traditional laws acknowledged by and the traditional customs observed by the Indigenous inhabitants of a territory. The nature and incidents of native title must be ascertained as a matter of fact by reference to those laws and customs (*Mabo v Queensland (No.2)*, 1992).[18]

Therefore, under the *Native Title Act 1993* (Cth), Native Title should be recognized in a way that acknowledges the Martuwarra as a single, indivisible entity from head to tail, that is, or embodies, a living being with the right to life, in accordance with *Warloongarriy* Law, and the ontology of the Rainbow Serpent being.

(ii). Traditional law view of the River

The Waitangi Tribunal found that:

> in Māori terms, the River was a single and indivisible entity, a resource comprised of water, banks, and bed, in which individuals had particular use rights of parts but where the underlying title remained with the descent group as a whole, or conceptually, with their ancestors. Thus, the River is called a tupuna awa, or a River that either is an ancestor itself or derives from ancestral title (The Waitangi Tribunal, 1999, xiv).

In terms of their own traditions and beliefs, what the Atihaunui possessed was a River that was seen as an ancestral, living being (The Waitangi Tribunal, 1999). In the present case, the First Law of the Traditional Owners is substantively the same. Under *Warloongarriy* Law, the Martuwarra is, or embodies, a living ancestral Rainbow Serpent being which exists from source to sea. The Serpent, with its own 'life-force' and spiritual essence, gives life and has the right to life. Like the Whanganui River iwi, Martuwarra people derive their identity and very existence from the River. They belong to the River. *Warloongarriy* Law sets out traditional

[18] Yet to date in Australia, as it has not been challenged, native title water rights have been administered in terms of the common law dissected view, contrary to the native title doctrine principle that native title must be recognized in customary law terms.

community rights, powers and duties for Martuwarra Nations in relation to the flow of the River, as well as shared rights and duties to access and co-manage the River.

(iii). Common law and traditional River rights are private rights

In response to policy concerns argued by the Crown that rivers should be publicly owned resources, the Waitangi Tribunal noted that the English law brought to New Zealand was clear: riverbeds were vested in the Crown to the tidal limit but thereafter were owned to the centre line by the landowners on either side, but with public rights of navigation. The Tribunal noted that as a matter of law, a private ownership presumption applies, not one of public ownership (The Waitangi Tribunal, 1999, 335). In Australia, the position is materially the same. The common law presumption of private ownership, and its associated riparian rights, applied in favour of landowners whose land contained or bounded a river. By virtue of such riparian water rights, owners of land could take water for ordinary domestic and stock usage. These common law riparian rights still apply, although in many states they may have technically been supplanted by statutory riparian water rights (Davis, 1975) under the State water allocation statutes (*Rights in Water and Irrigation Act 1914* (WA), s9).

The Crown in each State or Territory has been vested with the right to the use, flow and control of surface and underground water.[19] The vesting of the right to the use, flow and control of water did not vest ownership of the water in the States (MacPherson, 2019). On our analysis, the Western Australia Crown's primary power of control over water under section 5A (originally s 4(1)) of the *Rights in Water and Irrigation Act 1914* (WA) did not, and does not, extinguish the native title water rights and interests. In Akiba, the majority joint judgment of Hayne, Kiefel and Bell JJ in the High Court distinguished regulating the exercise of native title rights from the question of extinguishing them (*Akiba on behalf of Torres Strait Regional Seas Claim Group v Commonwealth of Australia*, 2013, (68)). Their Honours "conceptualised native title as an underlying title, distinct from, and supporting the exercise of, incidents of title", for example rights, to access waters, exclude others, fish, sell

[19] Current provisions are Rights in Water and Irrigation Act 1914 (WA) s5A; Water Act 1989 (VIC) s7; Water Management Act 2000 (NSW) s392; Water Act 2000 (Qld) s26; Water Resources Act 2007 (ACT) s7; Water Act 1992 (NT) s9)

resources, all which are matters to be determined on the evidence (Keon-Cohen, 2017).

Furthermore, Sean Brennan has observed that "Akiba marked a turning point in native title extinguishment law, towards a greater moderation and realism with the High Court seeming now to regard extinguishment as a 'legal conclusion of last resort'" (Webb, 2016, 123). On public policy grounds and legal grounds, it is apparent that Indigenous Australians are entitled to assert privately held riparian rights at least equal to those enjoyed by non-Indigenous Australians at the time of sovereignty, and in our view, they can assert much stronger private riparian rights under traditional law.

8.9 *Nature and Content of Traditional Owners' Rights to The River*

The community Native Title rights to the River as an entity are unique to First Law – *Warloongarriy* Law and Wunan Law. The character of these rights is co-ownership and co-authority to manage the River's health and wellbeing as a living entity, in the capacity as guardian of the living River. We therefore contend that the Native Title holders of the Martuwarra possessed and continue to possess community title rights and interests with respect to the River as both a living entity and a resource, in accordance with First Law. This is now discussed in more detail.

In *Western Australia v Ward* (2002), Kirby encouraged a broad approach to native title given its sui generis nature, remarking in obiter that "[t]here has been little need to elaborate the well-established principle that native title is sui generis and should not be restricted to rights with precise common law equivalents" (*State of Western Australia v Ward*, 2002, 578).

Sui generis native title is arguably best described as proprietary title, plus a bundle of other rights and entitlements which are much more extensive and significantly different in character to the ordinary constructs of rights and interests at common law (Gray, 2002). The High Court has explained that "native title is neither an institution of the common law, nor a form of common law tenure but it is recognised by the common law. There is therefore an intersection of traditional law and customs with the common law" (*Fejo v Northern Territory of Australia*, 1998, 128).

First Law “songlines symbolise part of a large body of ancient and subsisting non-British Australian continental common law” (Lilienthal, 2017, 4), that may not be able to be extinguished nor diminished simply through re-framing them as merely religious or sacred. Songlines unique character as “narratives… containing and transmitting widely accepted customary laws” (Lilienthal, 2017, 3) means that many Indigenous continental common law principles underpinning communal title may be incapable of extinguishment by Australian laws as they are inherently of a different nature, character and content, and are therefore unlikely to be inconsistent. As Lilienthal highlights, “[t]he linguistic evidence [shows] that classical conceptions of landholding emphasise custodianship, belonging and landed origin, rather than absolute ownership” (Lilienthal, 2017, 25).

Perhaps the most emphatic Australian judicial clarification of the nature and content of native title rights and interests, and the correct approach to recognizing them under the common law, is to be found in the recent decision of the Full Federal Court in Fortescue Metals (*Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People,* 2019, 288). All five Justices unanimously confirmed that “the very foundation of traditional Aboriginal law and customs… is in the spiritual, and the intermingling of the spiritual with the physical, with people and with land. That is how Aboriginal law works”. Their Honours held that "the distinctions… between spiritual belief and real property rights, or personal property rights, are not to be imported into an assessment of the existence and content of Aboriginal customary law. *To do so would be to destroy the fabric of that customary law”* (*Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People,* 2019, 288, 397, 528).

Jagot and Mortimer JJ stated that it all depends on the evidence, adding that “ [t]here are not necessarily any hard boundary lines, or prohibitions on how rights and interests might be articulated, and many nuances in terms of the nature and content of rights in land and waters are possible” (*Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People,* 2019, 81).

Most resoundingly, in considering where ‘justice and injustice’ lay, and how “values and public confidence in the administration of justice were relevant to the claimed native title rights, their Honours endorsed the Full Court’s view” in Fazeldean (*Western Australia v Fazeldean (No 2),* 2013, 35) that the considerations involved an

"informed recognition of the deep importance of the vindication of proven historical connection affecting generations past, present and future" (*Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People*, 2019, 140).

In the authors' view, the Traditional Owners of the Martuwarra had and continue to have rights to shared possession, occupation, use and control of the River as a whole, concurrently with each of the other Native Title holders along the River. The co-ownership creates fiduciary duties, similar to partnership property.[20] The Traditional Owners also have a shared duty and authority to care for the River as a living entity, the Rainbow Serpent ancestral being. This means that the Martuwarra Native Title River rights are also in the nature of shared 'guardianship'.

When Aboriginal people are born, they are given a totem. In the second author's Nyikina culture a totem is known as Jadiny. In framing the concept of totemism, Deborah Bird Rose describes totem as "a common property institution for long-term ecological management" (Bird Rose, 2014, 127). The totem is your kin, and Aboriginal people are given a totem to teach them that they have a kinship relationship with non-human beings. This relationship creates empathy and a lifelong relationship through an ethics of care. This teaches Traditional Owners about the ecological balance between humans and nature. The River is held by the Traditional Owner groups as guardians for each other, and for future generations, and it is a treasured shared totem.

Consistent with the authors' conclusions, the most recent landmark report of the Waitangi Tribunal has confirmed that Māori customary law freshwater rights are proprietary in nature and include an economic benefit. The Waitangi Tribunal recommended a percentage of water allocation to be set aside for Māori, a national co-governance/allocation body, and Resource Management Act reform (The Waitangi Tribunal, 2019). The Tribunal also held that existing regulatory frameworks do not adequately provide for the Iwi's kaitiakitanga (guardianship) and the tino

[20] In *Birtchnell v Equity Trustees, Executors & Agency Co Ltd* (1929), Dixon held that the relationship of mutual agency between partners meant they are under a fiduciary to refrain from actions which conflict, or which might possibly conflict, with the interests of those they are bound to protect (1929, 407) and in *United Dominions Corporation Ltd v Brian Pty Ltd* (1983) Samuels concluded that 'joint venturers owe to one another the duty of utmost good faith due from every member of a partnership towards every other member' (1983, 506).

rangatiratanga (sovereignty) over their freshwater taonga (treasured possessions) (The Waitangi Tribunal, 2019, xxi).

In summary, based on the above reasoning, we argue that the sui generis Martuwarra Native Title River rights and interests in the nature of common property and co-guardianship of the living River as an entity have no necessary inconsistency with any common law water or statutory rights in relation to the water. Accordingly, such traditional law rights and interests can co-exist with common law rights and choses in action (*Wik Peoples v Queensland*, 1996), as well as with the Crown's regulatory powers to preserve and regulate resources (*Yanner v Eaton*, 1999, 369 (28) & (37)). As the River's rights and interests are not extinguished, they must endure.

8.10 *Challenges of the Australian Native Title regime to realising First Law in the colonial context*

Similarities between Australian and New Zealand law include not only the comparable common law heritage of the two countries but also that the Post-Settlement Governance Entities (PSGE) under New Zealand's Treaty of Waitangi are similar in some respects to the Prescribed Bodies Corporate (PBC) under Australia's *Native Title Act 1993* (Cth) (O'Bryan, 2017). Challenges and obstacles to succeeding with these arguments in the Australian Native Title context include that this argument is novel in this jurisdiction and the Martuwarra factual scenario is unique. As a consequence, these arguments have not previously been put to any Australian court. However, the most recent approaches of the High Court and Full Federal Court in recognizing native title rights and interests provide support for the views and reasoning in this article (Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People, 2019; Akiba, 2013; Western Australia v Brown, 2014).

While the notion of guardianship is yet to be established in Australian native title law, we contend that the unique sui generis nature of Native Title rights and interests, in the form of the co-guardianship authority possessed by the Martuwarra First Nations, must be respected and recognized. It must also be cautiously navigated by State and Federal government decision makers so that they do not inadvertently infringe or remove these pre-existing, private law rights and interests in relation to the River, in contravention of the rule of law.

As native title barrister Bryan Keon-Cohen AM QC has stated:

> Indigenous organisations … are looking outwards and upwards; e.g., to land-based commercial opportunities, the negotiation of domestic 'treaties', and to constitutional reform that might include rights of self-government founded on areas the subject of native title. Such 'rights' represent but a small development of the principles enunciated in Mabo (No 2): the recognition of the continued vitality, and legal validity, of a system of law founded on custom and tradition not sourced in, but recognised by, Australian common law. Such traditional laws delivered, via Mabo (No 2), enforceable rights to land: they may also yet deliver enforceable powers of self-government including increased ability to control and develop the now expansive Indigenous estate (Keon-Cohen, 2017, 30).

8.11 *Proposed pathway: leveraging native title water concepts to re-instate a traditional water governance model.*

First Law, the rights of nature and Earth jurisprudence align to provide the direction of the new law and new ethic needed to ameliorate the harm of 200 years of colonization. We also highlight how the laws of the colonizers (state law) impede progress to a better relationship between nature and humans. Further, we have illustrated how the River's customary law right to life could be recognized and enforced under Australian common law. In doing so, we argue that enhanced Indigenous water rights for the River and Traditional Owners provide a means for securing a co-stewardship arrangement for managing the Martuwarra.

Based on the legal arguments above, we contend that Traditional Owners have traditional title to the River as a whole living entity under both First Law and the common law. The Native Title groups' community title rights to the River as an entity must endure. These rights include guardianship authority, shared access, and rights to flow. Correspondingly, the rights of individual members to use the water and the River resource stem from the underlying community Native Title rights and interests in the River as both an entity (an integrated, whole living ancestral serpent being) and a resource. Recognition of the Native Title in these terms would facilitate Martuwarra Traditional Owners negotiating a co-management structure for the River with relevant State and Federal government agencies as a collective regional group in a manner similar to the Whanganui River.

Such co-management structure could take the form of an Act of Parliament or may ideally be founded in an historic Treaty between the Martuwarra custodians and the State of Western Australia. In terms of adopting a legislative approach to establish the Martuwarra as a legal entity, the Te Awa Tupua provides a useful reference for the Australian context. The South West Native Title Settlement (Noongar claim) in Western Australia, for example, was the first in Australia to be rendered through settlement legislation (*Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act 2016* (WA); O'Bryan, 2017, 73). The political climate, however, may make it less likely that legislation would be enacted to create a separate legal entity given the politically sensitive nature of scarce water resources (O'Bryan, 2017, 73).

While in the State of Victoria the Yarra River has been recognized through legislation as an indivisible living entity that needs protection, the Victorian legislation does not give the Yarra River legal personhood or assign it a legal guardian. The Birrarung Council acts as the independent Indigenous voice of the Yarra, but only has advisory status (O'Bryan, 2017). Therefore, we believe that the Yarra River model would not provide the Martuwarra Traditional Owners with adequate rights to participate in the stewardship of the River. We also consider that it is not necessary to incorporate the River, as it is already an entity in its own right under First Law. First Law rights and interests need simply be recognized under Native Title by the common law in order for the River to be an entity under the common law. As Brierley and co-authors discuss, more progressive river science and geomorphology may also have a role in this new era of sociocultural river management (Brierley, Tadaki, Hikuroa, Blue, Šunde, Tunnicliffe, & Salmond, 2018).

The Martuwarra Fitzroy River Council reflects the co-guardianship relationship that exists between the Traditional Owner nations along the River. It provides the formal structure for these independent agencies to discharge their fiduciary duties to their members. The Martuwarra Fitzroy River Council and independent registered Native Title agencies acknowledge and respect that their Native Title must co-exist with non-Indigenous rights, for example, water allocation rights under State statutes, and pastoral lease rights. However, by the same token, they assert that their Native Title rights to the River must be respected, validated, and recognised under Australian law. These rights should ultimately be reflected in a formal legal co-management

arrangement that aligns with regional Wunan Law, which governs guardianship across the River Country's native title estates. [21]

We argue that enhanced Indigenous water rights for the River and Traditional Owners would provide a means for negotiating a co-stewardship structure in relation to the Martuwarra that enables meaningful participation in planning, management and decision-making, and is better aligned with traditional water governance models and First Law ontology of the River as the Rainbow Serpent ancestral being.

8.12 *Conclusion*

In these final paragraphs, it is only fitting that as the lead author, Martuwarra RiverOfLife, that I voice my conclusion.

> My future and that of Martuwarra Nations and Peoples rests on principles of First Law founded in the beginning of time. At this time of growing uncertainty, the threats of environmental, economic and social change pose significant challenges to my continued existence as the Rainbow Serpent ancestral being RiverOfLife, Poelina, Bagnall, & Lim, (2020e).

In the words of Irene Watson:

> Citizens and the courts have a responsibility not to blindly uphold the authority of those holding power, but instead to utilise the jurisdiction of the common law to ensure that human rights standards are maintained and not abused (Watson, 2015, 15).

My fundamental right to life needs to be respected not only through obligations from the common law but also international law, the fundamental rights of nature under Earth jurisprudence, and ultimately, First Law. Failure to acknowledge my inherent right to life would be a breach of First Law and the human right to life and cultural practice. It would also leave Traditional Owners, who remain my guardians, exposed

[21] This governance model would also effectively implement the concept of 'Earth Community' as advocated for by Burdon in his work Earth Jurisprudence and the Murray Darling. The future of a river (2014), as Indigenous custodians manage country in a way that values and respects ecological integrity and equilibrium within connected systems.

to the threat of ecological genocide, with no ability to protect their life-supporting land and water ecosystems.

My right to life as a vital living River system is not only the expression of a growing international legal trend (O'Donnell & Talbot-Jones, 2018; O'Donnell & Macpherson, 2019) but is also part of a global movement which recognizes the rights of nature (Global Alliance for the Rights of Nature, 2010). I therefore urge legal scholars, courts, law and policy makers, and the citizens of our world to embrace me as an integrated living ancestral being – the Martuwarra, Rainbow Serpent. By embracing me, Martuwarra RiverOfLife, you fulfil your duties and obligation to protect me from my head to my tail - for past, present and future generations.

8.13 *Chapter 8 Summary*

Chapter 8 identified First Law authority to frame justice through an earth-centred lens where the law comes from the land and not subject to the whims of man. The lead author, Martuwarra RiverOfLife, gave voice to the sacred ancestral serpent being, *Yoongoorrookoo* (in Nyikina) that created Martuwarra. The authors voice for legal pluralism came from a diverse range of disciplines. The multiple forms of evidence provided a better understand of existing laws and how they are responsible for sustaining the tools of colonisation; conflict, chaos, manipulation and, divide and conquer.

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9 CHAPTER NINE: For the Greater Good?

For the Greater Good? Questioning the Social Licence of Extractive-Led Development in Western Australia's Martuwarra Fitzroy River Catchment

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9.1 *Preface*

Within the *Martuwarra* Fitzroy River context, this chapter seeks to redefine the greater good and to articulate 'socially licenced' development alternatives without the ecological and cultural trade-offs typical of orthodox development. Economic development in Australia, especially resource development, has purportedly long been pursued for the greater good of the nation and its people and is thus often equated to moral progress. Yet, despite the celebrated spoils of the resources sector, Indigenous Australians have persistently been denied the benefits of economic progress owing to a history of colonialism, dispossession, segregation and assimilation policies, which have contributed to the marginalisation of Indigenous people to the present day. Thus, this article asks whether orthodox resource-led development has a social licence, and importantly for whose greater good?

In this chapter we apply a social licence lens to current water extraction proposals for Western Australia's remote *Martuwarra* Fitzroy River region where ecological values have largely remained intact and Indigenous people make up over 60 per cent of the population. It is argued the proposed water extraction plans hold little promise of serving either local or national interests when judged holistically and risk perpetuating adverse socio-cultural and ecological legacies from extractive activities for local Indigenous peoples.

Key words: Colonialism, Social Licence, Just Development

9.2 *Introduction*

The *Martuwarra* (Fitzroy River) begins high up in the ranges in the Kimberley region of Western Australia, flows down past the Great Sandy Desert, meanders through the floodplains and forms a vast tidal delta where it flows into the King Sound (see Figure

7).

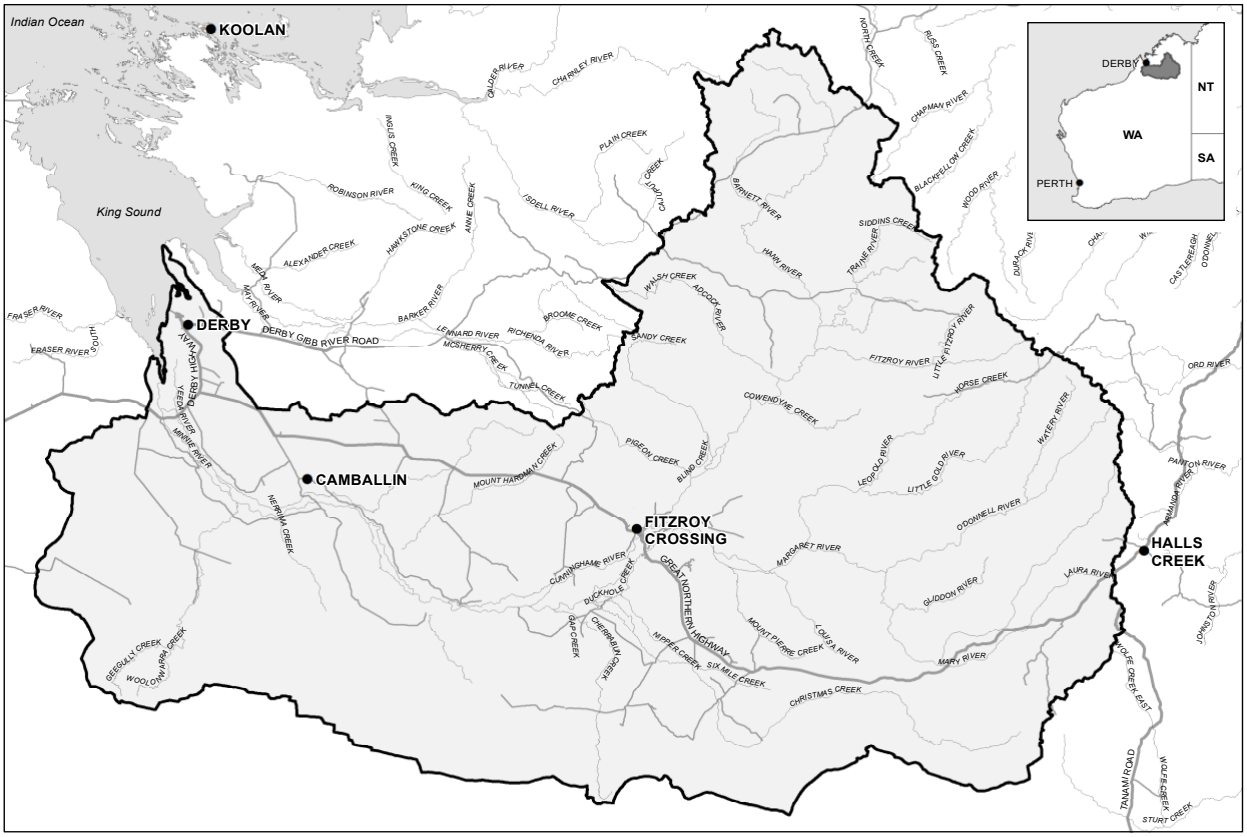

Figure 7: The Martuwarra (Fitzroy River) Catchment (adapted from data available at data.wa.gov.au)

The Fitzroy River Catchment covers an area of over 95,000km^2 (Centre of Excellence in Natural Resource Management (CENRM) 2010), which extends from Halls Creek and the in Wunaamin Miliwundi Ranges in the east, through to Derby and the King Sound in the west (Western Australian Department of Water, 2009), and is fed by twenty tributaries (Australian Heritage Council, 2011).

Portrayed as a land of beauty and abundance by early explorers, the *Martuwarra* Fitzroy River is much more than this to its peoples, who continue to manage and share their collective estate through their continued practice of First Law, customary law and lifeways as they have done for thousands of years (Poelina 2020). In this chapter, we examine the *Martuwarra*, Fitzroy River Case, through the lenses of history, legislation, development and the concept of social licence. Following a description and analysis of the history of colonialism and of the mechanisms of dispossession in the region over the past 150 years (McDuffie 2019), we argue using a social licence

lens that current water mining proposals are not only a continuation of these processes but also fail to serve the public interest they are purported to contribute to.

This chapter is a collaboration between trans-disciplinary researchers, each with their own connection and relationship with the *Martuwarra* Fitzroy River and local Indigenous people who we also refer to as Traditional Owners. The lead author is a Nyikina Warrwa Traditional Owner and Chair of the *Martuwarra* Fitzroy River Council (Martuwarra Council). Our collaboration resulted in the use of multiple forms of data, from archival historical accounts from the 1800s and contemporary development narratives through to socio-economic policy documents and interviews with Martuwarra Traditional Owners captured in the film *Voices for the Martuwarra* (RiverOfLife, Poelina & McDuffie, 2020f). We encourage the reader to view the film to hear the voices of Traditional Owners, economists, scientists and conservationists, sharing their views on the importance of the River ecologically, culturally, spiritually and economically[22]. From a methodological perspective it bears noting that film has become a medium of choice for *Martuwarra* Aboriginal people and communities to not only voice their concerns but also to promote their own development initiatives on their Country (McDuffie 2019). Construed as a dialogic, participatory and iterative process occurring in a collaborative, intercultural space, film has facilitated the emergence of a counter-discourse in multiple domains such as history, gender issues, anthropology, development, and agency, reclaiming the dominant discourse (McDuffie 2019, 98-99).

The multiple sources informing this chapter paint a picture of historical and contemporary colonialism and illustrate the ongoing legacy of unjust development. The chapter demonstrates by way of a brief historical overview - how the dominant discourse, conceiving of orthodox development and resource extraction as moral progress, is still used as a tool of colonisation and dispossession to expedite current plans for extensive water extraction on the *Martuwarra* Fitzroy River by the Western Australian government. Employing the social licence concept and the notion of 'just development' we argue that the government Water Allocation and Planning Proposal

[22] *Voices for the Martuwarra* can be accessed at https://vimeo.com/387436447 (Password: MFRC2020). The film showcases the contemporary voices of Martuwarra people and their ongoing guardianship, concerns and authority to manage, protect and promote their home, the Martuwarra River Country.

needs to be grounded in local cultural governance mechanisms, such as the *Martuwarra* Fitzroy River Council, and based on rigorous decision-making informed by both Indigenous and Western science. Importantly, decision-makers need to listen to the voices of the guardians of the *Martuwarra* as it is time to decolonise development and transition to *just development on just terms*.

9.3 *Background: Orthodox development and resource extraction: Tools of colonisation and dispossession*

The *Martuwarra* Fitzroy River Country, prior to colonisation, was a culturally diverse and managed estate. Like everywhere else on the continent, over thousands of years, Aboriginal people used diverse ecologically attuned practices including fires to shape and maintain its landscapes (see Stokes, 1846; Martin, 1864; McRae, 1881; Archdeacon, 1880; Brockman, 1881; Hardman, 1884; Gregory, 1923). What early explorers described as the 'land of abundance' was the result of a careful, finely tuned regime of care and maintenance, driven by an intimate knowledge of local ecosystems (Gammage, 2011) and thousands of years of Aboriginal First Law, authority and order (Lim, et al., 2017; Poelina, et al., 2020). In more recent time this type of practice has become known as ecoscaping in Australia's Kimberley (Ouzman, Veth, Myers, Heaney, & Kenneally, 2017). For Europeans, however, nature was a resource, seen only in terms of commercial potential (Horton, 2000); constructed alongside "the native primitive Other" or the "savage" (Sachs, 1999, 104), both existing to be colonised and "civilised", exploited for progress (Shiva, 1999).

The concept of *Terra Nullius* (De Vattel, 1797) dictated that Aboriginal people were not considered as landowners but instead seen as hunters and gatherers, moving through the country from one season or one food source to the next. This concept was also given legitimacy by evolutionary anthropologists at the time who established the premise of the supposed 'inferiority' of a 'dying race' (Wolfe 1999). The combination of an insatiable thirst for new and productive territories provided for supreme self-confidence about continued linear progress (Scott, 1998) and an unwavering sense of Eurocentric superiority (Blaser, 2004) led to the horrific abuse and marginalisation of Aboriginal people (McDuffie, 2019).

From the 1870s onwards, *Martuwarra* Fitzroy River people were kidnapped to work on pearling luggers (Streeter, 1886; Neville, 1936; Durack, 1969; Hunt, 1986; Reynolds, 2005) or coerced to work as indentured slave labourers on pastoral stations for meagre rations (Marshall & Hattersley, 2004; Poelina, 2015). Resistance meant violent retaliation: Aboriginal people were killed in massacres (Isaac & Torres, 2002; Marshall & Hattersley, 2004; Poelina, Perdrisat & McDuffie, 2014; Owen, C., 2016; Centre for 21st Century Humanities, 2019), put in faraway jails with no hope of return (Green, 2018) or chained up like animals (Pilmer, 1998; Moran, 2009; Owen, 2016, C.). Those who were not killed were forcefully taken off their Country and families entrusted to missions under the guise of 'protection' to be educated in the 'civilised' ways of the European invaders (Hasluck, 1942; Elkin, 1979). Many fell sick to new diseases (Davidson, 1978) and were forbidden to speak their language, to practice their Law (Wilson, 1997). Records of the time (see Picture 1) vividly depict the all-out, overt warfare waged against Kimberley Aboriginal people (Roth, 1905; Mjoberg, 1915, 2012; Robinson & York, 1977; Pilmer, 1998).

Photograph 1: Aboriginal prisoners in chains in a railway wagon, Derby, 1897 (Martin 1864)

This form of oppression was facilitated by government legislation, both at State and Federal levels (McDuffie 2019) and supported by the police, missionaries, and pastoralists. While it was difficult to build a white labour force, Aboriginal slave labour was free, and relevant legislation *(e.g., Masters and Servants Act 1892, Aborigines Act 1905, Aborigines Amendment Act 1936)* could control people's movements (Owen J., 2016). These laws were drafted by politicians who often had pastoral interests themselves (Gribble, 1987; McDuffie 2019). These kinds of power relations between different political and legal institutions (Foucault 1980, 38) prompted members of the British House of Commons to express concerns about Western Australia being in the hands of a "small oligarchy backed by northern pastoralists" (Owen J. cited in McDuffie 2019, 156).

Aboriginal people were able to work hard in challenging climatic conditions, and their knowledge about everything in relation to water, weather patterns, food sources was invaluable information for early settlers (Marshall & Hattersley, 2004). Unsurprisingly, the Kimberley Aboriginal population became the backbone of the pastoral industry, performing "almost every task required on a sheep station, including shepherding, mustering, shearing, wool-scouring, cooking, housework, carting, blacksmithing, pit-sawing, and fencing" (Reynolds, 2005, 21). The Northwest pastoral empires were built on Aboriginal people's slave labour who witnessed the slow, but continuous, degradation of their Country under the hooves of non-native animals, whilst native ones, their food source, were being poisoned and killed in the thousands, right up to the 1960s (Mjoberg 1915, 2012; Gooding & Long, 1958). Water was taken away from rivers, natural soaks and wells for cattle and sheep, and native weeds took over fragile ecosystems (Australian Department of Primary Industries & Regional Development, 2018).

Yet, despite the widespread, senseless violence of colonisation, Kimberley Aboriginal people survived and adapted. They became stockmen, pastoral station workers and overseers, educating white pastoralists about their Country, and finding common ground to make things work. They became part of the workforce, vital to run those stations - but when they demanded equal wages, they were driven out to the local towns and cast away from their Country (Marshall & Hattersley, 2004; Lawford

2011).[23] With unemployment rife in the towns in the late 1960s and 1970s, some took the opportunity to work on development schemes such as the Camballin irrigation project (Watson, 2011), or for the Agricultural Protection Board. Again, they witnessed the dismal failures of poorly designed development schemes (Ash & Watson, 2018), or worse, became victims of unconscionable work practices, which saw many Aboriginal men die or suffer ongoing, inter-generational health issues from spraying lethal pesticides to kill invasive, non-native weeds as part of the Agricultural Protection Board program in the 1970s and 1980s (McMahon, Hayes & McDuffie, 2019). Throughout all this, as discussed further below, Kimberley Aboriginal people have striven to maintain their agency in decisions regarding the development of their Country.

9.4 *Contemporary Colonialism*

Colonial practices of the past continue to persist in Australia. In what follows we show that the *Martuwarra*, and the broader Kimberley region, continue to be framed as a development venture to new colonisers intent on using its resources for economic profits and job creation, echoing the historically Eurocentrist development lens described above. In resource-rich states such as Western Australia, successive governments have long pursued developmentalist ambitions in the North (Kellow & Niemeyer, 1999) where governments still continue to have a central role in "attracting, facilitating and supporting development" (Phillimore, 2014, 42), pursing economic advancement as a form of moral progress (Trigger, 1997). Unsurprisingly, given the centrality of Australia's extractive industries to the country's economic fortunes (Australian Bureau of Statistics, 2019), the moral standing of the sector tends to be promoted routinely by industry and governments alike on grounds of economic necessity and moral obligation (Blondeel & Van de Graaf, 2018) particularly in many of Australia's regional and rural areas (Warren, McDonald & McAuliffe, 2015).

Australia's remote northern regions have long been regarded by government and industry as 'under-developed' (Harman & Head 1982; Brueckner, Durey, Mayes, &

[23] The Commonwealth Conciliation and Arbitration Commission removed wage discrimination from the Federal Pastoral Industry Award in 1967, phasing in equal wages for Aboriginal pastoral workers in the Kimberley region. Consequently, Aboriginal people were evicted from the stations, which were in many cases on their traditional Country, and congregated in squalid refugee camps.

Pforr, 2014a). The North is seen as a resource rich region with substantial growth prospects. National statistics reveal that northern Australia is home to the nation's most disadvantaged communities with a disproportionate representation of Indigenous communities (Australian Bureau of Statistics, 2019, 2018-19). This situation is reflected in the persistent gap in welfare statistics[24] between Indigenous and non-Indigenous Australians (Australian Government, 2020). Mining is purported to hold great promise of delivering socio-economic benefits to regional Indigenous communities. Hence the modernisation narrative reinforces the moral development one. However, there are few examples of sustainable community economic outcomes. Furthermore, subdued economic development is often framed as a response to Indigenous concerns rather than the interplay of remoteness, race politics and lack of appropriate economic investment (Pritchard, 2005; Wesley & MacCallum, 2014).

Resource extraction in Australia predominantly occurs adjacent to Indigenous communities and on Indigenous land and waters (Scambary, 2013) and is often defended in the name of Aboriginal economic development (Neale & Vincent, 2017); especially in the face of devolved responsibilities from the state to mining companies in relation to Indigenous development and service provision (Howlett, Seini, McCallum, & Osborne, 2011). The extractive sector also portrays itself as an economic lifeline for Indigenous communities in terms of employment generation and regional development (Minerals Council of Australia, 2016); a claim seemingly supported by national census data, which suggest that mining activities over the last 20 years had a positive economic effect for both Indigenous and non-Indigenous communities (Hunter, Howlett & Gray, 2015). Yet, while resource-based development undeniably offers benefits to, and opportunities for, society, it also harbours environmental, socio-cultural and economic sustainability risks and challenges (Brueckner et al. 2014a).

Such risks and challenges include the extractive industry's cumulative environmental impacts (Roche & Mudd, 2014), which contribute to the deteriorating state of the country's ecosystems and biodiversity (Australian Government 2017). Also, in

[24] Since 2008, the Australian government has been seeking to address Indigenous disadvantage under the so-called *Closing the Gap* framework, providing Indigenous-specific funding to implement reforms in remote housing, health, early childhood development, jobs and improvements in remote service delivery.

economic terms the sector's activities have been producing mixed results over the years. During the so-called resource 'super cycle' (Tonts, McKenzie, & Plummer 2016) between 2001 and 2013 — caused by historically unparalleled growth in demand and prices for Australian mineral and energy commodities — income growth was largely restricted to people inside the mining sector and related industries (Brueckner, Durey, Pforr, & Mayes, 2014b).

By contrast, other sectors experienced only very modest if any income growth, forcing many people outside mining to absorb not only higher costs of living due to the resources boom (Australian Bureau of Statistics, 2011a) but also reductions in real income. Further, despite record levels of employment in mining during the boom (Australian Bureau of Statistics, 2012) and industry claims of driving Indigenous development (Hooke, 2013), Indigenous employment figures in mining remained subdued, suggesting that many of mining's material benefits did not reach the Traditional Owners whose land was being mined (Dockery, 2014). In this regard, resource extraction in Australia can be seen as the continuation of colonialisation and the intensification of dispossession for Indigenous people (Howlett et al. 2011). Extractivism contributes to the "ongoing exclusion and structural inequities that continue to beset remote Aboriginal communities and their participation in the resource boom" (Brueckner, Durey, Mayes, & Pforr, 2013, 119) and resource extraction more generally.

Today, an increasing number of mining and fracking exploration licences cover a large portion of the Kimberley region (see Figure 8), putting enormous pressure on the region's Native Title Prescribed Body Corporates[25] to negotiate with government and industry. These negotiations also focus on major irrigation and agricultural

[25] The Native Title Act 1993 (Cth) recognises that Aboriginal and Torres Strait Islander people have rights and interests to land and waters according to their traditional law and customs. Under the Act, Native Title groups are required to nominate a Prescribed Body Corporate to hold or manage their Native Title (Kimberley Land Council, 2020). At the time of writing, the Western Australian government is preparing in consultation with stakeholders a management and water allocation plan for surface water and ground water resources in the Fitzroy River catchment, determining future use and management of water from the Fitzroy River acquifers. Planning involves the setting of water resource and management objectives, decisions on how much ground and surface water is available for use and development of a regulatory framework to manage water resources (e.g. licensing rules, policies, performance indicators and monitoring program) (Western Australian Department of Water & Environmental Regulation, 2019).

projects along the *Martuwarra* Fitzroy River which are part of the Western Australian government's Water Allocation and Management Plan. The region is earmarked for commercial water extraction inter alia for irrigation projects referred to here as 'water mining' (Broderick & Horwitz, 2014) as part of major invasive developments that continue to be imposed onto Aboriginal people. These projects are expedited without due consideration of the risks and benefits for the sake of productivity and progress (Kimberley Development Commission, 2018; McDuffie, 2019). In contrast, the Martuwarra Fitzroy River Council's commissioned research champions the need for responsible development to ensure projects are fully explored, thoroughly researched, mitigated, and adapted to local circumstances to operate through a negotiated social licence (RiverOfLife, et al., 2020c); this concept we explore further below in Figure 8.

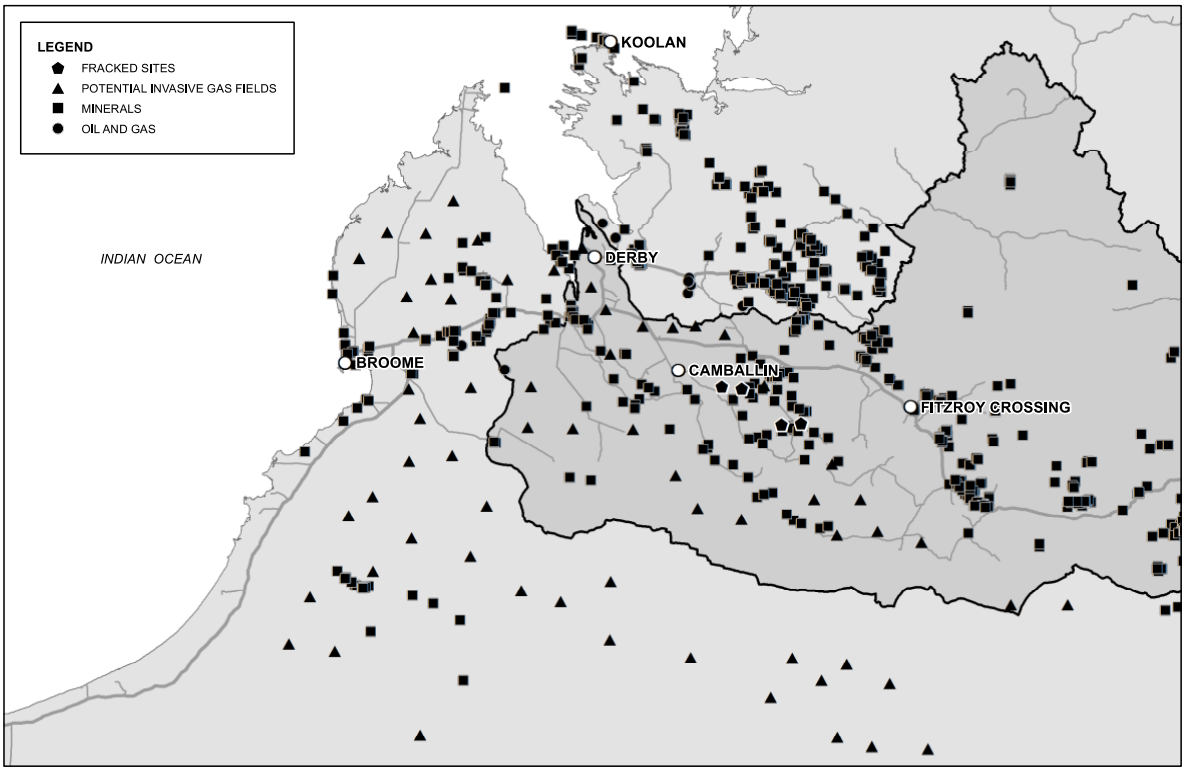

Figure 8: Kimberley Resources Map (adapted from data available at data.wa.gov.au)

9.5 *Social License to Operate*

The social licence to operate (SLO) concept is largely seen as a business construct (Hall, Lacey, Carr-Cornish, & Dowd, 2015) with its origins in the extractives sector in the late 1990s (Bice, Brueckner & Pforr 2017) where it has since gained widespread acceptance (Jenkins, 2018). While the concept has largely remained a metaphorical

device (Bice 2014), over the years the attainment and maintenance of an SLO have become matters of strategic importance to mining companies (Overduin & Moore, 2017) and a recognised tool for enhancing corporate reputation, minimising cost and avoiding project delays (Parsons, Lacey, & Moffat, 2014). An SLO - though numerous definitions exist[26] - is generally understood to be: "the ongoing acceptance and approval of a [project] by local community members and other stakeholders that can affect its profitability" (Moffat & Zhang, 2014, 61). Its attainment is said to provide companies with a legitimate basis for their projects and operations (Black, 2017).

Of interest to this chapter, however, is the way in which communities have begun to employ the SLO construct as a vehicle for asserting their objectives and values (Bice & Moffat, 2014). In light of companies' often transactional approach to SLO concerns (Williams & Walton, 2013), which tends to prioritise social issues mainly as a means of realising business benefits (Owen J., 2016). Communities frequently challenge companies' SLO claims (Brueckner & Eabrasu, 2018) and use the threat of SLO withdrawal from firms' exploration, operation or expansion projects (Bice & Moffat, 2014). Notwithstanding, at the heart of SLO contestations often lies an inattentiveness by companies to the inherent complexities associated with the 'issuance'[27] of SLOs pertaining to due process, informed consent, stakeholder inclusion and power relations (Solomon, Katz, & Lovel, 2008).

As a result, SLO issuance can be at risk due to companies failing to establish trust with stakeholders and to meet the expectations of local communities and/or wider society (Moffat & Zhang, 2014). This situation is particularly problematic for an industry such as the extractives sector, which portrays itself as a "development industry that creates new social possibilities" (Cutifani, 2013, 5). The sector's SLO legitimacy is dependent on more than promises of "bringing new jobs to a region"

[26] While there is general agreement in the literature that SLO broadly speaks to the nature of the relationship a company has with its stakeholders, definitions differ considerably in scope, ranging from narrow to broad SLO conceptions (Joyce &Thomson 2000; Gunningham, Kagan, & Thornton, 2004; Aguilera, Rupp, Williams, & Ganapathi, 2007; Solomon, Katz & Lovel, 2008; Thomson & Boutilier, 2011; Prno & Slocombe, 2012; Owen & Kemp, 2013).

[27] Issuance is an abstraction as SLOs are mostly implied de facto licenses.

(Black, 2017, 19). Instead, it requires an understanding of local contexts, needs and aspirations (Boutilier, 2009, Luke, 2017) as well as perceived social risks associated with industry activities and methods of stakeholder engagement that can address these sensitivities (Agrawal & Gibson, 1999 cited in Owen & Kemp, 2013).

Social risks, or socio-cultural risks, are particularly pertinent to this article for they are at the heart of concerns about development impacts among the Indigenous communities of the *Martuwarra*, Fitzroy River Country. The *Martuwarra* Fitzroy River case highlights the *realexistenz* of threatened human values and social order (after Rosa 1998 cited in Aven & Renn, 2009) as well as customs, spirituality and livelihoods deemed at risk from planned water extraction proposals. Values such as these require protection, yet these protections are rarely afforded by prevailing actuarial licences nor political licences, which intersect and often conflict with SLOs (Bice, et al.,2017).

Actuarial licences are concerned with companies operating lawfully and include permits, approvals, rules of conduct and due process. Ideally, these licences are reflective of social licences, providing legal standing to issues such as public health, safety or environmental concerns. Political licences can be understood on the one hand as a "licence to govern" (Morrison, 2014, 21) and seen as a badge for political legitimacy. On the other hand, a political licence can also take the form of a government granting rights and lending political support to an organisation to carry out a particular activity (Brueckner, et al., 2014b). Ideally the three licence types are in balance (Bice, et al., 2017), working to ensure that the public interest (understood here in terms of welfare (Ho, 2013) is protected.

Tensions exist, however, in each licensing space and between the different licences. Actuarial licensing may prove controversial, for example, due to competing views on regulatory efficacy and equity (Matten & Crane, 2005), while the issuance of both actuarial and political licences can be met with community disapproval and threats of SLO withdrawal. In other situations, actuarial licences, for example, may trump both political and social licences as independent assessments by statutory bodies can run counter to both political and/or social interests.

In Western Australia, there is a rich history of industry-community conflicts that speak to the complex interplay between the different licences and the various political actors that mobilise them. For example, tensions surrounding resource development projects such as liquified natural gas processing or unconventional gas development (Wesley & Maccallum, 2014; Luke, Brueckner, & Emmanouil, 2018) have erupted over the years in situations where SLOs have been contested and found in conflict with political and actuarial licences. In these instances, the state government's economic agenda was seen to have effectively outweighed community opposition to the various extractive projects, privileging the government's political licence and overriding perceived social risks that prevailing actuarial licences[28] were unable to safeguard against (Brueckner et al., 2014b).

In a similar vein, research into current water mining proposals for the Kimberley region suggests that these are premised merely on an economic legitimacy, promising to assist with the economic development of Western Australia's North and thus aligning well with the state government's own development agenda (Connor, et al, 2019). Indeed, the current government discourse touts northern Australia as the next "great food bowl" with thousands of hectares in the Fitzroy River basin identified as potentially suitable for irrigated agricultural crops (CSIRO, 2018). However, economic assumptions underpinning these water extraction proposals are found to be overly optimistic, with closer analysis revealing a strong likelihood of negative public investment returns, especially when the range of commonly unaccounted environmental public good externalities of water mining are considered (Connor, et al., 2019).

Overall, there is community concern that the 'mining' of the Martuwarra Fitzroy River and surrounding areas will proceed on the basis of assessments by industry that – akin to the Ord River (Western Australia) and the Murray-Darling Basin (Queensland, New South Wales, Australian Capital Territory, Victoria and South Australia) (Adamson, 2013, Molinari, 2016) – will over-estimate the benefits and under-estimate the costs of orthodox development. In socio-cultural terms, proposed

[28] Chandler (2014) questions the effectiveness of Western Australia's regulatory framework and its ability to balance adequately economic social and environmental concerns, seeing political barriers and powerful industry interests as key impediments to its effective functioning.

water extraction is seen as a threat to local Indigenous-based cultures (RiverOfLife, et al., 2020c), running counter to water based customary law activities, spiritual affiliations, beliefs and rituals (Toussaint, 2008).

There is also concern about the yet poorly understood future climate change impacts on the region's aquatic systems and broader environment (Jakob, Imielska, Charles, Fu, Frederiksen, C., Frederiksen, J., Zidikheri, Hope, Keay, Ganter, Li, Phatak, Palmer, Wormworth, McBride, Dare, Lavender, Abbs, Rotstayn, Rafter, Lau, & Bates, 2012; Australian Department of Water & Environmental Regulation, 2020; Australian Department of Primary Industries & Regional Development, 2020). As these future impacts are prone to be exacerbated by development, a holistic approach to water allocation and management is *sine qua non* so as to avoid adverse socio-cultural and environmental legacies from water mining (Gadgil, Berkes, & Folke 1993; Reyes-García & Benyei 2019).[29]

It is these broader socio-cultural and ecological trade-offs of orthodox development that the *Martuwarra* Fitzroy River Traditional Owners speak to (RiverOfLife, et al., 2020c). They raise concerns over the likely negative impacts of development projects earmarked for the region and urging due regard for the impacts of such developments on Indigenous peoples' native title rights, interests and authority over water, land, natural and cultural resources.[30]. A particular fear is the seeming alignment between industry's commercial interests and the state's development ambitions, as this risk producing a Water Allocation and Management Plan that effectively overrides what Martuwarra Fitzroy River communities see to be in their public interest; in other words, a de facto and de jure trumping of social licence concerns by way of political and actuarial licences. Traditional Owners see their concerns validated in the

[29] We recognise the efforts in areas such as conservation science (e.g. Gadgil, Berkes, & Folke 1993; Reyes-García & Benyei 2019) and impact assessment (O'Faircheallaigh, 2009; Bond et al., 2018) to draw on, and involve Indigenous knowledge and values. We contend, however, that while the marriage between Indigenous knowledge and western science is well theorised (see, for example, Salomon et al., 2018; Vanclay, 2020), in practice these fields still "carry a legacy of colonial constructs and relationships" (Mulrennan & Bussières 2020, 283) and remain closed to the ontological messiness required to see the world from different vantage points (Finn & Jackson, 2011; Barbour & Schlesinger, 2012; Awume, 2018; Roche et al., In Press).

[30] There are currently no requirements for either a cumulative impacts or social impact assessment in the context of water planning and the issuing of water licences for water resource extraction in the state (R*ights in Water Irrigation Act 1914* (WA)). We understand the Act is currently being reviewed with consideration given to requirements for cumulative impact assessment with the burden of proof resting with developers.

government's pro-industry stance is evident in the recently unveiled Pastoral Lands Reform package. This land reform seeks to provide better opportunities to pastoralists across Western Australia through a suite of measures designed to enhance land management and improve security of tenure (Aboriginal Policy & Coordination Unit 2018).

There are currently no requirements for either a cumulative impacts or social impact assessment in the context of water planning and the issuing of water licenses for water resource extraction in Western Australia (*Rights in Water Irrigation Act 1914* (WA); Western Australian Department of Water and Environmental Regulations, 2019). We understand the outdated Act of 1914 is currently being reviewed and reformed. Consideration is being made towards including a cumulative impact assessment where the burden of proof will rest with the developers.

While mandated consultation processes with the region's Traditional Owners give the impression that due process is being followed and that actuarial licencing conditions are being met, community-derived data reveals a schism between Indigenous and non-Indigenous value systems pertaining to the *Martuwarra* Fitzroy River (RiverOfLife, et al., 2020e). This division points to an incommensurability between the orthodox colonial development paradigm that views the river system as an underutilised resource, effectively an irrigation channel. Whereas local understandings of, and connections with, the River that regard it as ontological anchor view the water as fully utilised for the maintenance of vital ecological and cultural values. Pastoralists and irrigators feel that 99 per cent of the *Martuwarra* Fitzroy River's floodwater is wasted because it flows into the Indian Ocean (Courtney, 2019), whereas Traditional Owners see the River in its wider relationship feeding the surrounding environment. To this end, Traditional Owners regard the 'River as a living ancestral being with a right to life' (RiverOfLife, et al., 2020e). This paradigmatic and ontological mismatch, evidenced by different ideas about water availability, abundance and normative water consumption values (Kimberley Water Resources Development Office, 1993), raises questions about the social licence of extraction-led development and for whose benefit development occurs.

Overall, *Martuwarra* Fitzroy River Council and communities are concerned that proposed water extraction plans hold little promise of protecting the largest registered

Aboriginal Heritage site No. 12687 in Western Australia, the Martuwarra Fitzroy River; that these types of development neither serve local or national interests when examined holistically, and risk perpetuating adverse socio-cultural and ecological legacies for local Indigenous peoples (RiverOfLife, Poelina & Taylor, 2020g). In what follows, we seek to redefine within the Fitzroy River context the greater good and to articulate – using the social licence concept as a lens to critique water mining proposals – just development alternatives for the region without the ecological and cultural trade-offs that typically come with orthodox development.

9.6 *A Case Study of the Martuwarra Fitzroy River Council for Just Development*

> We are not saying we are anti-development. All we are saying is be careful with the decision you make (McLarty cited in Poelina, et al., (In Press)

Since colonisation, Kimberley Aboriginal people have been intent on making their voices heard through the inter-generational transmission of oral stories (Langdon, 2009), their engagement in land rights struggles (Wergin, 2016) and their determination to be involved in all discussions relating to development on their *Martuwarra* Country. These dialogic attempts have been both public and private, engaging at times with individual members of settler society, and at other times with government institutions at large. They have taken the shape of letters, petitions, meetings, committees and inquiries, witness statements, life narratives, and later on, autobiographies and films, and have been consistent in their presence through time and space (Van Toorn, 2001). The importance of speaking the *Martuwarra* Fitzroy River Traditional Owners worldview into existence, of educating non-Aboriginal people about Country, of seeing, naming, living on, and sharing Country, of place-making – envisaging all spatio-temporal interactions as being based in *Booroo* (Country) – forms the basis of their aspirations for development on Country (McDuffie, 2019).

Blaser (2004, 29-31) argues that place-basedness, or local place specificity, is a significant concept for Indigenous peoples across the world, which is often systematically ignored for more universal development models (McDuffie 2019). Contemporary socio-economic constructs view places as singular “assets” to be used up and abandoned as ruins once their productivity has run out (Tsing 2011). Placeless multinationals exploit resources in foreign spaces, leaving the people who inhabit

these places to deal with the cumulative impacts of rushed, invasive, short-term projects. Just development alternatives are therefore seen to reclaim a sense of identity that is grounded in place (McDuffie 2019).

Community development initiatives have been underpinned by a strong belief in maintaining and protecting Country, language, people's wellbeing, and preserving culture and identity, through a consultative and holistic approach to regional development (McDuffie 2019, 226). Aboriginal aspirations for alternative types of development take into account economic, social, cultural health and wellbeing considerations such as hybrid economies (Altman, 2005) and hybrid businesses. They advocate Indigenous social inclusion through economic participation while also serving vital environmental and socio-cultural functions (Brueckner, Spencer, Wise, & Marika, 2014c). Unfortunately, such approaches are often dismissed by governments and industries alike in favour of orthodox extractivism (McDuffie 2019).

The reductionist nature of government approaches and their weddedness to the ideals of the market economy continue to disadvantage Aboriginal people. Native Title negotiations with the resource industries, and the CDP (Community Development Program) have done little to increase the participation of Aboriginal communities in the economy and the labour market. Ever-changing government policies, rationalisation (Scott, 1998), and the mainstreaming of Aboriginal affairs (Sullivan 2011) continue to fragment service delivery and fail Kimberley Aboriginal people through another form of assimilation, failing to consider them as distinctive members of the Australian polity (McDuffie 2019, 271).

As argued by Amartya Sen (1999, 14, 70), key markers of successful development should go beyond wealth accumulation, gross national product or income statistics. Development should be also be concerned with enhancing lives and freedoms Amartya Sen (1999, 14) both "as the primary end of development but also as the principal means of it" Amartya Sen (1999, 36). Different people hold different opinions on what they consider to be "a life of value" Amartya Sen (1999, 68, 75, 87), and therefore should be actively participating in the decision-making processes that influence their lives Amartya Sen (1999, 242) and have the freedom to choose what they consider to be important to them.

Instead, governments have mostly tended to view the general population as a homogenous mass sharing similar life aspirations, or have imposed similar programs, services, or development strategies on culturally distinct peoples in a diversity of places (Bulloch & Fogarty, 2016); for the greater good. Indigenous peoples across the world have seen their cosmologies being denied a right of existence through the imposition of the dominant settler society's values and have lacked the opportunities to achieve the outcomes they have reason to value in their own lives (Sen, 1999, 291). Rather than reinforcing a dichotomy between the 'traditional' and the 'modern', a way forward may reside, not solely in the maintenance of "old ways of living" but rather in the development of a new "way of seeing" the world, neither old nor new, a multi-layered, place-based perception of the world - a counter-discourse to universalism (Blaser 2004, 28).

Cultural actions (Poelina 2009) put in place in the Kimberley region, as part of a sustainable, culture-conservation economy, are an important part of what Blaser (2004, 34-36) calls "life projects"– more than mere acts of resistance to development, they are a way for Indigenous people to live a life of purpose and value. In the Kimberley, these projects have ranged from micro-industries in remote communities, pastoralism, cultural tourism, the development of cultural centres, to youth training on Country, book publishing, scientific research collaborations, traditional ecological knowledge research, language programs, and ranger programs (McDuffie 2019). These "life projects" strengthen relationships within community, local governance, and promote increased engagement with employment and education services (Morrison, 2014, 13).

Programs such as the Yiriman Ranger Project enable young people to reconnect with their identity, build their resilience, and spend valuable time with family and community (Palmer, 2016, 1; Pilbara & Kimberley Aboriginal Media, McDuffie, & Dixon, 2018). Nationally, the positive impacts of *Caring for Country* initiatives on the physical and mental health of Aboriginal people, and on the ongoing conservation of highly bio-diverse landscapes, have been demonstrated through many studies (Weir, Stacey & Youngetob, 2011; Altman & Kerins, 2012). In the *Martuwarra* Fitzroy River Country 'Place' (*Booroo*) continues to be celebrated, respected, and loved by Traditional Owners. In the lives of Traditional Owners, the Martuwarra will forever

remain a life project: the centre of all social, economic, cultural, spiritual, educational and political interactions (McDuffie 2019).

Over the years, *Martuwarra* Traditional Owners have continued to engage in consultative groups set up to discuss potential developments on, or the protection of, the *Martuwarra*, such as the Our Place Our Future conference, organised by the KLC in 1998, the *Kimberley Appropriate Economies Roundtable* in 2005 (Hill, 2006), or the Fitzroy River Catchment Group (FitzCAM), created in 2007. The Martuwarra Traditional Owners' continued determination to have agency in all future development plans for the region is also demonstrated in the *Walalakoo Healthy Country Plan* (2007-2027), (Walalakoo Aboriginal Corporation RNTBC 2017). Indigenous leaders have also consistently demonstrated their entrepreneurship and business-mindedness, implementing cultural actions and life projects in their communities (Poelina 2009; Poelina, Perdrisat, I., McDuffie, B., & McDuffie, M, 2008; Poelina, McDuffie & Pandanus Park, 2016).

In 2018, *Martuwarra* people, comprising six Aboriginal nations along the Fitzroy River, formed an alliance to establish the *Martuwarra* Fitzroy River Council (Martuwarra Council), in response to what they see as the new wave of colonisation; miners, agriculturalists, and irrigators, eyeing the region. Traditional Owners have adopted a collective united position; "One Mind and One Voice" to be included in decision-making processes, with Free, Prior, and Informed Consent (FPIC) (Poelina, et al, 2019). International covenants and obligations consider FPIC a specific right that pertains to Indigenous peoples under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007; Ward, 2011), relating to just development on Indigenous people's lands and waters. It allows Traditional Owners to issue or withhold a social licence to a project that may affect them or their territories and enables them to negotiate the conditions under which the project will be designed, implemented, monitored and evaluated.

Since the formation of the Martuwarra Council, Traditional Owners from the *Martuwarra* have strengthened their capacity for collaborative planning between government, Native Title holders and industry (Laborde & Jackson, 2018). The Martuwarra Council position of standing, 'One Mind and One Voice', encapsulates their collective guardianship responsibility and authority to protect the *Martuwarr*a's

right to continue to flow as a living entity for generations to come (Poelina, 2020b). Traditional Owners are concerned about the extent to which Aboriginal voices will be heard, or whether the impositions of the last 150 years will continue unabatedly under ever-renewing colonisers. The quote below exemplifies the concerns of *Martuwarra* people:

> We are highly dependent as Traditional Owners on the Fitzroy River as a food source, as a way of connecting with our Native Title, importantly how the river and living on Country is therapeutic and that there is a sense it's a healing. One of the things we want to be very clear about is understanding that there is lots of other forms of value other than economic development and extraction of water for somebody else from somewhere else. As the old people are saying: no river, no people. No people, no life. (Poelina cited in , Poelina & McDuffie., 2020b)

In June 2018, the Martuwarra Council called on the Western Australian government to take a science-based approach to water allocation in the Fitzroy River basin. Council representatives met with the heads of three government departments to promote a more coordinated approach to water management, at a time when pastoralists in the region, led by mining magnate and station owner Gina Rinehart, began lobbying for greater access to the *Martuwarra* for irrigation purposes (Wahlquist, 2019). The Western Australian government's Water Allocation Planning earmarked for the *Martuwarra* separates people, land, water, plants and animals into distinct assets, and assigns rights to multiple interests, such as pastoralists, irrigators and miners, to use and develop water, land and environmental resources through separate legal processes and instruments. In theory, these licences and leases are meant to be issued to those who can generate the most prosperity and wellbeing to the community by way of their enterprise. Extractive water rights are one of these legal instruments.

The Martuwarra Council over the past 12 months has engaged in a wide range of workshops, meetings and partnerships to produce two peer reviewed published reports; firstly, *Martuwarra Country a Historical Perspective* (1838-Present), (RiverOfLife et al.2020a) and *A Conservation and Management Plan for the National Heritage Listed Fitzroy River Catchment Estate*, (RiverOfLife et al., 2020c). Both

reports demonstrate the need to for governments to invest in a statement of commitment in their engagement with Indigenous Western Australians, and to decolonise policies, laws, regulation, and management towards an inclusive earth-centred regional governance approach. The 15 Position Statements identified in the Martuwarra Council's Conservation and Management Plan justify the need to develop a Fitzroy Catchment Management Authority to guide the development, management and regulation of water extraction in the Fitzroy River Catchment for the greater good of all (Poelina, 2020a).

In this context, the Martuwarra Council has requested a cumulative impact assessment of current and proposed development around water use and or drawdown within the Fitzroy River Catchment. Furthermore, the Martuwarra Council have requested a social impact assessment that is designed to guide the planning and mitigate the impacts of the proposed Fitzroy River Management Plan and Fitzroy Catchment Water Allocation Plan. As part of the right of Traditional Owners to FPIC, the Martuwarra Council has asked the Western Australian government to undertake these assessments prior to the release of the Fitzroy River Management Plan and Fitzroy Catchment Water Allocation Plan.

At the time of writing, there were several national and senate inquiries into multiple forms of legislation which directly affect the wellbeing of Indigenous peoples in the Martuwarra. We have referred to them briefly as the information was published by the Martuwarra Council.

The first inquiry came about through the global attention emanating from the National Inquiry into the destruction of the Western Australian 46,000-year-old Juukan Gorge Caves. Initial findings reveal the politics of economics legitimise the failure to protect the evidence of the first form of human thought from destruction. This has been described as '*incremental genocide'* by Indigenous Senator Patrick Dodson (Michelmore, 2020). The intent of this inquiry is to make sure processes are put in place to prevent such destruction from ever happening again. With the Martuwarra Fitzroy River being the largest recorded Registered Aboriginal Heritage site in Western Australia, the Martuwarra Council's public submission makes the case that the political goodwill of governments is needed to protect the River. Not only as an

Aboriginal and National Heritage listed River, but also as a global asset under World Heritage protection for generations to come (RiverOfLife, et al., 2020g).

The second public inquiry, which closed on October 9th, presented the Martuwarra Council with the opportunity to make a submission for the review of the outdated Western Australian Aboriginal Heritage Act (1972) (RiverOfLife, Poelina, & Taylor, 2020h) The Martuwarra Council along with many traditional owners, scientists, and legal experts, remain concerned that the Western Australian government appears to be fast-tracking a Review of the Aboriginal Cultural Heritage Bill prematurely, before the Juukan Gorge Inquiry is finalised in December 2020. The Martuwarra Council is calling for Reform, not just a Review of the Bill. Despite calls for additional time, and an overwhelming number of public submissions still to be registered with the Western Australian Department of Planning, Land and Heritage, the Minister for Indigenous Affairs believes there has been sufficient time and consultation and is looking to enact the Bill prior to the next state elections in March 2021 (Michelmore, 2020).

The Martuwarra Council advocates for the political goodwill and research investment required to ensure the concept of 'Just Development' is based on Indigenous First Law. First Law incorporates Indigenous Lifeways and Livelihoods coupled with Western science and actioned through genuine FPIC, as identified in the Kimberley Science and Conservation Strategy (Government of Western Australia, 2011). When First Law is applied to the present and future development planning in the Kimberley region it is important to recognise that the following questions from the Martuwarra Council need to be fully explored from a social licence perspective:

- Who and what counts and is counted?
- How are values assigned?
- How do relationships between people and the 'natural' world work to produce value?
- How are existing values of the riverine system understood and measured?
- Whose laws and values matter?
- What impacts and risks are accurately predicted and deemed acceptable?
- Who gets to decide? And what kind of 'evidence' is weighed up in the decision-making process?
- How and where are decisions made?

- Whose visions of the future are being pursued?

Ultimately Traditional Owners concerns are about property rights, power and values in regard to deeply different ontologies and epistemologies. At the time of publication, the Martuwarra Council await further engagement and negotiations with the WA government commitment to working cooperatively with the Martuwarra Council in the ongoing development and implementation of the Fitzroy River Management Plan and Fitzroy Catchment Water Allocation Plan. Time will tell whether positive socio-cultural and environmental legacies for the *Martuwarra* Fitzroy River region will eventuate.

9.7 *Conclusion*

The violent history of colonial invasion and occupation of the *Martuwarra* Fitzroy River Country has morphed from extreme physical violence into endemic structural violence (Galtung 1969). The consequence is the ongoing subjugation of Kimberley Aboriginal people in the name of wealth creation for private and foreign interests at great cultural and ecological expense. Notwithstanding, *Martuwarra* Traditional Owners are surviving and building their capacity to decolonise through co-operation, unity, cultural synthesis, and organisation (Freire, 1970). The Martuwarra Council provides a model for Indigenous-led regional cultural water governance, advocating decolonising the Catchment by promoting new and emerging economies. The Council is championing decolonising the Fitzroy Catchment by promoting new economies that demonstrate that 'just forms of northern development' are not only possible but also vital in the context of climate change, water scarcity, food security and their impacts on people, communities and businesses within the *Martuwarra*, Fitzroy River Catchment/Estate.

The *Martuwarra* Council research and planning reports affirms there is a strong sentiment that the entire Catchment needs to be protected including the King Sound from irrigation, mining and gas development. The *Martuwarra* Council is eager to continue discussions with the government on water planning, allocation and River protection. It is important to note consultation does not mean consent. Through the Martuwarra Council they will ensure Traditional Owner decisions are grounded in Free Prior and Informed Consent. At the present time, Traditional Owners are

concerned government may use the COVID 19 Pandemic and the current economic downturn brought on by the pandemic as a pretext for fast-tracking resource development projects.

Resource development advocates are increasing pressure on government to weaken cultural and economic policy and scientific research in a bid to promote their view of a resource-led economic recovery (Anon 2020). Industry-led development would effectively limit the scope for community-sanctioned water allocation processes and perpetuate marginalisation processes. The time has come for structural reform and systemic change in the way development strategies are devised and implemented in remote Australia. Orthodox development cannot proceed as 'business as usual' at the regional, national, and global levels. Economic development in the West Kimberley region, particularly in regard to 'water resource' development of the *Martuwarra*, Fitzroy River Catchment, requires the involvement of Traditional Owners.

Genuine partnerships, involving government, industry and Traditional Owners, are necessary to ensure a) the sustainable management of water resources and b) dedicated government investment is committed into Traditional Owner-determined economies, to ensure equitable distribution of wealth creation from diverse 'new and forever' industries and economies. It is only then that development can be considered a form of moral progress. The justification for imposed resource extraction from the region to more populated centres has been touted as being "for the greater good". The notion of the greater good needs to be expanded to include Traditional Owners. Furthermore, there needs to be greater recognition of the enduring First Law of guardianship and authority of *Martuwarra* Traditional Owners of these natural assets.

These natural assets are located on the estates that Traditional Owners have managed from the beginning of time through to today. In this time of climate change and global economic, human, social, cultural, and environmental uncertainty[31], there is an opportunity to redefine the moral compass of development, by introducing the concept of a 'social license' into water planning. Sustainable water management

[31] Indigenous land management is recognised for maintaining the world's highest biodiversity values, underscoring that collaboration with Indigenous land stewards is essential in ensuring that species and ecosystems survive and thrive (IPBES, 2018).

requires holistic applied research to ensure Indigenous economies and values are included in the 'greater good of all'. It is time to decolonise development and shift the paradigm shift towards *just development on just terms.*

9.8 *Chapter 9 Summary*

Indigenous earth-centric ecological values and ethics of care and love have created a deep spiritual relationship between people with all that is within the biosphere, where plants and animals, rivers and land are considered to be family. The authors applied a social licence lens in Chapter 9 to consider the notion of the greater good in regard to who benefits from mining, fracking and water extraction policies and at whose cost. Traditional Owners remain excluded from decisions regarding resource development on their ancestorial lands. Chapter 10 explores Indigenous cultural heritage through an earth-centred regional governance approach to create new sustainable economies to transition to justice, freedom, and hope.

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10 CHAPTER TEN: Coalition of Hope

A Coalition of Hope: A Regional Governance Approach to Indigenous Australian Cultural Wellbeing

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10.1 *Preface*

The chapter brings together and applies the arguments developed in the thesis and is structured as follows. First, is the opportunity to watch my final film. The film presentation was given as part of my keynote speech for CSIRO titled; *Mardoowarra River, Always Was, Always Will Be*! (11th, November 2020). The film is a compilation of several short stories. It starts with the voice of senior Nyikina Elder Paddy Roe, *Our law is from Bookarrarra, from the beginning of time, we try to explain these things to them but they don't know what we are talking about…our law is different, different altogether than white man's law*. Paddy is emphasising the need to have the philosophical world view that all life is precious.

First Law is the principal way stories from the beginning of time through to contemporary life, provide the values and ethics as key principles for framing co-existence and equity between human and non-human relatives and relationships. The film moves towards the need to value and protect the Martuwarra. The conclusion of the film is a poem I wrote narrated as the voice of Yoongoorookoo 'Singing' as E travels across the land, closing the film with the words, "*rivers have a right to live and flow*", making the point that as humans if want to survive, we must ensure our living waters are maintained and sustained as they are vital links for humanity and our multispecies justice and survival.

Secondly, we move from the film and I introduce my position as an Indigenous person and our experience as colonised Indigenous Australians. The reader is introduced to the Fitzroy River and the Rainbow Snake as a universal Indigenous Australian representative at all our meetings of water management. The sacred ancestral being is a central theme that links people and places throughout the regions and to the Australian continent.

The methodology captures the importance of stories as an Indigenous research method for the insider researcher. The intention is to showcase the lived experiences of Aboriginal people and links the cultural authority of Indigenous regional governance in a context for how Indigenous people are strengthening their capacity in these modern times. The theoretical framework identifies the characteristics of the pedagogy of oppression through the work of Paulo Freire and makes the shift towards a pedagogy of hope and freedom (1970).

These characteristics are explored through the journey of colonisation and oppression for Kimberley Indigenous people to illuminate resilience in transition. In the section on the Fitzroy River Water Planning and Management we learn how these Indigenous people are impacted by global climate change and how they are learning from the experiences of fellow Indigenous Australians confronted with the national disaster of the Murray Darling Basin. I make the case for decolonising through an earth-centred regional governance approach. This approach is focused on cultural wellbeing, resilience and what is required to make the transition to justice, freedom and hope.

Key words: Cultural Governance, Hope, Wellbeing, Freedom

10.1.1 Recognising country in relationships with people

The reader is encouraged to access the link to the film to listen with your eyes and see with your ears. The intent is to create the link between the readers', body, mind and liyan (spirit). The final film before the conclusion captures the entire journey of the insider research and the actions, she has undertaken to strengthen the conclusion not only in this chapter but to the entire research process, impacts and outcomes. Through this reciprocal exchange the intent is a gift to experience the recognition of living country and living waters and this relationship with and for ALL people. The intent of the insider researcher is to move the examination of this story from intellectual to 'feeling' the meaning whilst reading and examining the chapter.

10.2 *See Film*

Citation: Poelina, A. & McDuffie, M. (2020e). Mardoowarra River, Always Was, Always Will Be (2020), Retrieved from: https://vimeo.com/478315975/006c07e861

Film Link: Mardoowarra River, Always Was, Always Will Be (2020), Retrieved from: https://vimeo.com/478315975/006c07e861

10.3 *Introduction*

The Rainbow Snake is a universal Indigenous Australian living creature responsible for the creation and protection of waterways. Countless generations of traditional owners have cared for the sacred ancestral being it is a spiritual guardian. The ancient creation songs and stories shared across the continent create meaning and purpose for our collective responsibility in managing the health and survival of the rivers, wetlands, springs, billabongs, floodplains and soaks.

This chapter presents an *insider* view about how to promote remote Aboriginal people's wellbeing through a co-operative regional earth-centred governance model. The story reveals a powerful policy and investment approach to the planning and development of regional governance and showcases the unique cultural and environmental values of the Fitzroy River, and its Indigenous people as having local, national and international significance. The central theme is the responsibility of Indigenous leaders to facilitate knowledge building, which requires sharing a deeper understanding of continuing colonisation and the collective responsibility, as Australians, for managing water.

The chapter is structured as follows. First, I introduce my position as an Indigenous person and our experience as colonised Indigenous Australians. The reader is introduced to the Fitzroy River and the Rainbow Snake as a universal Indigenous Australian representative at all our meetings of water management. The sacred ancestral being is a central theme that links people and places throughout the region and to the Australian continent. The methodology captures the importance of stories as an Indigenous research method for the insider researcher. The intention is to showcase the lived experiences of Aboriginal people and links the cultural authority of Indigenous regional governance in a context for how Indigenous people are strengthening their capacity in these modern times.

The theoretical framework below identifies the characteristics of the pedagogy of oppression through the work of Paulo Freire and makes the shift towards a pedagogy of hope and freedom (1970). These characteristics are explored through the journey of colonisation and oppression for Kimberley Indigenous people to illuminate resilience

in transition. In the section on the Fitzroy River Water Planning and Management, we learn how these Indigenous people are impacted by global climate change and how they are learning from the experiences of fellow Indigenous Australians confronted with the national disaster of the Murray Darling Basin. The author makes the case for decolonising through an earth-centred regional governance approach. This approach is focused on cultural wellbeing, resilience and what is required to make the transition to justice, freedom and hope.

Ngayoo Yimardoowarra marnin in my Indigenous language Nyikina means I am a woman who belongs to the Mardoowarra. This centres my responsibility as a guardian of the Martuwarra in the West Kimberley region in remote north-western Australia. Martuwarra (or Mardoowarra in Nyikina) is the generic name for the Fitzroy River in several of the Indigenous languages in the region (Pannell, 2009). The words 'Aboriginal' and 'Indigenous' are used interchangeably here to describe the original people of the Australian mainland. Throughout this chapter, I highlight the ongoing colonisation of the original Australians in north-western Australia. The colonial story of invasion and occupation of the Fitzroy River 'country and peoples were violent and brutal. It resulted in the subjugation and slavery of Kimberley Aboriginal people. Invasion was defined as development: the colonial states were established to create wealth for private and foreign interests at the expense of Indigenous people, our lands and waters' (Poelina, 2016). Despite the racist laws, policies and continuing violence perpetrated against the original Australians, we have survived.

The Kimberley is a large remote region with a unique mix of people, histories, landscape and development located in the north-western corner of Western Australia (Western Australian Department of Regional Development, 2014; Kimberley Development Commission, 2018; Pepper & Keogh, 2014.) Water management is the central theme that has always linked people and places throughout the region and with other regions. The Rainbow Snake is a universal Indigenous Australian representation of water. Stories from all over Australia tell of how the Rainbow Snake went up in the sky and down in the ground to carve river valleys and gorges, billabongs, soaks, springs, floodplains and aquifers (Poelina & McDuffie, 2017). As an insider, I know that these ancient stories and songs explain the inter-relationship between surface and

groundwater and how water is connected within each region and through a network of catchments and basins on a continental scale.

The unique cultural and environmental values of the river are of local, national and international significance. The five distinct representations of the Rainbow Serpent are listed in both the National Heritage and Aboriginal Heritage Lists (Australian Heritage Council, 2011; Pannell, 2009; *Aboriginal Heritage Act 1972* (WA)). In listing the Fitzroy River for National Heritage status, traditional owners documented their cultural values and beliefs particularly regarding the river's *right to life*. The evidence demonstrates why their sacred ancestral being, the Martuwarra, must be protected (Pannell, 2009).

Right now, it is the guardianship responsibility of the Traditional Owners, as it has been for countless generations, to protect the survival of the Fitzroy River for current and future generations (Lim, et al., 2017). As a sacred living entity, the Fitzroy River can teach others about reciprocal bonds between human and non-human life forces. These values and ethics can promote health in its holistic context by fostering a deep relationship between human and non-human beings (Lim et al., 2017; Poelina & Nordensvärd, 2018; Taylor, Moggridge & Poelina, 2017). In a time when climate change is quickly spiralling into *climate chaos*, we need to revalue water as a precious and rare commodity. There is an urgent need to change from the current development models if we are to give humanity, non-human beings and our planet earth a *climate chance* (Borland & Lindgreen, 2013). An earth-centred governance prioritises the health of the land and water above all and sets cautious limits to extraction and invasive development (Graham & Maloney, 2019).

The Martuwarra Fitzroy River Council (MFRC) is the contemporary regional model for consolidating the independent Indigenous nations' shared values and joint responsibility for managing the national heritage values of the river. It has the potential to create a transition to diverse economies, sustainable communities and culturally enriching livelihoods (CENRM, 2010; Pascoe, 2014).

At the same time, it is necessary to keep an eye on potential cumulative impacts from extractive development to ensure they don't impact negatively on the environmental and human rights of current and future citizens (Brueckner et al., 2014b; Burdon,

2014; Watson, 2017). Managing this requires careful dialogue. This global perspective illuminates the experience of invasion and colonisation that Indigenous Australians share with other Indigenous people across the world. There are similarities in the colonial processes used; however, the outcomes of these experiences are unique to each location. My research seeks to reframe the dominant colonial experience in Australia from a colonised insider position. It focuses on the Kimberley region of West Australia as an example of the ongoing colonisation of original Australians (Poelina, 2016).

The process and outcome of creating dialogue for building hope and the capacity to reach our full potential as Indigenous peoples is a process and outcome of decolonising (Smith, 1999). Decolonising requires dialogic action based on mutual respect involving open and honest dialogue (Freire, 1970); mutual respect that includes open and honest dialogue, action and critical reflection (Poelina, 2009, 2017b; Poelina, Taylor, & Perdrisat, 2019). In the Kimberley, as elsewhere in Australia, Indigenous people's identity is grounded in their cultural relationship with their environment and with each other. Aboriginal people in the Kimberley generally identify with one or more of four landscapes: the sea, river, desert and hill country (KALACC, 2017). This knowledge building and adaptation is promoted through an ethic of caring for diverse cultural landscapes through people who have a deep respect for the earth. This Indigenous Australian story presents a new way of approaching knowledge-building and adaptive water management to promote Aboriginal people's wellbeing through a co-operative regional earth-centred governance model. Through this learning with others, we are building knowledge to reform legal practice and this requires new ways of thinking and critical reflection (Graham & Maloney, 2019).

10.4 *Method: Indigenous Insider Researcher*

10.4.1 All About Stories

Martin and Mirraboopa emphasise if research is to serve Aboriginal people, it must centralise the core structures of Aboriginal ontology (Martin & Mirraboopa, 2009). Through collaboration with Indigenous members of the MFRC, Kovach claims that the conversational method fits in with Indigenous worldviews and involves dialogic participation in which people share their stories with the purpose of helping others—a deeply relational process. Oral stories, used to transmit knowledge, enable people to

observe and maintain community traditions while contributing to innovative research (Kovach, 2010).

Wilson, in crafting the definition of an Indigenous methodology, emphasises the concept of relational accountability, in which researchers consider all relationships while doing research, with the obligation to fulfil responsibilities to the world around us (Wilson, 2020). Similarly, Lambert argues that Indigenous methodologies are steeped in the relationships between the researcher, community members and the evidence being gathered, making our collaboration as researchers account- able to both the community and the information we build and gather together. This must do justice to, and be respectful of, all involved in sharing and analysing knowledge since as insiders we have been entrusted with it (Lambert, 2011). Important to generating new knowledge is the question of how the information informs policy and then, in turn, influences investment to transform the lives of Indigenous Australians.

10.4.2 Inside the Kimberley

As already noted, the Kimberley is a vast remote wilderness region in the remote north-western corner of Australia. Within this region, the culture, society and politics of historical groups are formed around four distinct interrelated landscapes from which diverse cultural groups share kinship, ceremonies, knowledge-making and practice. My identity is formed by the ancient and contemporary stories of my family's relationship with the Fitzroy River.

Following an academic career in capital cities and regional centres in Indigenous health, education and development, I returned to focus on my homelands in the Kimberley. Throughout the past 20 years, my role as an Indigenous leader in the Kimberley region has focused on promoting Indigenous human rights and environmental justice. My capacity as an Indigenous community leader, academic researcher and cultural and environmental advocate provides me with a unique *insider* perspective. As Deputy Chair of the Walalakoo Registered Native Title Body Corporate (RNTBC), I am jointly responsible, in collaboration with other Nyikina and Mangala leaders, for managing 27,000 square kilometres of our people's lands and waters (Walalakoo Aboriginal Corporation, 2017; Watson et al., 2011).

My view is further informed through my role as Chair of the MFRC. The MFRC is a federation of six Registered Native Title Body Corporations and registered claimants with traditional land tenure and title along the river. The WAC and the MFRC have mandates for traditional custodianship of the Fitzroy River. The WAC represents Nyikina and Mangala Native Title traditional owners who have responsibility for 40% of the river (Poelina, Taylor, & Perdrisat , 2019).

The Fitzroy River Declaration and the MFRC are specific examples of the earth-centred approach. The approach values the river as the connection between the health and wellbeing of its diverse Indigenous peoples. Through our continuing guardianship and cultural governance of the river, we are strengthening earth-centred policymaking towards a decolonising future as an example of better practice for the rest of the country and globally. First Law promotes an earth-centred Indigenous governance approach to Environmental Law and the Rights of Nature (Lim et al., 2017). The Declaration is a regional earth-centred governance approach to decolonising Native Title lands and waters (Graham & Maloney, 2019; KALACC, 2017).

I wholly concur with our leading organisation, the KALACC research, that increasing active participation in cultural practices for people in riverside communities improves their health and wellbeing. Conversely, the same research identified where cultural practices diminish, health and wellbeing follow (KALACC, 2017). My values and ethics, the way I see and act in the world, have been shaped by Indigenous experience of a deep connection and relationship with the natural world. Indigenous community responses contribute to building an evidence base that links cultural health to well-being for both individuals and communities (Hemming & Rigney, 2008; Poelina, Taylor, & Perdrisat, 2019).

Along with Graham and Maloney (2019), I believe that improving Indigenous Australian wellbeing can be achieved through better management of Australia's biodiversity. This requires a multidisciplinary approach (Dockery, 2010; Preece, 2017; Pyke et al., 2018). My efforts include collaborating with critical friends, non-government and government agencies as well as developing a network of academic and community advocates from a disparate range of intersecting disciplines nationally and from around the globe (Lim et al., 2017; Poelina & Nordensvärd, 2018; Taylor et al., 2017.

10.5 *Aboriginal Voices*

Emerging Aboriginal voices are being recognised as integral to providing an alternative narrative to Australian history (Altman & Kerins, 2012; Marshall, 1989; Pascoe, 2014) not just to reset perspectives but to con- sider a range of options and strategies to orient Aboriginal determined actions for change (Griffiths & Kinnane, 2011). In telling this story, I focus on the current socio-political context for Aboriginal people as an insider, and in doing so, I remain conscious of my responsibilities and obligations to our sacred river, family, community and the broader Australian community.

When Aboriginal people champion their rights as free people, it is referred to as *decolonising* (Smith, 1999). The process and outcome of decolonising require us to explore and analyse within an Indigenous con- text, and importantly to honour First Law, customary law (legal systems prior to British annexation), Indigenous science and technology (knowledge-making, adaptation, application and culture from the beginning of time to now) (Black, 2010; Graham & Maloney, 2019; Pascoe, 2014). This contrasts with 230 years of Australian Western knowledge- making which has typically focused on single issue approaches which do not reflect the interconnected fabric of Indigenous lives (Boulton, 2016; Hemming & Rigney, 2008).

10.5.1 Fitzroy River Declaration

Since the beginning of time, traditional owners in this region continued to agree that the Fitzroy River is a continuous living entity that cannot be divided into a series of autonomous sections. The Mardoowarra is a living water system and therefore must be treated with the dignity and respect of a sacred ancestral being with its own right to life. The Fitzroy River Declaration (The Declaration) expresses the ethics and collective position of Native Title Traditional Owners in relation to maintaining the spiritual, cultural and environmental health of the river (KLC, 2016a; Lim et al., 2017). Grace (2016) validates the actions of the Aboriginal nations who came together for The Declaration.

Through this process, traditional owners identified knowledge-gathering and sharing as necessary ingredients for building capacity for sustainable regional development (Lim et al., 2017). This socio-political and cultural regional governance approach to

Indigenous land and water management principles prioritises the health of the ecosystem above all other interests and has wider application inter- nationally (Jackson, S., 2015; Jackson, Pusey, & Douglas, 2011; Toussaint, 2008; Toussaint et al., 2001; Vasseur, Horning, Thornbush, Cohen-Shacham, Andrade, Barrow, Edwards, & Jones, 2017).

10.5.2 Martuwarra Fitzroy River Council

In June 2018, the KLC in partnership with the Pew Charitable Trust brought together Native Title Traditional Owners from the region to establish the Martuwarra Fitzroy River Council (MFRC). The MFRC is an earth-centred regional governance cultural authority founded on the principles of the Fitzroy River Declaration. The MFRC is a federation of six Indigenous nations with custodianship for managing 733 kilometres of our sacred Fitzroy River (KLC, 2016a).

10.6 *Theoretical Framework*

10.6.1 Anti-dialogic Action

Freire's *Pedagogy of the oppressed* (1970) describes the instruments of anti- dialogic action enacted through, 'conflict, invasion, manipulation, divide and conquer,' which leads to 'chaos, uncertainty, despair, disease and hopelessness' (Freire, 1970, 119–147; Poelina, 2009). Aspects of anti- dialogic action can be seen in the 'deficit discourse' within which Aboriginal identity is bound to narratives of 'negativity, deficiency and disempowerment' (Fforde et al., 2013).

Overseas and in Australia deficit discourses are linked with negative outcomes, such as stereotyping and perpetuating the notion of lack of agency (Fforde et al., 2013, 166). An anti-dialogic framing of the so-called 'Aboriginal problem' would interpret Aboriginal people as being the problem, as opposed to an Aboriginal dialogic perspective that sees the dominant Western model of governance as systemic racism and therefore problematic.

The consequences of colonisation from legislated inequality are termed 'structural violence' and are evident in three forms: (1) physical violence manifested in mortality and morbidity rates; (2) psychological violence manifested in poor mental health and high levels of substance misuse; and (3) individual and community violence

manifested in family and community breakdown (Altman & Kerins, 2012; Boulton, 2016; Galtung, 1969, 1996).

The anti-dialogic lived experiences of Indigenous Australians are direct outcomes of the continuing 'invasion, manipulation and divide and conquer' tactics by governments, which deny both the history of colonisation and the contemporary Australian context of racism and structural violence (Poelina, 2009, 2017b). Inevitably, this systemic frustration reduces aspirations and inhibits the ability of an Indigenous person to reach their full potential as a human being. There needs to be thorough consideration of the social determinants of health and wellbeing in order to better understand the extent of oppression Aboriginal people experience in the Kimberley (Boutlon, 2016). This anti-dialogic approach is opposite to the earth-centred, decolonising approach, the focus of which is on the wellbeing of the Fitzroy River, and through the River, its people. The river is the central life force of these diverse cultural landscapes and provides food, medicine, recreational and ceremonial activities which promote and support the health and wellbeing of the people. In turn, the people reciprocate as guardians of the Fitzroy River through an ethic of care.

10.7 *Social Determinants of Indigenous Health and Wellbeing*

The colonial states of Australia were established to create wealth for private and foreign interests, principally the British Crown at the expense of Indigenous people, our lands and waters, and natural and cultural resources (Poelina, 2009, 2017b). For many years, the pastoral industry was propped up by Aboriginal slaves:

> For 100 years Aboriginal people were the backbone of a vast [sheep and] cattle industry in the Kimberley, based on their land and their slave labour. But when equal pay was introduced in the mid-1960s, most of the black stock workers lost their jobs, and they and their families were kicked off the stations to gravitate to the fringe camps of the white townships (Chase & Isaac, 1992)

Indigenous Australians continue to live as colonialised peoples (Watson, 2017). Brown identifies that social determinants of health in Indigenous culture which impact on wellbeing include racism, oppression, environmental and economic influences as well as stress, trauma and grief, and cultural genocide (Brown, 2001). Twenty years ago, the World Health Organization (WHO) expressed concern

regarding the lack of appropriate care, especially to vulnerable groups such as Indigenous peoples - World Health Organisation (WHO) (1999). At that time, the WHO published an international overview of the world's Indigenous populations:

> The needs and rights of Indigenous peoples have been of little concern to those larger and powerful nations. [Furthermore] it is remarkable that during the same period of colonialism there has been no lack of knowledge of the brutalities to which the Indigenous peoples of the world have been and continue to be subjected. (WHO, 1999: 7)

Over time, I have come to realise the Australian Indigenous colonial experience is shared with other indigenous people internationally (Césaire, 2010; Poelina, 2009, 2017a). Forty years ago, a historically significant event occurred on my grandmother's country at the remote pastoral station, Noonkanbah. Film Australia produced the movie *On Sacred Ground* which showcased Aboriginal people from across the Kimberley and beyond gathered to protest against oil drilling exploration by Amax Oil and Gas Company on our sacred ancestral lands (Hughes & Howes, 1981). The voices of the wise old people from Noonkanbah echo in my head. Their words and actions to protect our sacred sites resonated around the globe:

> We hope one day that the government might understand that we are a human being, [who] hardly can read and write, but he has protection over his land, what he can see, what he can hold on to, they just don't realise we don't want the mining company to ruin up our sacred places those are the things we see. They just can't see the point we are trying to get at, how it hurt our memories. (Paddy Moolambin in Hughes & Howes, 1981).

Another senior leader added:

> All we are saying is that we want land rights and human rights and a treaty to be signed by the Australian government so that Aboriginal people can be recognised as an owner [of our land]. (Jimmy Beindurry in Hughes & Howes, 1981).

Paddy Moolambin and Jimmy Beindurry were men of high degree, senior elders in First Law who stood to protect their land, waters and sacred sites from mining. As leaders, they sought rights and recognition from government 40 years ago.

Kimberley Aboriginal people continue to experience imposed invasive development because the *Native Title Act (1993)* (Cth) does not allow traditional owners the right to veto extractive and invasive industries on their land (Blowes, 1993; Hepburn, 2005; Triggs, 1999). The colonial foot- print has expanded in multiple forms with differing impacts at different times and in different locations (Poelina, 2009, 2017). Fresh corporate interests are poised to implement government policies that promote invasive development such as mining, fracking and irrigated agriculture throughout the region (Poelina et al., 2019). These examples of invasive development are also instances of structural violence that represent an ongoing process of colonisation.

Given the structural violence inherent in oppressive colonial systems, it is not surprising that Aboriginal people in the West Kimberley experience high levels of community and family breakdown, loss of cultural identity, racial discrimination, poor education and low standards of living, which contribute to high rates of poor health and wellbeing, perpetuating a cycle of disadvantage (Boulton, 2016; Poelina, 2009, 2017a). The *Overcoming Indigenous Disadvantage Report* (2016) identified overwhelming evidence that Indigenous life expectancy remains approximately 20 years lower than other Australians (Steering Committee for the Review of Government Service Provision (SGRGSP), 2016). Every health indicator for Indigenous people in the West Kimberley is almost two to three times worse than non-Indigenous people's health (Australian Department of Indigenous Affairs (DIA), 2005). Many of our young people in the Kimberley live in despair and poverty. They have the highest suicide rates in the world, as evidenced in the recent Coronial Inquest (Aboriginal Policy & Coordination Unit, 2018).

While being Indigenous is not itself a risk factor, Indigenous individuals are more likely than non-Indigenous Australians to experience poor mental and physical health, imprisonment, shortened life expectancy, poverty, unemployment, homelessness, poor education, drug and alcohol misuse and violence. The Australian Bureau of Statistics (ABS) Aboriginal Health and Wellbeing of Aboriginal Australians report, 2017 confirms very little has changed for Aboriginal Australians (ABS, 2017). This was validated in a recent stocktake of similar evidence in the *Rising Inequality Report* by the Productivity Commission (2018). These reports speak significantly of a crisis that

must be addressed, effectively, through a paradigm shift to holistic policy, investment and political action.

10.8 *Indigenous Cultural Health and Wellbeing*

The Indigenous concept of health is holistic and includes the social, cultural and environmental factors that impact on the status of individual, family and community wellbeing. Importantly, it affirms the need to connect and learn from the past to act in the present in forging a sustainable future.

Indigenous peoples' concept of health and survival is both a collective and an individual intergenerational continuum encompassing holistic perspectives incorporating four distinct shared dimensions of life. These dimensions are the spiritual, intellectual, physical and emotion. Linking these four dimensions, health and survival manifest itself on multiple levels where the past, present and future co-exist simultaneously (WHO, 1999: 3). The historical connection of Indigenous Australian people to their country, culture and kin remains integral to their contemporary experience of wellbeing (Altman & Kerins, 2012; Burgess et al., 2005).

10.8.1 Culture

Culture is defined as a shared system of beliefs, knowledge, values, symbols, stories and ways of life in a group passed on through generations. Chu (1998, 126) highlights that, "from infancy to old age, culture mediates one's experience and guides one's perceptions, interpretations, and behaviour." Indigenous researcher Stephen Kinnane states:

> 'Culture' has been described as the glue that holds the diverse people of the Kimberley together. But it is a glue that has had to weather policies of removal, enforced concentration on the outskirts of towns, the impacts of grog and substance abuse and increased migration of kartiya [white people] as the potential development of natural resources is realised. (Kinnane, 2003).

Kinnane validates the notion of decolonising by maintaining cultural practices through resistance and reconciliation, which serves to maintain Indigenous identities and sustain resilience. He makes the point that this will be tested as developers come to exploit the natural assets of the region. Importantly, part of decolonising for the River's Traditional Owners is to unite and become organised as people who share

culture and hold the same conceptual map; that is, they view the world similarly because of their common history and shared lived experiences (Hall, 1997).

Similarly, Stockton (1995) identifies the relevance of culture for improving wellbeing. Traditional owners in the Kimberley seek to improve wellbeing by passing culture on to young people through com- munity participation in cultural activities (KALACC, 2017). This requires educating the wider community to accept that colonisation has continuing influences on Indigenous health and wellbeing (Dockery, 2010; Ganesharajah & Native Title Research Unit, 2009). Collaborations between diverse groups promote the concept that sustainable lives and sustainable development are vital ingredients to shifting from being welfare dependent to creating wealth, equity and hope.

10.9 *Pedagogy of Hope*

Despite wellbeing becoming a key criterion in policy development and evaluation within the community sector, the original people living on their traditional lands along the Martuwarra must reframe their lives in the pursuit of justice and freedom through a post Native Title deter- mined lens. For the first time in 40 years since the Noonkanbah dispute, Indigenous leaders are standing united towards building a pedagogy of hope. Their collective dream for the future now is to build trust and capacity to face the challenges from government policy objectives that conflict with maintaining their wellbeing and the health and sustainability of the Fitzroy River (KLC, 2016b; Lim et al., 2017; Poelina et al., 2019).

10.9.1 Indigenous Concept of Health

In order to act in good faith and nurture an ethic of care for both human and non-human beings, we need to free ourselves from the paradigm of *me* (Western individualism) with man dominating nature (Burdon, 2014; Graham & Maloney, 2019) to *we* (Indigenous community-ism). We need to turn our *we* dialogue into action by starting with the Indigenous Australian concept of health:

> holistic, encompassing mental health and physical, cultural and spiritual health. Land is central to well-being. This holistic concept does not merely refer to the 'whole body' but in fact is steeped in the harmonised interrelations, which constitute cultural well-being. These inter-relating factors can be categorised largely as spiritual,

> environmental, ideological, political, social, economic, mental and physical. Crucially, it must be understood that when the harmony of these inter-relations is disrupted, Aboriginal ill health will persist. (Swan & Raphael, 1995, 14)

Dialogue is a process action we need to engage in with other interests in the river to promote and maintain our human right to a safe environment when living on our traditional lands (Rimmer, 2018).

10.9.2 Dialogic Action

Paulo Freire (1970) proposed that development needs to incorporate dialogue to action. The concept of cultural synthesis identifies the need to generate dialogue to promote harmony (Freire, 1970). Freire challenged us to understand the tasks of knowledge building to unravel the increasing complex problems such as water management by first understanding the social and cultural contexts of oppressed people's lives.

The formation of the MFRC has provided a regional governance model for traditional owners who have shared values and beliefs with an opportunity to participate in regional planning and management. Through this collaboration with a wide range of partners, we are building new knowledge to inform policy and investment for Indigenous-led workforce development and business (Lim et al., 2017; Poelina et al., 2019). By promoting our values and beliefs of the Fitzroy River as a major spiritual, cultural, social, environmental and economic asset, we signal to potential partners our intention to contribute to regional investment, planning, management and assessment.

10.10 *Fitzroy River Water Planning and Management Through an Earth-Centred Regional Governance*

We live at the beginning of the Anthropocene where the attempts of humans to dominate and control the natural environment through technological and economic advancement have altered earth systems. There is a strong international consciousness that human activity has induced climate change which is quickly spiralling into *climate chaos* (Borland & Lindgreen, 2013). In 2019, the world earth systems are facing unprecedented risks that are pushing the planetary boundaries towards ultimate collapse (Gallagher, 2012). The Intergovernmental Panel on Climate Change (IPCC,

2018) report contextualises the transformative changes needed to overcome the societal challenges and biodiversity threats associated with climate change.

Among developed countries, Australia is one of the most vulnerable to the impacts of climate change (Climate Council, 2015). Australia ranks as the second worst in the world on biodiversity conservation, corresponding to a total loss of 5–10% (Preece, 2017). Expansion of agriculture and aquaculture is a direct cause of loss of biodiversity (Preece, 2017). The current government management approach planned for the Fitzroy River is likely to increase the number of rare, endangered and extinct species.

Government attempts to initiate an unprecedented amount of forced invasive exploitation along the river demonstrates continuing colonial development for the benefit of established power and wealth (Borland & Lindgreen, 2013). In these, governments and investors fail to see and value the multiple and diverse new economies of culture, science, conservation and tourism. Indigenous people in the Kimberley refer to these multiple and complimentary industries that contribute towards the balance of life as the 'forever industries'—productive activities that support sustainable life and sustainable livelihoods forever (Poelina & Nordensvärd, 2018).

The first step towards creating sustainable regional communities supported by 'forever industries' is recognising that the planet has limits to industrial growth and that human wellbeing is crucially dependent on rich and healthy ecosystems (Alexander, 2016; Alexandra, 2016; Assadourian, Prugh, Starke, & Link, 2013). Rather than positioning social and natural systems as conditional subsystems to the economic system (anthropo-centrism), the natural system must be at the centre, balancing environmental, human and subsequently economic activities (ecocentrism) (Graham & Maloney, 2019; Watson, 2017.

To establish a harmonious outcome, it is necessary to promote an inclusive co-operative process rather than a conflictual approach. It is also important to base reasoning and action around an examination of processes, which facilitates development of economic interests from within the region. The push for development creates direct pressure on environ- mental and cultural values but also on "the

capacity of existing state-based legal frameworks to protect these values" (Lim et al., 2017, 21). Building on the momentum garnered to secure Indigenous rights and the legal and ethical protection for the river, I have advocated for planning and development to be transparent and inclusive of all stakeholders, particularly those who live in the region and frequent the river for cultural affirmation, food, recreation and work, seeking to realise the pre-election promises of the current state government to develop a Fitzroy River Management Plan.

10.10.1 Fitzroy River Management Plan

The Draft Fitzroy River Management and Draft Fitzroy Water Allocation Plans were presented at a meeting involving Indigenous community and government representatives in Broome on 21 February 2019. They offer opportunities for national and state governments to invest into a structure for integrated and adaptive water management (Western Australian Government, 2018). This would contribute to better water planning, which is a priority for improving the health of water places in northern Australia (Douglas et al., 2011).

The MFRC is currently of the view that there should be a moratorium on issuing water licences. The Draft Plan requires broader scientific and industry knowledge as well as independent peer review of the government science. Most important, it is vital to include Traditional Owners in the co-design of any planning process because they have intergenerational knowledge spanning tens of thousands of years of knowledge-making, adaptation and mitigation (Graham & Maloney, 2019; Watson, 2017. These processes would facilitate opportunities for disparate interest groups to collaborate in order to sustain life and livelihoods in the region.

This inclusive and consultative approach to managing limits to water is supported by Dale (2014) who indicates that northern development has focused on progressing irrigated agricultural and mining demands, particularly gas extraction. Dale also cautions against development at all costs, pointing out the futility of seeking perpetual growth on an earth with finite resources. Additionally, Dale (2014, 143) posits co-operation to prevent further ecological decline as an alternative to current 'conflict based' 'competitive' approaches.

10.10.2 Murray Darling Basin

The Report of the South Australian Murray Darling Basin Royal Commission (SAMDBRC) in 2019 detailed the failure of the management of the Murray Darling Basin (MDB). Commissioner Bret Walker described the massive fish kills, polluted river ways, dry riverbeds, water theft as gross neglect, collusion, corruption as a direct consequence of government maladministration. The lessons learnt from the lack of water management planning that was responsible for the MDB disaster signal the need for sound policy investment in order to prevent a similar disaster occurring in the Martuwarra. Critical to the River's survival is the need to understand the potential cumulative impacts from development currently being promoted in the region (Poelina et al., 2019). The development of a Fitzroy River Management Plan has the benefit of being informed by the South Australian Royal Commission into management of the MDB. The MDB example demonstrates that Indigenous Australian voices are necessary for delivering justice in water and land management governance (SAMDBRC, 2019).

The Commissioner acknowledged that Australian laws and institutions continue to disadvantage Indigenous Australians. The Commissioner's findings state "it appeared unconscionable that cultural flows have been put at the bottom of the pile" (SAMDBRC, 2019, 448–452). The Commissioner's findings alerted the MFRC to proceed with caution on any negotiations with government development proposals for the Fitzroy River, as justice may not be delivered.

The MDB Royal Commission shed a light on the true value of Indigenous knowledge for responsible water and land management practices. These cultural landscapes are not a blank canvas (SAMDBRC, 2019, 500–501). Australian rivers and waterways are already being 'developed' by Aboriginal people who continue to manage these natural assets for sustaining life and livelihoods (Gammage, 2011; Pascoe, 2014; Watson et al., 2011). The body of knowledge and practices for responsible river management has been handed down from thousands of generations of traditional owners for future generations.

10.10.3 Multi-stakeholder Partnerships

There are many government agencies and departments with a single objective from their portfolio's perspective. Despite wide acknowledgement of the need for intergovernmental trans-departmental community partnerships in the literature and policy, there continues to be a predominantly siloed approach to Indigenous investment and development and the ongoing failure to close the gap on Indigenous disadvantage (Brann & Gordon, 2017; Australian Department of Prime Minister & Cabinet, 2017).

Negotiating a multi-stakeholder partnership is an important dialogic process for the disparate interests within MFRC to collaborate to achieve shared interests in adaptive water management and governance. Some describe this working together as the revolution required to create a sustainable world (Brouwer & Woodhill, 2016; Senge, Smith, Kruschwitz, Laur, & Schley, 2008). Aboriginal people are developing collaborative partnerships with government and industry to explore alternative low-impact development futures involving science, culture and conservation economies (Hemming & Rigney, 2008; Hill et al., 2008).

Conservation management of terrestrial landscapes, such as the Martuwarra, needs to incorporate Aboriginal cultural, legal, political, social, governance and environmental management knowledge (Poelina et al., 2019). The partnership approach endeavours to strengthen Aboriginal peoples' capacity by building their social, cultural, environmental and economic capital. Through an Indigenous holistic lens, all forms of capital are seen as necessary in order to shift from poverty to sustainable wealth creation. By drawing on a range of disciplines, disparate sectors can contribute to creating legal and policy instruments which can provide robust and equitable water governance for the Fitzroy River (Lim et al., 2017). The MFRC's perspective is informed by Lim's "principle of fundamental truth or laws on which to base reasoning or action" (Lim, 2014, 98). The MFRC endorses these principles will create a better understanding of the cumulative impacts of development across the region.

10.10.410.10 Conclusion

The MFRC is a federation of registered Native Title bodies with traditional custodian responsibility for the Martuwarra Fitzroy River catchment. There are multiple

economies in culture, science, heritage and conservation that are grounded in our deep relationship with the river and our connection to each other. Guided by First Law, our living water systems are our life force, connecting surface to groundwater, uniting the diverse cultural landscape and people throughout the Kimberley.

these modern times, Aboriginal people living along the Fitzroy River and throughout the region continue to frame our health and well- being in terms of First Law ethics, values and governance. “In accord with Aboriginal law we continue to have the authority and the responsibility to care for and ensure our territories are kept alive and well for future generations” (Watson, 2017, 2). First Laws are the natural *laws of the land* which frame the principles of adaptive water management through regional-scale earth-centred governance. This contemporary story champions decolonising invasive development through an Indigenous Australian wellbeing approach to regional governance. This story is grounded in a regional governance approach to Indigenous Australian cultural wellbeing. The approach is less than a year in its development. It is at the early stages of engaging in dialogue to generate action and is demonstrating a useful approach to influencing policy and investment.

As Indigenous people living in this region of Australia, we are reframing development policy towards an earth-centred regional governance approach. We are exploring new ways of doing business by asserting our Indigenous and human rights and by engaging with governments and other stakeholders as equal partners. We are advocating that sustainable life of the river requires respect for the cultural and environmental values of the diverse Indigenous peoples along the river. As contribution of this chapter to thesis development, we believe sustainability of the River and the Traditional Owners transition to resilience and cultural wellbeing requires investment to strengthen their capacity to shift from a pedagogy of oppression towards a pedagogy of hope and freedom.

10.11 *Chapter 10 Summary*

The Rainbow Snake is the universal Indigenous Australian creation story about our shared sacred ancestral relationship to water. More recently, water scarcity and food and medicinal wild harvest insecurity is impacting on regional sustainability. Storying provides the theoretical framework to support an earth-centred regional

governance approach to strengthen indigenous capacity to protect and promote Indigenous cultural heritage and lifeways. Chapter 10 identified an opportunity to establish a bio-regional governance framework. Despite uncertainty leaders are working with others to build new sustainable economies based on Freire's critical ingredients for decolonising: cooperation, unity, organisation and cultural synthesis. Kimberley Indigenous leaders have started healing their family and regional kinship relationships to improve cultural wellbeing and resilience in order to transition to justice, freedom, and hope.

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11 CHAPTER ELEVEN: Discussion

11.1 *Introduction*

The regional Anthropocene has been shaped by tens of thousands of years of responsible and wise human land and water management practice. Martuwarra is an iconic national environment and Indigenous heritage listed wild river system. As I have shown throughout this thesis, countless generations of local independent Indigenous nations have developed and maintained a complex historical cultural relationship with environmental systems.

My Nyikina and Warrwa family together with other local Indigenous families have sustainably and responsibly governed Martuwarra since Bookarrarra. My philosophy, values, and ethics have shaped my world view and in turn my lived experience, particularly my relationship with Country, and my responsibility to maintain living waters, and to human and non-human beings. Australian native title law recognizes that prior to colonization Traditional Owners had, and continue to have, our own laws and customs for managing our Country.

This thesis examines the relationship of Indigenous peoples' storytelling, teaching and research methods in relation to Indigenous people's health and wellbeing. It is grounded in the cultural values and ethics required for an Indigenous regional governance approach to responsibly manage the land and Living Waters. Through multiple storying with extended family, local and regional neighbours, colleagues, and the academy I've revealed a body of evidence to demonstrate Martuwarra First Law is vital for sustaining land, Living Waters and remote economies, ecosystems, and Indigenous people's wellbeing.

According to First Law, original Australians have responsibilities, duties, authority, and rights to water which are embedded in Indigenous water governance, legal and management systems. This includes the exploration of legal options and a statutory management body that is based on cultural governance and the wellbeing of people, communities, and multiple species.

Invasive colonial development that commenced with the arrival of Europeans in 1837 continues to be grounded in the philosophy of racial superiority. The intent of invasive industries initially coming to Australia was and continues to be shareholder

economic development from resource extraction at the cost of the individuals, societies and nations who were and continue to be here. Australian colonial governance started with invasion and annihilation. It has been perpetuated by destructive occupation that continues to be maintained by a constant series of changing contemporary policies and laws. These constantly changing policies and laws have created the deep uncertainty that is responsible for the characteristics of colonisation; conflict paradigm, chaos, manipulation, divide and conquer.

Western ethics have maintained a colonial approach to promoting insensitive and authoritarian laws, policies, governance processes and relationships with Indigenous Australians. The past one hundred and fifty years of colonial governance in the Kimberley is responsible for extensive environmental destruction, species loss, desertification and subjugation of people, culture, and land management practices.

Successive Australian governments, state and federal, continue to assert the power they have over Indigenous Australians. Government laws, policies and procedures continue to diminish intergenerational life opportunities and outcomes for Traditional Owners. There is a history of governments promoting the narrative that industrial development will create employment for local, place-based people. Yet the lived experience of local Indigenous people demonstrates there are few jobs in mineral and fossil fuel extraction, and industrial scale irrigation industries. The few jobs that do come are at the cost of exploiting sacred ancient ancestral cultural spiritual places and water ways. Indigenous lives are diminished as a sacrifice for development, to improve the so-called wider national greater good.

This sacrifice is often couched in the language of 'trade off' as if there is an equal cost and benefit sharing arrangement, however it is almost exclusively Indigenous people and future generations of all humans and species who bear the cost of trading-off while governments and private industry benefit in very narrowly defined terms. This study raises fundamental concerns regarding government development ethics, laws and outcomes that benefit external investor interests above local historical landowners. Furthermore, this study has highlighted, from its multiple, collaborative and on-the-ground perspectives, the political role governments play in garnering

wider community support to justify their perpetuation of human disadvantage and, cultural and environmental devastation for the benefit of corporations.

Ruthless atrocities continue as governments give permission to corporations to destroy ancient heritage for example, blowing up the world's earliest record of human thought such as Juukan Gorge in the Pilbara region of Western Australia. Furthermore, governments are prepared to poison catchment level ground and surface water systems by fracking and sucking the life out of the Country with vast industrialised irrigated monocultures.

We live in a society where some enjoy the highest quality of life, yet local Indigenous peoples' quality of life is among the most disadvantaged in the world. Contemporary colonial society has maintained a culture of invasive violence and exploitation of Indigenous Australian people, our Country and our future. Indigenous Australians experience internationally significant levels of suicide and self-harm, incarceration, unemployment, poverty, violence as victims and perpetrators and early death, poor health, education and mental health and spiritual wellbeing.

Modern sustainability principles recognise the value of resilience. With over 60,000 years of living sustainably with Martuwarra, our people have deep knowledge of creating resilient social-ecological systems. We offer our hand in partnership with those who want to learn from, and with us, to meet the challenges of the future.

Indigenous nations who share Martuwarra are developing a contemporary model for managing natural systems using traditional governance principles. Local historical Indigenous governance models engaged an egalitarian 'commons' governance approach. Indigenous governance models are globally unique as they have emerged from countless generations of local societies managing the landscape for the universal benefit of all entities in the biosphere.

We live on the driest continent on earth. Colonial river management practice has had a significant impact on inland rivers, biospheres and people. Many of our rivers are already unrecognisable. Furthermore, Aboriginal people experience a lack of intersectoral collaboration from government. They fail to attract an appropriate management response from government due to political interests. Further impediments for change include the multiple forms of legislation that require

amendment in order to promote and protect our natural and cultural assets. This study shows that there is a real opportunity for new sustainable economies and new ways of doing business with Indigenous people on Indigenous lands.

While there is consistent reference in state government policy regarding the government building partnerships with industry and Indigenous communities, there are few examples of where this has been implemented.

The Fitzroy River Catchment Management Plan (FitzCAM) project that finished in 2010 demonstrated an effective model of collaborative river management. The process of engagement used a dialogic method which demonstrated a model for promoting trust. FitzCAM developed networks to share of information to strengthen inclusive river management and planning. Furthermore, it identified common interests to promote collaboration between diverse interest groups. Despite FitzCAM being very successful, having achieved far more that the initial objectives, government failed to provide ongoing support.

Rather than extending the mechanisms of partnership building, the current *Review of the WA Aboriginal Heritage Act* has identified the potential risk of political influence from the Minister for Indigenous Affairs having exclusive responsibility for Indigenous heritage decisions. The imposition of absolute Ministerial power is antithetical to historical Indigenous authority that is recognised by the High Court. Indigenous authority comes from a deep relationship with Country responsible for maintaining spiritual wellbeing and generating sustainable livelihoods and lifestyles on Country.

In more recent times I have incorporated diverse and complementary disciplinary approaches involving elders, academics and practitioners which has identified the destabilising role of poor governance and partisan politics. This research has revealed the continued contemporary practice of colonisation, ecocide, and genocide. The term ecocide is the nexus between ecological destruction and genocide. The victims of ecocide include humans and the environment itself, as canvassed in Chapter 8.

Ecocide has a particularly genocidal impact for Indigenous people who depend on Country for their survival and their cultural and spiritual health and wellbeing. Genocidal consequences from the destruction of essential life supporting

ecosystems are a real and imminent risk for Indigenous people, such as the Traditional Owners of Martuwarra.

The recent destruction of the ancient Juukan Gorge rock art site is a contemporary example of incremental genocide where the politics of economics has garnered government support to permit exploitative destruction of significant world culture for private corporate interests. It demonstrates government laws, policies and decision-making processes are not reasonable. The intent must be to prevent this type of destruction of *world culture* being repeated; never ever again.

The Martuwarra Fitzroy River Council is an alliance of registered native title bodies of traditional custodians who have historical responsibility for governing the Martuwarra Fitzroy River catchment. There are multiple economies in culture, science, heritage and conservation that are grounded in our deep relationship with the River and our connection to each other and the environment. As Indigenous people living in this region of Australia, we are reframing development policy towards an earth-centred regional governance approach. We are exploring new ways of doing business by asserting our shared Indigenous human rights by collectively engaging governments and other stakeholders.

11.2 *First Law*

First Law is the ancient codes of values, ethics, thoughts and actions local people inherited from countless generations stretching back to Bookarrarra, the creation time, the beginning of time. Importantly, these First Laws are earth-centred in that their objective is to maintain the balance and sustainability of all life.

First Law governs the responsible management of Martuwarra through Warloongarriy, the law of the River and Wunan the law of regional governance. Since Bookarrarra, Warloongarriy and Wunan law have provided a framework for understanding the central role of water in all things and its relationships to everything else.

First Law has ensured countless generations of Traditional Owners have responsibly managed the biosphere within a unique living hydrological catchment system. Guided by First Law, our living water systems are our life force, connecting surface to

groundwater, uniting the diverse cultural landscapes and people throughout the Kimberley.

First Law is the internal energy that is created from love, positive thoughts and actions that contribute to building universal spirit and wellbeing. First Law is the natural laws for regional-scale earth-centred governance. Its priority is to maintain the wellbeing of the people, Country, and Living Waters and all living things.

11.3 *Living Water*

The central theme in the creation story is about the responsibility humans have to protect water systems. First Law asserts the natural laws to protect and manage the River. Clean fresh water that sustains life is a basic human right and is referred to as Living Water. Living Water lives in rivers, creeks and lakes, billabongs, springs and soaks. First Law stories tell how the various forms of Living Water are connected in relation to each other. There are stories that describe how water moves under the ground and the relationship between surface and ground water.

11.4 *Fitzroy River Declaration*

In 2016 Traditional Owners framed a contemporary model of First Law within the Fitzroy River Declaration (Declaration). The Declaration represents an agreed expression of First Law by Martuwarra Nations. Furthermore, the Fitzroy River Declaration identifies Traditional Owner priorities for implementing First Law in modernity. It acknowledges the joint and separate management responsibilities of Traditional Owners of the Martuwarra catchment regarding their shared and individual sections of the river.

In the Declaration, Traditional Owners state their concern regarding the potential damage to Martuwarra from the cumulative impacts from the wide range of development proposals for the River. This is the first time in Australia that both First Law such as Warloongarriy, and the inherent rights of nature have been explicitly recognized in a negotiated instrument. In the Declaration, Traditional Owner groups agree to cooperate on a joint action plan to protect the globally significant traditional and environmental values of the River.

11.5 *Colonisation and Decolonisation*

The invasion and colonisation of settler society in the Kimberley from 1837 to the present continues to make profound changes to the lives and lifeways of the Traditional Owners of the Martuwarra. Within 150 years of invasive development of Martuwarra, Indigenous lives and the lives of our non-human family; the birds, the fish, the animals and the environment have been transformed from a world of peace, happiness and sharing into incremental genocide.

We have shifted from 60,000+ years of collectively managing our catchment estate, through First Law and order, to having mass species loss and degradation of our cultural landscape. The region has the highest suicide rate in the world for our young people, resulting from oppression and abject poverty and inter-generational trauma for Martuwarra families and communities. Despite the ongoing characteristics of colonisation such as anti-dialogic action and scarce investment being responsible for failed policies, Indigenous leaders from six independent nations have come to stand united with 'One Mind and One Voice' as a method for decolonising the region.

My role as insider researcher, broker and storyteller has been to work with our elders, leaders and with our families, friends and colleagues to better understand the concept of 'freedom'. Martuwarra Council members have embraced an informal moral contract to promote a collective concept of freedom. Within this informal moral contract Traditional Owners acknowledge decolonisation begins with dialogic action.

This study evidenced Traditional Owners collective journey for decolonising Martuwarra. The Fitzroy River Declaration (2016) and the formation of the Martuwarra Fitzroy River Council (2018) are examples of Traditional Owners collaborating to establish independent legal entities to promote decolonisation of the River catchment.

11.6 *Martuwarra Fitzroy River Council*

The Martuwarra Fitzroy River Council (Martuwarra Council) is an alliance of Traditional Owners in the Fitzroy River catchment. Nyikina Mangala, Bunuba, Ngarinyn, Warrwa, Walmajarri, Kija and other Indigenous nations have come together to negotiate a multi-stakeholder partnership for justice and a sustainable future. This future recognises and respects Indigenous people's connection to Country

particularly the deep knowledge that Indigenous people have in regard to managing Country within the bounds of nature's limits.

The establishment of the Martuwarra Council promoted dialogue for bringing disparate approaches together to promote adaptive water planning, management and governance. The Martuwarra Council members are working to revitalize trust, respect, kinship, family, and dignity to reclaim cultural synthesis in an effort to reject imposed invasive contemporary models of colonisation. The Martuwarra Council provides a united approach to catchment management and governance to protect the diversity, health and wellbeing, and spirit of the River, people and the environment.

The Council's focus is on building partnerships and coalitions with individuals, organisations and nations who aspire to equity and justice. The Martuwarra Council is not driven by consumerist values. Indigenous values are founded upon kinship, reciprocity and social connections which are intrinsically connected to nature and all that it provides and sustains.

11.7 *Reconciliation*

Australian governments are founded on the Terra Nulius myth, which was debunked by the Australian High Court in 1992. Other myths such as the denial of the extent and circumstances of Indigenous deaths in custody and the genocidal tactic of stealing a generation of Indigenous children have been exposed by government inquiries. Australian political leaders continue to deny the truth. Over time they created a culture of denying invasion, massacres, slavery and continuing colonisation of Indigenous Australians (Hetherington, 2002). Without acknowledging the truth there can be no reconciliation.

The first step to reconciliation is to agree to a shared truth regarding colonial history, particularly the violation of human rights that has led to the circumstances Indigenous Australians experience today. Despite endless rhetoric about the need for reconciliation in government announcements and documents the study illuminated there is little genuine good will. Contemporary governments continue to collude with industry to defraud Traditional Owners of their ancestral rights, authority and responsibility to Country.

A genuine spirit of accord is required to strengthen and value the capacity of Indigenous Western Australians in order to shift from poverty. Rather than becoming more empathetic, the Martuwarra example demonstrates there is insufficient good will from Australian governments to reorient reconciliation discussions from a conflict model of power of the state, toward acknowledging the cultural authority of Indigenous people. The path to true reconciliation begins with forming genuine empathetic and truthful relationships between all parties.

11.8 *Coalition of Hope*

The Martuwarra Fitzroy River Council have come together to give voice to shared ambitions for justice and a sustainable future. The theoretical framework of this study identifies shared characteristics with the pedagogy of oppression described by Paulo Freire (1970). This study also considers Freire's view regarding moving toward a pedagogy of hope (1992).

Traditional Owners are building partnerships and coalitions with individuals, government and non-government organisations and nations who aspire to a just and equitable future. A future that is not driven by consumerist values in the quest for ever-increasing monetary wealth that is concentrated by the few, at the expense of the many. The value of wealth to us is realised through kinship, reciprocity and social connections which are intrinsically connected to nature and all that it provides and sustains.

11.9 *Statutory Authority*

The study identified (in Chapters 3, 4, 5 and 9) Traditional Owners are concerned about development options proposed by industry and government. The Western Australian government's planning and implementation of the Fitzroy River Catchment Management Plan and Fitzroy River Catchment Water Allocation Plan hold little promise for serving either local or national interests when judged holistically, as they risk perpetuating adverse social, cultural and ecological legacies.

Traditional Owners through the Martuwarra Fitzroy River Council have requested the Western Australian government create a statutory authority to manage the River. The *sui generis* nature of Martuwarra native title rights and interests in regard to common property and co-guardianship of the river requires an independent entity such as a

‘statutory authority’ which is consistent with common law or statutory rights in relation to water justice. Accordingly, the study evidenced First Law rights and interests can co-exist with common law rights and interests and neither are extinguished as a result.

A statutory authority is seen as the minimum standard for river management. Highly valued rivers such as the Swan-Canning in Western Australia’s south-west, and the Murray-Darling riverine systems are managed by a statutory authority. The Swan-Canning and Murray-Darling are highly degraded river systems where a statutory authority appears to be established too late for any real impact. The general principles that apply to sustainably managing other rivers is applicable to Martuwarra. Now is the most appropriate time to establish a statutory authority to incorporate a bio-regional framework for developing a conservation and management plan prior to development.

12 CHAPTER TWELVE: Conclusion

Living Water First Law first. Living Water is necessary to sustain life including the wellbeing of rare and exotic plant and wildlife, culture and people.

The study has been a personal journey, as an insider, to better understand the influences, opportunities and risks impacting on the wellbeing of Indigenous Australians in the West Kimberley region of Western Australia. The historical colonial approach maintained by government and industry is responsible for the ongoing injustice experienced by remote Indigenous Australians, our land, water and environment. Governments continue to impose invasive laws, policies and practice that is responsible for exploitation, oppression, disadvantage, and racist outcomes for Indigenous Australians.

This study introduced an Indigenous method for research. Using a range of mediums, I've generated a body of evidence that demonstrates there are benefits from investing into wider assets that influence our world, such as respectful relationships, love and happiness, the environment, society and culture, local Indigenous knowledge known as Indigenous science as well as new sustainable industries, reciprocity and good will.

Dialogic action is a useful method for generating genuine collaboration to engage Traditional Owners in partnership with the wider community, to provide information and receive advice about the risks and benefits to wellbeing. Furthermore, it demonstrates a collaborative process for generating an international network of trans-disciplinary science, legal, and social research scholars. Through collaborating with Traditional Owners, research scholars are able to gain a better understanding and respect for First Law in regard to the customary rights of nature, particularly the right for vital living rivers to flow.

As a result of local and international collaboration, there is greater access to information resulting in a wider sense of community awareness regarding politically influenced decision-making models. Politically motivated decisions are more that an attack on Indigenous Australians, rather they are a grave injustice on all Australians.

The power of the state remains imbedded in invasive historical colonial land and water governance decision-making processes which continue to be driven by external

political interests with a view to benefiting private economic capital and governments. The evidence identified the ongoing invasive colonial power of the state remains conflicted with the cultural authority of Martuwarra Traditional Owners. The various independent research projects in this thesis define the narrative regarding how Martuwarra Traditional Owners are actively exploring opportunities that have been created by the global movement to extend legal rights to rivers.

The study illuminated Traditional Owner cultural authority comes from our spiritual relationship with Martuwarra. My ancestor, Woonyoomboo created Martuwarra when he speared Yoongoorrookoo the giant Rainbow Serpent. Countless generations of diverse independent Indigenous nations have managed their estate with a view to maintain harmony through an earth-centred governance approach to land, Living Water and people known as First Law. First Law is a deep spiritual responsibility for maintaining the wellbeing of Country, by connecting people to Living Waters, land, and the natural world.

It is communicated through stories, song, and dance from deep history to explain the benefit of maintaining respect and liyan, a 'good feeling' for all entities in the biosphere. Traditional Owners are the First Law guardians for the entire length of Martuwarra. Their authority comes from timeless inheritance of ancient songlines and stories that validate their independent and interdependent responsibility for governing rich and sustainable river culture. First Law is embodied in the skills, knowledge, and respect for maintaining a positive spirit; connection, harmony and balance for a fertile, peaceful and sustainable world. Living Water is necessary to sustain life including the wellbeing of rare and exotic plant and wildlife, culture, and people.

An Indigenous worldview informs holistic development choices that impact at a universal level. It incorporates all forms of local and regional capacity for creating, maintaining, and protecting sustainable Indigenous lifestyles, livelihoods, and environments. The Martuwarra Fitzroy River Council believes Martuwarra is *too precious to pump*. It has identified further inquiries are needed and recommend the Western Australian government invest into the implementation of the Fitzroy River Management Plan and the Fitzroy River Water Allocation Plan (See Appendix 2) through a statutorily catchment authority.

There is a fundamental truth concerning assets in common. It is better to invest shared assets into supporting a universal good rather than a private beneficiary. In this circumstance it is essential government, corporate and philanthropic agencies invest multiple forms of capital into maintaining industries that have a universal benefit. There is genuine Traditional Owner interest in creating local jobs in responsible land management activities such as environmental restoration, tourism, education and ethical pastoral and agriculture industries.

The study affirmed that legal pluralism incorporates the cultural authority for Indigenous Australians of the Kimberley to reframe our relationship with the state government to improve our wellbeing, freedom, justice and hope.

12.1 *Recommendations*

The plan to action the information from this thesis has been developed in partnership with the Martuwarra Fitzroy River Council. The recommendations are presented in Appendix 2: Martuwarra Fitzroy River Council Recommendations to WA Government Fitzroy River Water Planning Discussion Paper (December 2020).

13 APPENDIX ONE

13.1 *List of Thesis Publications 2017 – 2020*

Publication: RiverOfLife, Martuwarra, KS Taylor and A Poelina. (In Press). Living Waters, Law First: Nyikina and Mangala water governance in the Kimberley, Western Australia. *Australasian Journal of Water Resources*. Vol 25(1)

Abstract: The 'Living Waters, Law First' water governance framework centres Living Waters, First Law and the health/well-being of people and Country. The framework is based on a groundwater policy position developed by the Walalakoo Aboriginal Corporation , the Nyikina and Mangala peoples' native title corporation, in the West Kimberley, Western Australia in 2018. This article celebrates Traditional Owner's pragmatic decolonising strategies. It explores the emerging conceptual challenges to the status quo by comparing the Living Waters, First Law framework to Australia's settler state water governance framework, represented by the National Water Initiative. Bacchi's 'what is the problem represented to be' approach is used to interrogate the underlying assumptions and logics (2009). We find that there are incommensurable differences with First Law and the Australian water reform agenda. Yet, our analysis also suggests 'bridges' in relation to sustainability

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Publication: Poelina, A., Brueckner, M. & McDuffie, M. (In Press). "For the greater good? Questioning the social licence of extractive-led development in Western Australia's Martuwarra Fitzroy River Catchment". In Brueckner M. et al (Eds) Mapping mining legacies: On their problems and potential. Special Issue, The Extractive Industries and Society, Volume 7 No. 4. https://doi.org/10.1016/j.exis.2020.10.010

Abstract: Economic development in Australia, especially resource development, has purportedly long been pursued for the greater good of the nation and its people and is thus often equated to moral progress. Yet, despite the celebrated spoils of the resources sector, Indigenous Australians have persistently been denied the benefits of economic progress owing to a history of colonialism, dispossession, segregation, and assimilation policies, which have contributed to the marginalisation of Indigenous people to the present day. Thus, this article asks whether orthodox resource-led development has a social licence, and importantly for whose greater good? This paper applies a social licence lens to current water extraction proposals for Western Australia's remote Martuwarra Fitzroy River region where ecological values have largely remained intact and Indigenous people make up over 60 per cent of the population. It is argued the proposed water extraction plans hold little promise of serving either local or national interests when judged holistically and risk perpetuating adverse socio-cultural and ecological legacies from extractive activities for local Indigenous peoples. Within the Martuwarra Fitzroy River context, this paper seeks to redefine the 'greater good' and to articulate 'socially licenced' development alternatives without the ecological and cultural trade-offs typical of orthodox development.

Publication: RiverOfLife, M., Poelina, A., Bagnall, D., & Lim, M. (2020). Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being. Transnational Environmental Law, 9(3), 541-568. doi:10.1017/S2047102520000163

Abstract: Traditional custodians of the Martuwarra (Fitzroy River) derive their identity and existence from this globally significant river. The First Laws of the Martuwarra are shared by Martuwarra Nations through a common songline which sets out community and individual rights and duties. First Law recognizes the River as the Rainbow Serpent: a living ancestral being from source to sea. On 3 November 2016, the Fitzroy River Declaration was concluded between Martuwarra Nations. This marked the first time in Australia that both First Law and the rights of nature had been explicitly recognized in a negotiated instrument. This article argues for legal recognition within colonial state laws of the Martuwarra as a living ancestral being by close analogy with the Whanganui River case. We seek to advance the scope of

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Native Title water rights in Australia and contend that implementation of First Law is fundamental to the protection of the right to life of the Martuwarra.

Publication: O'Donnell, E., Poelina, A., Pelizzon, A., & Clark, C. (2020). "Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature". Transnational Environmental Law, 0(0), 1–25. doi:10.1017/S2047102520000242.

Abstract: The rapid emergence of rights for nature over the past decade across multiple contexts has seen increasing awareness, recognition, and, ultimately, acceptance of rights of nature by the global community. Yet, too often, both scholarly publications and news articles bury the lede: that the most transformative cases of rights for nature have been consistently influenced, and often actually led, by Indigenous peoples. In this paper, we explore the ontologies of rights of nature and earth jurisprudence, and the intersections of these movements with the leadership of Indigenous peoples in claiming and giving effect to their own rights. Based on early observations, there is an emerging trend of increased efficacy, longevity and transformative potential being linked to a strongly pluralist approach of law making and environmental management. A truly transformative and pluralist ecological jurisprudence can only be achieved by enabling, and empowering, Indigenous leadership.

Publication: Poelina, A. (2020). A Coalition of Hope! A Regional Governance Approach to Indigenous Australian Cultural Wellbeing. In A. Campbell, M. Duffy, & B. Edmondson (Eds.), Located Research: Regional places, transitions and challenges (pp. 153–180). Singapore: Springer Singapore. doi:10.1007/978-981-32-9694-7_10

Abstract: The Rainbow Snake is a universal Indigenous Australian living creature responsible for the creation and protection of waterways. Countless generations of traditional owners have cared for the sacred ancestral being, it is a spiritual guardian. The ancient creation songs and stories are shared across the continent to create meaning and purpose for our collective responsibility in managing the health and survival of the rivers, wetlands, springs, billabongs, floodplains and soaks. This chapter presents an insider view about how to promote remote Aboriginal people's wellbeing through a co-operative regional earth-centred governance model. The story reveals a powerful policy and investment approach to the planning and development of regional governance and showcases the unique cultural and environmental values of the Fitzroy River, and its Indigenous people as having local, national and international significance. The central theme is the responsibility of Indigenous leaders to facilitate knowledge building which requires sharing a deeper understanding of continuing colonisation and the collective responsibility, as Australians, for managing water.

Publication: Poelina, A., Taylor, K. S., & Perdrisat, I. (2019). Martuwarra Fitzroy River Council: an Indigenous cultural approach to collaborative water governance. Australasian Journal of Environmental Management. Volume 26, #3. Retrieved from https://www.tandfonline.com/doi/abs/10.1080/14486563.2019.1651226

Abstract: In 2016 Traditional Owners came together to discuss their collective vision for the Martuwarra, expressed in the Fitzroy River Declaration. Traditional Owners established the Martuwarra Fitzroy River Council (MFRC) as a collective governance model to maintain the spiritual, cultural, and environmental health of the catchment. Traditional Owners advocate a collaborative approach for an inclusive water governance model and catchment management plan. The MFRC advocates the need to establish a Fitzroy River Catchment Authority as a statutory body to monitor and regulate potential cumulative impacts from development. The Authority needs to be inclusive of all stakeholders and ensure that there is informed consent in decisions regarding development. This article articulates a local critique of water resource development and presents, and alternative model of governance developed by Indigenous leaders of the West Kimberley

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Publication: Poelina, A. (2019). "Country". In A. Kothari, A. Salleh, A. Escobar, F. Demaria, & A. Acosta (Eds.), Pluriverse: A Post Development Dictionary (Vol. 1, pp. 142–144). New Delhi: Tulika Books. Retrieved from https://www.radicalecologicaldemocracy.org/pluriverse/

Abstract: My Indigenous heritage is Nyikina; in my language 'ngajanoo Yimardoowarra marnin' means "a woman who belongs to the river". This centres me as property belonging to the Mardoowarra, Fitzroy River, country. We are the traditional custodians of this sacred river in the Kimberley region of Western Australia. We were given the rules of Warloongarriy Law from our ancestor Woonyoomboo. He created the Mardoowarra by holding his spears firmly planted in Yoongoorrookoo, the Rainbow Serpent's skin. As they twisted and turned up in the sky and down in the ground, together they carved the river valley track as sung in the Warloongarriy river creation song. This is the First Law from Bookarrarra, the beginning of time. This is inherent to what we call 'Country.'

Publication: Poelina, A., & Nordensvärd, J. (2018). Sustainable Luxury Tourism, Indigenous Communities and Governance. In M. A. Gardetti & S. S. Muthu (Eds.), Sustainable Luxury, Entrepreneurship, and Innovation (pp. 147–166). Singapore: Springer.

Abstract: Sustainable luxury cannot only be understood as a vehicle for more respect for the environment and social development, but also as a synonym of culture, art and innovation of different nationalities and the maintenance of the legacy of local craftsmanship. The overall aim of this chapter is to explore the important intersection between traditional Aboriginal cultural and environmental management, knowledge and heritage, with the interest of sustainable luxury tourism in remote wilderness communities in Australia. Socially Sustainable luxury tourism could encompass important element of empowering and life-sustaining activities for remote Indigenous groups on a global scale based if informed by Indigenous cultural governance to facilitate sustainable tourism. We argue that such a development could bridge the divide between culture and nature explaining how and why management and protection of landscapes and eco-systems are integral to human heritage, culture and a new wave of sustainable luxury tourism. The Mardoowarra, the Fitzroy River and its life ways, in the vast Kimberley, northern Western Australia, is highlighted to exemplify both our meaning and concern.

Publication: Lim, M., Poelina, A., & Bagnall, D. (2017). Can the Fitzroy River Declaration ensure the realisation of the First Laws of the River and secure sustainable and equitable futures for the West Kimberley? Australian Environment Review, 32(1), 18–24. https://researchers.mq.edu.au/en/publications/can-the-fitzroy-river-declaration-ensure-the-realisation-of-the-f

Abstract: This article outlines the threats to the unique cultural and ecological values of the river as well as the events that led to the evolution and conclusion of the Declaration. A key component of the article is the exploration of legal options (including those based on the First Laws) which might enable realisation of the aim of the Declaration to protect the river for present and future generations. The article concludes that the Declaration is an important starting point for achieving sustainable and equitable futures in the West Kimberley. Underlined, however, is the importance of harnessing momentum which has developed following the conclusion of the Declaration and of developing mechanisms in state law to give effect to the First Laws.

13.2 *Statement of Equal Joint Authorship of All Authors and Declaration of Equal Attribution to Contribution of Publications, signed by all Authors.*

The Declaration of this Statement reflects the collaboration and intent of scholars of diverse background who have contributed to the body of peer reviewed evidence published or in the final stages In Press.

Together we came together through multiple workshops, big ideas, research, and capacity building strategies we filmed, documented the stories over a period of three years. As researchers we agreed to decolonise our practices and to shift our thinking, writing and constant rewriting, creating the ability to recognise and respect each other's contribution and collective wisdom through this transdisciplinary approach. Ideas for papers came through as we built and strengthened trust and respect amongst each other which framed our publications our way.

A commitment to share and learn from each other, a contract of good will and intent. All authors agreed these works would be included in my doctoral thesis. I am humbled by the eminent scholars across the planet, as well as close to home, who taught me many things, always open to the idea that our efforts will one day move towards the legal pluralism required to see First Law, Common Law and the Law of the Crown become entwined in a multi-species justice for ALL.

Writing ALL the papers, including papers I have led or written on my own have been a collaborative and rich process of collective wisdom and trans-disciplinary knowledges interpreted through the wisdom and lived experiences of both non-Indigenous and Indigenous authors. While we acknowledge the role of the 'lead' author in bringing us together, we agreed de-colonisation of academia needs to include a re-framing of authorship that truly values and reflects the shared knowledge and learnings between all authors. These collective publications are the product of building relationships and trust, including face-to-face meetings as well as web-based video meetings. This process created important 'waiting time', which allowed clarity of thought and new information to emerge.

We were at time guided by the process of the reviewers, rewrites, more rewrites, editors, and publishers. One paper took almost 3 years from concept to full publication. We agreed deadlines drive many academic outcomes, but it is in the

interstices of time when urgency is not present, that insight and clarity manifest, as in a complex puzzle whereby the location of the pieces is revealed when not watching.

In an age of ongoing and often competing pressures, it is important - and ultimately refreshing - to be reminded of the preciousness and richness of patience. In these quiet spaces, we can begin to hear silenced voices and the songs of Country. We also acknowledge that the system of hierarchical ordering of authorship is very 'Western' and leaves insufficient room for the essential contribution each author makes in a truly collaborative process. It is on this collaboration and trust, that I have been able to produce a thesis which, strengthened my capacity to think, to write and to be published achieving one of the main aims of the study which was the intent to work with amazing intellectual minds, who have become not only colleagues but lifelong friends of the Martuwarra, Fitzroy River and the Martuwarra Fitzroy River Council.

The authors dated signatures and affiliations attached affirm the Declaration in good faith and their informed consent to this Statement.

Poelina, A. (2019). Country. In A. Kothari, A. Salleh, A. Escobar, F. Demaria, & A. Acosta (Eds.), Pluriverse: A Post Development Dictionary (Vol. 1, pp. 142–144). New Delhi: Tulika Books. Retrieved from https://www.radicalecologicaldemocracy.org/pluriverse/

I confirm I am the author of the above article.

Name: Anne Poelina
Affiliation: University of Notre Dame – Nulungu Research Institute
Date: 28/12/2020

Poelina, A., Taylor, K. S., & Perdrisat, I. (2019). Martuwarra Fitzroy River Council: an Indigenous cultural approach to collaborative water governance. Australasian Journal of. Retrieved from https://www.tandfonline.com/doi/abs/10.1080/14486563.2019.1651226

RiverOfLife, Martuwarra, KS Taylor and A Poelina, In Press. Living Waters, Law First: Nyikina and Mangala water governance in the Kimberley, Western Australia. *Australasian Journal of Water Resources*. Vol 25(1)

I, K-S Taylor  **declare my consent to the above statement.**
Name: Katherine Selena Taylor
Affiliation: Australian National University
Date: 17/10/2020

Lim, M., Poelina, A., & Bagnall, D. (2017). Can the Fitzroy River Declaration ensure the realisation of the First Laws of the River and secure sustainable and equitable futures for the West Kimberley? *Australian Environment Review*, *32*(1), 18–24. https://researchers.mq.edu.au/en/publications/can-the-fitzroy-river-declaration-ensure-the-realisation-of-the-f

RiverOfLife, M., Poelina, A., Bagnall, D., & Lim, M. (2020). Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being. Transnational Environmental Law, 1-28. doi:10.1017/S2047102520000163.

I, Dr Michelle Lim declare my consent to the above statement.

Name: Dr Michelle Lim 
Affiliation: Centre for Environmental Law, Macquarie Law School, Macquarie University
Date: 16/10/2020

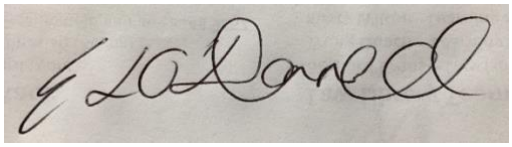
Poelina, A., Brueckner, M. & McDuffie, M. (In Press). "For the greater good? Questioning the social licence of extractive-led development in Western Australia's Martuwarra Fitzroy River Catchment". In Brueckner, M. et al. (Eds) Mapping mining legacies: On their problems and potential. Special Issue, *The Extractive Industries and Society*, Volume 7 No. 4. https://doi.org/10.1016/j.exis.2020.10.010

I, Martin Brueckner, declare my consent to the above statement.


Name: Martin Brueckner
Affiliation: Murdoch University
Date: 19/10/2020

O'Donnell, E., Poelina, A., Pelizzon, A., & Clark, C. (2020). Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature. Transnational Environmental Law, 0(0), 1–25. doi:10.1017/S2047102520000242.

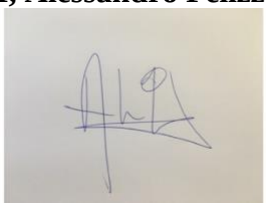
I…Dr Erin O'Donnell….declare my consent to the above statement.



Name: Erin O'Donnell
Affiliation: Melbourne Law School
Date: 16/10/2020

O'Donnell, E., Poelina, A., Pelizzon, A., & Clark, C. (2020). Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature. Transnational Environmental Law, 0(0), 1–25. doi:10.1017/S2047102520000242.

I, Alessandro Pelizzon, of 5 Koala Close, Ewingsdale, NSW, 2481, declare my consent to



the above statement.
Name: Dr Alessandro Pelizzon
Affiliation: Southern Cross University
Date: 15/10/2020

Poelina, A., Taylor, K. S., & Perdrisat, I. (2019). Martuwarra Fitzroy River Council: an Indigenous cultural approach to collaborative water governance. Australasian Journal of. Retrieved from https://www.tandfonline.com/doi/abs/10.1080/14486563.2019.1651226

I, Ian Perdrisat of 12 Pembroke Road Broome WA 6725 , declare my consent to the above statement.

Name: Ian Perdrisat
Affiliation: University of Newcastle**,**
Date: 15/10/2020

Lim, M., Poelina, A., & Bagnall, D. (2017). Can the Fitzroy River Declaration ensure the realisation of the First Laws of the River and secure sustainable and equitable futures for the West Kimberley? *Australian Environment Review*, *32*(1), 18–24. https://researchers.mq.edu.au/en/publications/can-the-fitzroy-river-declaration-ensure-the-realisation-of-the-f

RiverOfLife, M., Poelina, A., Bagnall, D., & Lim, M. (2020). Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being. Transnational Environmental Law, 9(3), 541-568. doi:10.1017/S2047102520000163

I declare my consent to the above statement.
Name: Donna Bagnall
Affiliation: Curtin University and the Australian Conservation Foundation
Date: 17/10/2020

O'Donnell, E., Poelina, A., Pelizzon, A., & Clark, C. (2020). Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature. Transnational Environmental Law, 0(0), 1–25. doi:10.1017/S2047102520000242.

I…CristyClark.....declare my consent to the above statement.

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Affiliation: University of Canberra, School of Law
Date: 15/10/2020

Poelina, A., & Nordensvärd, J. (2018). Sustainable Luxury Tourism, Indigenous Communities and Governance. In M. A. Gardetti & S. S. Muthu (Eds.), *Sustainable Luxury, Entrepreneurship, and Innovation* (pp. 147–166). Singapore: Springer.

I Johan Nordensvärd declare my consent to the above statement.
Name: Johan Nordensvärd, Senior Lecturer in Political Science

Affiliation: Linköpings universitet (University of Linköping)
Date: 16/10/2020

Poelina, A., Brueckner, M. & McDuffie, M. (In Press). "For the greater good? Questioning the social licence of extractive-led development in Western Australia's Martuwarra Fitzroy River Catchment". In Brueckner M. et al (Eds) Mapping mining legacies: On their problems and potential. Special Issue, *The Extractive Industries and Society*, Volume 7 No. 4. https://doi.org/10.1016/j.exis.2020.10.010

I Dr Magali McDuffie declare my consent to the above statement.

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Date: 22/12/2020

Lim, M., Poelina, A., & Bagnall, D. (2017). Can the Fitzroy River Declaration ensure the realisation of the First Laws of the River and secure sustainable and equitable futures for the West Kimberley? *Australian Environment Review*, *32*(1), 18–24. https://researchers.mq.edu.au/en/publications/can-the-fitzroy-river-declaration-ensure-the-realisation-of-the-f

Poelina, A., & Nordensvärd, J. (2018). Sustainable Luxury Tourism, Indigenous Communities and Governance. In M. A. Gardetti & S. S. Muthu (Eds.), *Sustainable Luxury, Entrepreneurship, and Innovation* (pp. 147–166). Singapore: Springer.

Poelina, A., Taylor, K. S., & Perdrisat, I. (2019). Martuwarra Fitzroy River Council: an Indigenous cultural approach to collaborative water governance. Australasian Journal of. Retrieved from https://www.tandfonline.com/doi/abs/10.1080/14486563.2019.1651226

RiverOfLife, Martuwarra, KS Taylor and A Poelina, In Press. Living Waters, Law First: Nyikina and Mangala water governance in the Kimberley, Western Australia. *Australasian Journal of Water Resources*. Vol 25(1)

Poelina, A., Brueckner, M. & McDuffie, M. (In Press). "For the greater good? Questioning the social licence of extractive-led development in Western Australia's Martuwarra Fitzroy River Catchment". In Brueckner M. et al (Eds) Mapping mining legacies: On their problems and potential. Special Issue, *The Extractive Industries and Society*, Volume 7 No. 4.

Poelina, A., Brueckner, M. & McDuffie, M. (In Press). "For the greater good? Questioning the social licence of extractive-led development in Western Australia's Martuwarra Fitzroy River Catchment". In Brueckner M. et al (Eds) Mapping mining legacies: On their problems and potential. Special Issue, *The Extractive Industries and Society*, Volume 7 No. 4.
https://doi.org/10.1016/j.exis.2020.10.010

O'Donnell, E., Poelina, A., Pelizzon, A., & Clark, C. (2020). Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature. Transnational Environmental Law, 0(0), 1–25. doi:10.1017/S2047102520000242.

RiverOfLife, M., Poelina, A., Bagnall, D., & Lim, M. (2020). Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being. Transnational Environmental Law, 9(3), 541-568. doi:10.1017/S2047102520000163

I confirm I am the author of the above articles.

Poelina, A., Balginjirr: A Special Place in Our Home River Country. (2019, March 7). Retrieved 26 September 2019, from https://westerlymag.com.au/balginjirr-a-special-place-on-our-home-river-country/

Poelina, A., (Producer), & McDuffie, M. (Director). (2019a). Balkinjirr Poem (Online Film). Retrieved from Retrieved from: https://vimeo.com/376460849

Poelina, A. (2019). Country. In A. Kothari, A. Salleh, A. Escobar, F. Demaria, & A. Acosta (Eds.), Pluriverse: A Post Development Dictionary (Vol. 1, pp. 142–144). New Delhi: Tulika Books. Retrieved from https://www.radicalecologicaldemocracy.org/pluriverse/

Poelina, A. (2020). A Coalition of Hope! A Regional Governance Approach to Indigenous Australian Cultural Wellbeing. In A. Campbell, M. Duffy, & B. Edmondson (Eds.), *Located Research: Regional places, transitions and challenges* (pp. 153–180). Singapore: Springer Singapore. doi:10.1007/978-981-32-9694-7_10

I confirm I am the author of the above articles.

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Date: 28/12/2020

14 APPENDIX TWO: MFRC Recommendations

Martuwarra Fitzroy River Council Recommendations to Western Australian (WA) Government Fitzroy River Water Planning Discussion Paper – Calls for Submissions (December 2020).

14. 1 Recommendations

These recommendations focus on the Western Australian governments commitments to developing the Martuwarra as a resource for water allocation and extraction. The Martuwarra Fitzroy River Council position is to engage in a consultative process with government and other stakeholders to consider the opportunity to co-design the water planning and management process to fully understand the cumulative and social impacts of development across the Catchment.

The Martuwarra Fitzroy River Council will collaborate with a number of key partners to provide a submission to both the Draft Derby Water Allocation Plan and the WA Government Fitzroy River Discussion Paper due 30th June 2021.The Martuwarra Fitzroy River Council advocate for a sustainable water development approach to be conducted in good faith to promote Free Prior and Informed Consent decision making to implement the following recommendations to protect the Aboriginal Cultural and National Heritage Listed Fitzroy River.

The intent of these Recommendations is to promote a bio-regional planning framework across the Fitzroy River Catchment; a unity pathway for collaboration, sharing information and free prior and informed consent decision making for ALL citizens of the regions. The Martuwarra Council position championed is based on Water Justice through a Statutory Planning Framework with the capacity to action, monitor and evaluate these Recommendations:

Recommendation 1: Planning Process and Consultation

1. Ensure (Catchment-wide) high order objectives to protect and maintain nationally important values relating to the River's ecological processes and cultural values of Living Water systems and flows that underpin the health of significant cultural places plants and animals and maintains traditions and stories;
2. Engage Traditional Owners in a culturally sensitive way throughout the process, not just as another stakeholder, but as the primary holders of knowledge about their cultural heritage, recognising their identity, ownership and custodianship and the connections they maintain with the Fitzroy River and its groundwater systems;
3. Respect the cultural diversity of the Indigenous communities in the Fitzroy River

catchment and the timeframes necessary to allow ALL people to be able to participate.

4. Ensure Aboriginal people understand and have adequate knowledge of the planning issues AND understand the consequences and outcomes that may result from the Plan, and the contribution of their cultural knowledge, values and perspectives;
5. Integrate traditional ecological knowledge as Indigenous science into the planning framework, including recognising both Indigenous knowledge for planning and incorporating this knowledge to co-manage the River and its systems, and the monitoring and review of the Plan.

Recommendation 2: Planning Data and Limitations

1. Describe the climate processes and drivers of change for the region and how they are influencing climate variability, particularly changes in rainfall in the Fitzroy Catchment;
2. Use best available climate change information to guide water planning in the Fitzroy Catchment;
    a. For example, ensure the Plan takes account of increasing variability in rainfall frequency and intensity; and how these changing patterns of rainfall will impact aquifer recharge.
3. Acknowledge uncertainty about impacts of extraction in the absence of sufficient longitudinal ecological catchment research, particularly at low flows, and the limited understanding of groundwater/surface water connections and how groundwater use in different parts of the catchment will change water levels and flows in the River.
4. Acknowledge impacts and distributive equity for Traditional Owners who are downstream from proposed developments and the associated risks with their human right to live in a clean environment and the potential loss of lifeways and culture.
5. Acknowledge Traditional Owners are considering property rights to land and water in a post native title determined era.
6. Acknowledge impacts and distributive equity for Traditional Owners who are downstream from proposed developments and associated risks with their human right to live in a clean environment and potential loss of lifewasy and culture.

Recommendation 3: Cultural Values, Inherent Rights and Needs

1. Recognise the value of First Law, traditional knowledge, wisdom and water stewardship in existing intergenerational management of the River Country;
2. Acknowledge Traditional Owners are considering how they best use native title, earth laws, First Law and Crown Law property rights to promote and protect; people, land living waters and biodiversity.
3. Cultural values associated with Living Water systems need to be respected and central to decision making processes;
4. Protect and maintain the productive processes of River pools and floodplains for culturally significant plant and animal species and maintain surface water flows

and recharge to protect groundwater fed dry season water stores (jila) for Indigenous people, recognising that subsurface flows are also part of the listed values;

5. Address water requirements across all stages of the year for culturally significant resources (plants and animals) and significant cultural places. (note the proposals for flood harvesting which may affect wetland connectivity and fish growth and reproduction);
6. Respect our all-year rights to access water resources and carry on our traditions, management practices and ceremony for the Fitzroy River and its related jila sites.

Recommendation 4: Licensing, Review and Monitoring

1. Adopt a Moratorium on Water Licenses - The Martuwarra Fitzroy River Council recommends the Western Australian government DO NOT issue new water licenses or increase existing water licenses until post Peer Review of the Draft Fitzroy River Management Plan and Fitzroy Catchment Water Allocation Plan;
2. Adopt a precautionary principal approach to water allocation, recognising a sustainable allocation will not be able to be determined on a system-wide basis in the absence of longitudinal ecological data and groundwater and surface water connections, and to address the need for conservative baselines and ongoing monitoring;
3. Monitor the adaptive Fitzroy River Plan, i.e. assess changes to flows from extraction on natural and cultural values and significant cultural places – regarding intervals and/or flow and ecological thresholds;
4. Manage extractions to prevent adverse impacts on flows in seasons of low in-flows in the catchment – reduce risks by introducing pumping rules - annual license reviews, meters, gauges, and compliance measures such as licensees' penalties and spot checks;
5. Greater public transparency about annual reviews of water plans and about water license conditions, monitoring and compliance.
6. Use license conditions and other levers to actively involve Traditional Owners in monitoring compliance activity and build local Indigenous community capacity (e.g. through Community Researchers and Ranger groups) to co-manage the Fitzroy Catchment water resources.

Bibliography

ABC News. (2012, November 19). *Big Jump in Mining in the Kimberley*. Retrieved from https://www.abc.net.au/news/2012-11-19/report-details-mining-impact-in-the-kimberley/4379584

ABC News. (2016, August 30). *Victorian unconventional gas exploration ban to end fracking and CSG extraction*. Retrieved from http://www.www.abc.net.au/news/2016-08-30/victoria-to-ban-csg-fracking-and-unconventiona-gas-exploration/7796944

Aboriginal & Torres Strait Islander Affairs (ATSIA). (2003). *Guide to provide advice for Indigenous tourism business—Media release.* Minister for Immigration and Multicultural and Indigenous Affairs.

Aboriginal & Torres Strait Islander Heritage Protection Act 1984 (Commonwealth of Australia. Retrieved from https://www.legislation.gov.au/Details/C2016C00937

Aboriginal Heritage Act 1972 (Western Australia). Retrieved from https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_3_homepage.html

Aboriginal Policy & Coordination Unit. (2018). *Government response to learning from the message stick: The report of the inquiry in aboriginal youth suicide in remote areas.* Perth, Western Australian Department of Premier and Cabinet.

Aborigines Act 1905 (Western Australia). Retrieved from https://aiatsis.gov.au/sites/default/files/catalogue_resources/52790.pdf

Aborigines Amendment Act 1936 (Western Australia). Retrieved from https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_12388.pdf/$FILE/Aborigines%20Act%20Amendment%20Act%201936%20-%20%5B00-00-00%5D.pdf?OpenElement

Abu, R., Reed, M., & Jardine, T. (2019). Using Two-Eyed Seeing to Bridge Western Science and Indigenous Knowledge Systems and Understand Long-Term Change in the Saskatchewan River Delta, Canada. *International Journal of Water Resources Development, 36*(5), 757-776. doi: 10.1080/07900627.2018.1558050

Adamson, D. (2013). *Romancing the north: the food bowl furphy*. Retrieved from https://theconversation.com/romancing-the-north-the-food-bowl-furphy-15469.

Agrawal, A., & Gibson, C. (1999). Enchantment and Disenchantment: The Role of Community in Natural Resource Conservation. *World Development, 27*(4), 629–649. doi:10.1016/S0305-750X(98)00161-2

Aguilera, R., Rupp, D., Williams, C., & Ganapathi, J. (2007). Putting the S Back in Corporate Social Responsibility: A Multi-level Theory of Social Change in Organizations. *The Academy of Management Review, 32*(3), 836-863 doi:10.2139/ssrn.567842

Agyeman, J., & Evans, B. (2004). 'Just sustainability': the emerging discourse of environmental justice in Britain? *The Geographical Journal*, *170*(2), 155–164. doi:10.1111/j.0016-7398.2004.00117.x

Akchurin, M. (2015). Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador. *Law & Social Inquiry: Journal of the American Bar Foundation*, *40*(4), 937–968. doi:10.1111/lsi.12141

Akiba on behalf of Torres Strait Regional Seas Claim Group v Commonwealth of Australia (2013). HCA 33. (Austl). Retrieved from http://eresources.hcourt.gov.au/showCase/2013/HCA/33

Alcantara, C., Longboat, S., & Vanhooren, S. (2020). Improving First Nations water security through governance. *Canadian Public Administration: Administration Publique Du Canada*, *63*(2), 155–176. doi:10.1111/capa.12363

Alexander, S. (2016). *Limits to growth: Policies to steer the economy away from disaster.* Retrieved from The Conversation: https://theconversation.com/limits-to-growth-policies-to-steer-the-economy-away-from-disaster-57721

Alexandra, J. (2016). 'Risks, Uncertainty and Climate Confusion in the Murray–Darling Basin Reforms'. *Water Economics and Policy*, *3*(3), 1-21. doi:1650038–1 to 1650038–21.

Alexandra, J. (2018). 'Evolving Governance and Contested Water Reforms in Australia's Murray Darling Basin', *Alternative Law Journal*, *33*(3), 132–36. doi: 10.3390/w10020113

Altman, J., & Finlayson, J. (1992). *Aborigines, tourism, and sustainable development*. Centre for Aboriginal Economic Policy Research (CAEPR) Discussion Paper No. 26. Retrieved from https://caepr.cass.anu.edu.au/research/publications/aborigines-tourism-and-sustainable-development

Altman, J. (1993). *Indigenous Australians in the National Tourism Strategy: Impact, Sustainability and Policy Issues*. Centre for Aboriginal Economic Policy Research (CAEPR) Discussion Paper No. 37. Retrieved from https://caepr.cass.anu.edu.au/research/publications/indigenous-australians-national-tourism-strategy-impact-sustainability-and

Altman, J. (2001). *Sustainable Development Options on Aboriginal Land: The Hybrid Economy in the Twenty-first Century*. Centre for Aboriginal Economic Policy Research (CAEPR) Discussion Paper No. 226. Retrieved from https://caepr.cass.anu.edu.au/research/publications/sustainable-development-options-aboriginal-land-hybrid-economy-twenty-first

Altman, J. (2004). Indigenous interests and water property rights. *Academy of Social Sciences*, *31*(23), 29-34. https://researchers.anu.edu.au/publications/3447

Altman, J. (2005). Development options on Aboriginal land: Sustainable Indigenous hybrid economies in the twenty-first century. In Australian Institute of Aboriginal and Torres Strait Islander Studies & L. Taylor (Eds.), *The Power of Knowledge: the resonance of tradition*.

Canberra, Australia: Aboriginal Studies Press. Retrieved from https://openresearch-repository.anu.edu.au/handle/1885/84304

Altman, J., & Kerins, S. (Eds). (2012). *People on country: vital landscapes, Indigenous futures*. Federation Press.

Anaya, J., & Wiessner, S. (2007, October 3). *The UN Declaration on the Rights of Indigenous Peoples: Towards Re-empowerment*. Retrieved from http://jurist.org/forum/2007/10/un-declaration-on-rights-of-indigenous.php

Andersen, J., Larsen, J., & Møller, I. (2009). The exclusion and marginalisation of immigrants in the Danish welfare society. *International Journal of Sociology and Social Policy*, 29(5/6): 274–286. doi:10.1108/01443330910965804

Anderson, C., & McLachlan, S. (2016). Transformative research as knowledge mobilization: Transmedia, bridges, and layers. *Action Research*, *14*(3), 295–317. doi:10.1177/1476750315616684

Anker, K. (2008). Teaching 'Indigenous Peoples and the Law', *Alternative Law Journal*, *33*(3), 132–136. doi:10.1177/1037969X0803300301

Anon. (2020, April 13). *Mining can lead economic surge after the pandemic - Editorial*. The Australian. Retrieved from https://www.theaustralian.com.au/commentary/editorials/mining-can-lead-economic-surge-after-the-pandemic/news-story/ad661014ff4dd8d149aa76ef88d9d315

Appleyard, S., MacIntyre, K., & Dobson, B. (2001). Protecting 'Living Water': Involving Western Australian Aboriginal Communities in the Management of Groundwater Quality Issues. *Anthropology from the Shed*. Retrieved from https://anthropologyfromtheshed.com/project/protecting-living-water-involving-western-australian-aboriginal-communities-management-groundwater-quality-issues/

Archdeacon, W. E. (1880, December 25). Report on King's Sound. *Fremantle Herald*, 3.

Ash, A., and Watson, I. (2018). Developing the north: learning from the past to guide future plans and policies. *Rangeland Journal*, *40*(4), 301–314. doi: 10.1071/RJ18034

Assadourian, E., Prugh, T., Starke, L., & Link, S. (2013). *State of the world 2013: Is sustainability still possible?* Island Press.

Australian Bureau of Statistics. (2011a). *Australian system of national accounts, 2018-19* (Cat. No. 5204.0). Retrieved from http://www.abs.gov.au

Australian Bureau of Statistics. (2011b). *Consumer Price Index table 12 (Perth)*. (Cat.No. 6401.0). Retrieved from http://www.abs.gov.au

Australian Bureau of Statistics. (2012). *Labour Force, Australia - Detailed Quarterly Time Series Workbook.* (Cat. No. 6291.0.55.003). Retrieved from http://www.abs.gov.au

Australian Bureau of Statistics. (2017), *2016 Census Data Summary: Indigenous and Torres Strait Islander Population*, (Cat. No. 2071.0). Retrieved from http://www.abs.gov.au

Australian Bureau of Statistics. (2018). *Socio-economic advanatge and disadvantage.* (Cat.No. 2071.0). Retrieved from http://www.abs.gov.au

Australian Bureau of Statistics, (2019). *Australian System of National accounts, 2018-19* (Cat.No. 5204.0). Retrieved from http://www.abs.gov.au

Australian Department of Agriculture, Water and the Environment. (n.d.). *National Heritage Places: West Kimberley*. Retrieved from https://www.environment.gov.au/heritage/places/national/west-kimberley

Australian Department of Environment & Energy. (2017). *Australia State of the Environment 2016*. Retrieved from https://soe.environment.gov.au/sites/default/files/soe2016-overview-launch-version328feb17.pdf?v=1488792535

Australian Department of Industry, Innovation & Science. (2015). *Our North, Our Future: White Paper on Developing Northern Australia* (No. 1). Commonwealth of Australia. Retrieved from https://www.industry.gov.au/data-and-publications/our-north-our-future-white-paper-on-developing-northern-australia

Australian Department of Industry, Tourism & Resources. (2005). *Request for tender: Research project - Business ready program for Indigenous tourism*. http://base.socioeco.org/docs/indigenoustourismresearchagenda.pdf

Australian Department of Infrastructure, Transport, Regional Development and Communications. (2019). *IY2019: Knowledge of Woonyoomboo lives on* (Film). Retrieved from https://www.arts.gov.au/departmental-news/iy2019-knowledge-woonyoomboo-lives

Australian Department of Primary Industries & Regional Development. (2018). *Noogoora burr: what you should know (Agriculture and Food)*. Australian Government. Retrieved from https://www.agric.wa.gov.au/declared-plants/noogoora-burr-what-you-should-know

Australian Department of Primary Industries & Regional Development. (2020). *Climate projections for Western Australia*. https://www.agric.wa.gov.au/climate-change/climate-projections-western-australia

Australian Department of the Prime Minister & Cabinet. (2017). *Closing the Gap Prime Minister's Report*. Retrieved from https://www.niaa.gov.au/sites/default/files/publications/ctg-report-2017.pdf

Australian Department of Water & Environmental Regulation. (2020). Climate trends – Kimberley. Accessed October 8, 2020. https://www.water.wa.gov.au/planning-for-the-future/allocation-plans/managing-water-in-a-changing-climate/climate-trends-kimberley

Australian Government. (2015). *Australia's Wild Rivers*. Retrieved from https://protect-au.mimecast.com/s/iT0RCZY1gJTXNY14iz_x5o?domain=australia.gov.au

Australian Government. (2020). *Closing the Gap Report*. Retrieved from https://ctgreport.niaa.gov.au/

Australian Heritage Council. (2011). *West Kimberley Place Report* (No. 1.0). Retrieved from https://www.environment.gov.au/system/files/pages/ed0b4e39-41eb-4cee-84f6-049a932c5d46/files/ahc-final-assessment-full.pdf

Australian Heritage Database. (n.d.). *Australian Heritage Database: Place details*. Retrieved from http://www.environment.gov.au/cgi-bin/ahdb/search.pl?mode=place_detail;place_id=106063

Australian Human Rights Commission. (2012, December 14). *United Nations Permanent Forum on Indigenous Issues*. Retrieved from https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/united-nations-permanent-forum

Australian Institute of Aboriginal and Torres Strait Islander Studies. (2018). *PBC National Snapshot*. Retrieved from https://www.nativetitle.org.au/learn/role-and-function-pbc/pbc-national-snapshot.

Australian National Indigenous Affairs Agency. (2016, May 6). *Indigenous Protected Areas (IPAs)*. Retrieved from https://www.niaa.gov.au/indigenous-affairs/environment/indigenous-protected-areas-ipas

Aven, T., & Renn, O. (2009). On risk defined as an event where the outcome is uncertain. *Journal of Risk Research, 12*(1), 1-11. Doi: 10.1080/13669870802488883

Aven, T., & Renn, O. (2010). *Risk Management and Governance: Concepts, Guidelines and Applications*. Springer-Verlag Berlin Heidelberg.

Awume, O. (2018). *Indigenizing water security* (Doctoral dissertation, University of Saskatchewan, Canada). Retrieved from https://harvest.usask.ca/handle/10388/11467

Ayre, M., and Mackenzie, J. (2013). "Unwritten, Unsaid, Just Known": The Role of Basin Reforms. *Local Environment, 18*(7), 753–68. Doi: 10.1080/13549839.2012.665864

Ayre, M., Wallis, P., & Daniell, K. (2018). Learning from collaborative research on sustainably managing fresh water: implications for ethical research–practice engagement. *Ecology and Society*, *23*(1), 6. doi:10.5751/ES-09822-230106

Bacchi, C. (2000). Policy as Discourse: What Does It Mean? Where Does It Get Us? *Discourse: Studies in the Cultural Politics of Education, 21*(1): 45–57. Doi: 10.1080/01596300050005493

Bacchi, C. (2009). *Analysing Policy: What's the Problem Represented to Be?* Pearson Australia.

Bakker, K. (2007). Neoliberalizing nature? Market environmentalism in water supply in England and Wales. In N. Heynen, J. McCarthy, S. Prudham & P. Robbins (Eds.), *Neoliberal Environments: False promises and unnatural consequences* (101-113). Routledge.

Barber, M., Jackson, S., Shellberg, J., & Sinnamon, V. (2014). Working Knowledge: characterising collective indigenous, scientific, and local knowledge about the ecology, hydrology and geomorphology of Oriners Station, Cape York Peninsula, Australia. *Rangeland Journal*, *36*(1), 53–66. doi:10.1071/RJ13083

Barber, M., & Woodward, E. (2018). *Indigenous Water Values, Rights, Interests and Development Objectives in the Fitzroy Catchment* (No. 1.0). CSIRO. Retrieved from https://publications.csiro.au/publications/publication/PIcsiro:EP18617

Barbour, W., & Schlesinger, C. (2012). Who's the boss? Post-colonialism, ecological research and conservation management on Australian Indigenous lands. *Ecological Management & Restoration 13* (1), 36-41. Doi: 10.1111/j.1442-8903.2011.00632.x

Bartlett, C., Marshall, M., & Marshall, A. (2012). Two-Eyed Seeing and other lessons learned within a co-learning journey of bringing together indigenous and mainstream knowledges and ways of knowing. *Journal of Environmental Studies and Sciences*, *2*(4), 331–340. doi:10.1007/s13412-012-0086-8

Bartolo, R., Bayliss, P., & van Dam, R. (2008). *Ecological Risk Assessment for Australia's Northern Tropical Rivers: A report to Land & Water Australia* (No. 1.0). Retrieved from https://www.environment.gov.au/science/supervising-scientist/publications/tropical-rivers/ecological-risk-assessments-australias-northern-tropical-rivers

Bawaka Country, Wright, S., Suchet-Pearson, S., Lloyd, K., Burarrwanga, L., Ganambarr, R., Ganambarr-Stubbs, M., Ganambarr, B., & Maymuru, D. (2015). 'Working with and Learning from Country: Decentring Human Author-Ity'. *Cultural Geographies* 22 (2), 269–283. Doi: 10.1177/1474474014539248

Becker, M. (2010). *Pachakutik: Indigenous Movements and Electoral Politics in Ecuador*. Rowman & Littlefield Publishers.

Bendell, J. (2012). *Elegant Disruption: How Luxury and Society Can Change Each-Other for Good*. Asia Pacific Centre for Sustainable Enterprise, Griffith University. Retrieved from http://insight.cumbria.ac.uk/id/eprint/2556/1/Bendell_ElegantDisruptionHowLuxuryAndSociety.pdf

Bendell, J., & Kleanthous, A. (2007) *Deeper Luxury: Quality and style when the world matters*. World Wildlife Fund. Retrieved from http://assets.wwf.org.uk/downloads/luxury_report.pdf

Bennett, N., Lemelin, R., Koster, R., & Budke, I. (2012). A capital assets framework for appraising and building capacity for tourism development in aboriginal protected area gateway communities. *Tourism Management*, *33*(4), 752–766. doi:10.1016/j.tourman.2011.08.009

Benterrak, K., Muecke, S., & Roe, P. (1984). *Reading the Country: Introduction to Nomadology*. Fremantle Arts Centre Press.

Berros, M. (2019). Rights of Nature in the Anthropocene: Towards the Democratization of Environmental Law? In M. Lim (Ed.), *Charting Environmental Law Futures in the Anthropocene* (pp. 21–31). Singapore: Springer.

Berry, K., & Jackson, S. (2018). The Making of White Water Citizens in Australia and the Western United States: Racialization as a Transnational Project of Irrigation Governance. *Annals of the American Association of Geographers, 108*(5), 1354-1369. doi:10.1080/24694452.2017.1420463

Berry, T. (1988). *The Dream of the Earth*. Sierra Club Books.

Berry, T. (1999). *The Great Work: Our Way Into the Future*. Harmony/Bell Tower.

Berry, T. (2006). *Evening Thoughts: Reflections on Earth as Sacred Community*. (M. Tucker, Ed.). Sierra Club Books.

Bibeau, F. (2019, April). *Mother Earth approach in the implementation of Education and Climate Change* (presentation). Ninth Interactive Dialogue of the General Assembly on Harmony with Nature, New York. Retrieved from http://www.harmonywithnatureun.org/dialogue/W1SIzrYjf!c!gfNhRm6BLrSwRcjB8GkgcietrQhxqmXLP6mbxQhtegWTlecUWUGabPRCakBVNP5!Y9fV8volbg==

Biblestudytools, accessed 18 September 2020, https://www.biblestudytools.com/library/

Bice, S. (2014). What Gives You a Social Licence? An Exploration of the Social Licence to Operate in the Australian Mining Industry. *Resources*, *3* (1), 62-80. doi:10.3390/resources3010062

Bice, S., & Moffat, K. (2014). Social licence to operate and impact assessment. *Impact Assessment and Project Appraisal 32* (4), 257-262. doi:10.1080/14615517.2014.950122

Bice, S., Brueckner, M., & Pforr, C. (2017). Putting social license to operate on the map: A social, actuarial and political risk and licensing model (SAP Model). *Resources Policy 53*, 46-55. doi:10.1016/j.resourpol.2017.05.011

Biggs, S. (2017). *Ponca Nation of Oklahoma to Recognize the Rights of Nature to Ban Fracking*. Retrieved from https://www.movementrights.org/ponca-nation-of-oklahoma-to-recognize-the-rights-of-nature-to-ban-fracking/

Bird Rose, D. (1992). *Dingo Makes Us Human: Life and Land in Australian Culture.* Cambridge University Press

Bird Rose, D. (2013). Common property regimes in Aboriginal Australia: totemism revisited. In P. Larmour P (Ed.), *The Governance of Common Property in the Pacific Region* (pp.127-143). ANU Press.

Birrell, K. (2016). *Indigeneity: Before and Beyond the Law*. Routledge, London & New York.

Birtchnell v Equity Trustees, Executors & Agency Co Ltd (1929), HCA 24. (Austl.). Retrieved from https://jade.io/j/?a=outline&id=63417

Black, C. (2010). *The Land is the Source of the Law: A Dialogic Encounter with Indigenous Jurisprudence*. Routledge, London & New York.

Black, L. (2017). *The Social Licence to Operate: Your Management Framework for Complex Times*. Routledge, London & New York.

Blaser, M. (2004). Life projects: Indigenous peoples' agency and development. In M. Blaser, H. Feit & G. McRae (Eds), *In the way of development: Indigenous peoples, life projects and globalization* (pp. 26 – 27). Zed Books in association with International Development Research Centre Ottawa, London & New York.

Blondeel, M., & Van de Graaf, T. (2018). Toward a global coal mining moratorium? A comparative analysis of coal mining policies in the USA, China, India and Australia. *Climatic Change, 150*(1), 89–101. Doi: 10.1007/s10584-017-2135-5

Blowes, R. (1993). Governments: Can You Trust Them with Your Traditional Title-Mabo and Fiduciary Obligations of Governments. *The Sydney Law Review, 15*, 254. Retrieved from https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/sydney15&section=26

Bond, A., Pope, J., Retief, F. & Morrison-Saunders, A. (2018). On legitimacy in impact assessment: An epistemologically-based conceptualisation. *Environmental Impact Assessment Review, 69*(1), 16-23. Doi: 10.1016/j.eiar.2017.11.006

Borland, H., & Lindgreen, A. (2013). Sustainability, epistemology, ecocentric business and marketing strategy: Ideology, reality, and vision. *Journal of Business Ethics, 117*(1), 173-187. Doi: 10.1007/s10551-012-1519-8

Bosselmann, K. (2016). *The Principle of Sustainability: Transforming law and governance* (2nd ed.). Routledge, London & New York.

Boulton, J. (2016). *Aboriginal children, history and health: Beyond social determination*. Routledge, London & New York.

Boutilier, R. (2009). *Stakeholder Politics: Social Capital, Sustainable Development, and the Corporation*. Stanford University Press.

Bozhkov, E., Walker, C., McCourt, V., & Castleden, H. (2020). Natural Sciences Ready for Truth, Healing, and Reconciliation with Indigenous Peoples in Canada? Exploring "Settler Readiness" at a World-Class Freshwater Research Station'. *Journal of Environmental Studies and Sciences, 10* (3), 226-241. Doi:10.1007/s13412-020-00601-0.

Brann, M. & Gordon, O. (2017, 25 September). Irrigation plans for Kimberley's Gogo Station facing green wall of opposition. *ABC News*. Retrieved from http://www.abc.net.au/news/rural/2017/green-groups-launch-campaign-against-gogo-irrigation-plans/8980912

Bratspies, R. (2015). Do we need a human right to a healthy environment. *Santa Clara*

Journal of International Law 13(1), 31 - 69. Retrieved from https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/scjil13&section=8

Brierley, G., Tadaki, M., Hikuroa, D., Blue, B., Šunde, C., Tunnicliffe, J., & Salmond, A. (2018). A geomorphic perspective on the rights of the river in Aotearoa New Zealand. *River Research and Applications, 35*(10), 1640–1651. doi: 10.1002/rra.3343

Brockman, J. (1881, September 20). Notes of an Exploratory Trip Northwards from the Fitzroy. *The West Australian*, p. 7. Retrieved from https://trove.nla.gov.au/newspaper/article/2985646

Brocx, M., & Semeniuk, V. (2011). The Global Geoheritage Significance of the Kimberley coast, Western Australia. *Journal of the Royal Society of Western Australia, 94*(2), 57–88. Retrieved from https://researchrepository.murdoch.edu.au/id/eprint/7712/

Broderick, G., & Horwitz, P. (2014). Sustainability Mining: Water for Mining, and Mining Water. In M. Brueckner, A. Durey, R. Mayes, & C. Pforr (Eds.), *Resource Curse or Cure? On the Sustainability of Development in Western Australia* (pp. 207–219). Springer-Verlag Berlin Heidelberg.

Brouwer, H., & Woodhill, J. (2016). *The MSP guide: How to design and facilitate multi-stakeholder partnerships*. Practical Action Publishing.

Brown, R., (2001). Australian Indigenous Mental Health. *Australian and New Zealand Journal of Mental Health Nursing, 10*(1), 33-41. Doi: 10.1046/j.1440-0979.2001.00189.x

Brown, L., & Strega, S. (2005). *Research as Resistance: Critical, Indigenous and Anti-Oppressive Approaches*. Canadian Scholars' Press.

Brueckner, M., Durey, A., Mayes, R., & Pforr, C. (2013). The mining boom and western Australia's changing landscape: towards sustainability or business as usual?. *Rural Society, 2*(1), 111-124. doi: 10.5172/rsj.2013.22.2.111

Brueckner M., Durey A., Mayes R., & Pforr C. (2014a). Confronting the 'Resource Curse or Cure' Binary. In M. Brueckner, A. Durey, R. Mayes, & C. Pforr (Eds.), *Resource Curse or Cure? On the Sustainability of Development in Western Australia* (pp. 3-23). Springer-Verlag Berlin Heidelberg.

Brueckner, M., Durey, A., Pforr, C., & Mayes, R. (2014b). The civic virtue of developmentalism: on the mining industry's political licence to develop Western Australia. *Impact Assessment and Project Appraisal, 32*(4), 315–326. doi:10.1080/14615517.2014.929784

Brueckner, M., Spencer, R., Wise, G., & Marika, B. (2014c). Indigenous entrepreneurship: Closing the Gap on local terms. *Journal of Australian Indigenous Issues*, *17*(2), 2–24. Retrieved from https://researchrepository.murdoch.edu.au/id/eprint/32756/

Brueckner, M., & Eabrasu, M. (2018). Pinning down the social license to operate (SLO): The problem of normative complexity. *Resources Policy, 59*(1), 217-226. doi:10.1016/j.resourpol.2018.07.004

Bulloch, H., & Fogarty, W. (2016). Freeing the 'Aboriginal Individual': Deconstructing 'Development as Freedom' in Remote Indigenous Australia. *Social Analysis, 60*(3), 76-94. doi:10.3167/sa.2016.600305

Bunn, S. & Arthington, A. (2002). Basic principles and ecological consequences of altered flow regimes for aquatic biodiversity. *Environmental Management, 30*(4), 492–507. doi:10.1007/s00267-002-2737-0

Bunten, A. (2010). More like ourselves: Indigenous capitalism through tourism. *The American Indian Quarterly 34*(3), 285-311. doi:10.5250/amerindiquar.34.3.285

Burdon, P. (2010). The Rights of Nature: Reconsidered. *Australian Humanities Review 49*(1), 69-89. Retrieved from https://papers.ssrn.com/abstract=1709015

Burdon, P. (2014). *Earth Jurisprudence: Private Property and the Environment* (First edition). Routledge London & New York.

Burdon, P., Drew, G., Stubbs, M., Webster, A., & Barber, M. (2015). Decolonising Indigenous Water 'Rights' in Australia: Flow, Difference and the Limits of Law. *Settler Colonial Studies, 5*(4), 334-349. Doi: 10.1080/2201473X.2014.1000907

Burgess, C.P., Johnston, F.H., Bowman, D.M., Whitehead, P.J., (2005) Healthy country: healthy people? Exploring the health benefits of indigenous natural resource management. Aust N Z J Public Health. 2005 Apr;29(2):117-22. doi: 10.1111/j.1467-842x.2005.tb00060.x. PMID: 15915614.

Butler, R., & Hinch, T. (2007). Introduction: Revisiting common ground. In R. Butler & T. Hinch (Eds.), *Tourism and Indigenous peoples: Issues and implications* (pp. 1–13). Elsevier Ltd.

Butterly, L. (2012). Keeping the engine room running: Key themes and developments in water resources management in the Pilbara region of Western Australia. *Journal of Natural Resources Law and Policy*, *15*(2), 191–217. Retrieved from https://search.informit.com.au/documentSummary;dn=201214584;res=IELAPA

Buultjens, J., Waller, I., Graham, S., & Carson, D. (2005). Public sector initiatives for Aboriginal small business development in tourism. In C. Ryan, & M. Aicken (Eds.), *Indigenous Tourism: The Commodification and Management of Culture* (pp. 127-150). Elsevier Ltd.

Camkin, J., & Neto, S. (2013). New Learning Foundations for Building Water Knowledge Bridges. *Journal of Contemporary Water Research & Education, 150*(1), 72-79. doi: 10.1111/j.1936-704X.2013.03137.x

Cano Pecharroman, L. (2018). Rights of Nature: Rivers That Can Stand in Court. *Resources*, *7*(1), 13. doi:10.3390/resources7010013

Carter, J. (2010). Displacing Indigenous Cultural Landscapes: the Naturalistic Gaze at Fraser Island World Heritage Area. *Geographical Research*, *48*(4), 398–410. doi:10.1111/j.1745-

5871.2010.00644.x

Carwardine, J., O'Connor, T., Legge, S., Mackey, B., Possingham, H., & Martin, T. (2011). *Priority threat management to protect Kimberley wildlife* (No. 1). CSIRO Ecosystem Sciences. Retrieved from https://publications.csiro.au/rpr/download?pid=csiro:EP102445&dsid=DS4

Centre For 21st Century Humanities. (2019). *Colonial Frontier Massacres Map (1780-1930)*. Newcastle: University of Newcastle. Retrieved from https://c21ch.newcastle.edu.au/colonialmassacres/map.php

Centre of Excellence in Natural Resource Management (CENRM). (2010). *Fitzroy River Catchment Management Plan* (Report prepared for Rangelands Natural Resource Management Western Australia). Retrieved from https://rangelandswa.com.au/wp-content/uploads/2017/01/Rangelands-Fitz-Mng-Plan-Summary.pdf.

Cepek, M. (2011). Foucault in the forest: Questioning environmentality in Amazonia. *American Ethnologist, 38*(3), 501–515. doi:10.1111/j.1548-1425.2011.01319.x

Césaire, A. (2000). *Discourse on colonialism*. (J. Pinkham, Trans.). Monthly Review Press.

Chase, G., & Isaac, G. (1992). *The Kimberley Mob* (Film). Mayfan, Australian Film Finance Corporation.

Chandler, L. (2014). Regulating the resource juggernaut. In M. Brueckner, A. Durey, R. Mayes, & C. Pforr (Eds.), *Resource Curse or Cure? On the Sustainability of Development in Western Australia* (pp. 165-177). Springer-Verlag Berlin Heidelberg.

Christensen, C. (1997). *The innovator's dilemma: When new technologies cause great firms to fail*. Harvard Business Review Press.

Christensen, C. & Overdorf, M. (2000). Meeting the challenge of disruptive change. *Harvard Business Review Magazine* (March-April 2000). Retrieved from https://hbr.org/2000/03/meeting-the-challenge-of-disruptive-change

Christensen, C. & Raynor, M. (2003). *The innovator's solution: creating and sustaining successful growth.* Harvard Business Review Press.

Christie, G. (2014). "Obligations", Decolonization and Indigenous Rights to Governance. *Canadian Journal of Law & Jurisprudence, 27*(1), 259–82. Doi: 10.1017/S0841820900006330

Chu, C. (1998). Cross-cultural health issues in contemporary Australia. *Ethnicity & Health*, 3(1/2), 125-134. Doi: 10.1080/13557858.1998.9961854

Clark, C., Emmanouil, N., Page, J., & Pelizzon, A. (2020). Can You Hear the Rivers Sing: Legal Personhood, Ontology, and the Nitty-Gritty of Governance. *Ecology Law Quarterly, 45*, 787-844. doi: 10.15779/Z388S4JP7M

Climate Council. (2015). *Thirsty country: Climate change and drought in Australia*. Retrieved from https://www.climatecouncil.org.au/resources/droughtreport2015/

Collins, B. (2015, 10 September). Buru Energy Begins Fracking Again in WA's Kimberley. *ABC News.* Retrieved from http://www.abc.net.au/news/2015-09-10/fracking-begins-in-western- australia-kimberley-region/6765104

Colton, J., & Whitney-Squire, K. (2010). Exploring the relationship between aboriginal tourism and community development. *Leisure/Loisir*, *34*(3), 261–278. doi:10.1080/14927713.2010.521321

Commonwealth of Australia. (2011a). *Indigenous Economic Development Strategy 2011-2018*. Retrieved from https://www.ilo.org/dyn/youthpol/en/equest.fileutils.dochandle?p_uploaded_file_id=500#:~:text=The%20aim%20of%20the%20Indigenous,functional%20families%20and%20successful%20communities.

Commonwealth of Australia. (2011b). *Inclusion of A Place In The National Heritage List: The West Kimberley* (Gazette No. S132). Retrieved from https://www.environment.gov.au/heritage/laws/publicdocuments/pubs/106063_gazette_place_inclusion_20110831.pdf

Commonwealth Scientific and Industrial Research Organisation (CSIRO). (2018). *Water resource assessment for the Fitzroy catchment. A report to the Australian Government from the CSRIO Northern Australia Water Resource Assessment* (No. 1.0). Retrieved from https://www.csiro.au/en/Research/Major-initiatives/Northern-Australia/Current-work/NAWRA/Fitzroy-report

Community Environmental Legal Défense Fund (CDELF). (2008). *Ecuador Constitutional Assembly Votes to Approve Rights of Nature In New Constitution*. Retrieved from https://web.archive.org/web/20091110010418/http://www.celdf.org/Default.aspx?tabid=537

Community Environmental Legal Défense Fund. (2018). *Ho-Chunk Nation General Council Approves Rights of Nature Constitutional Amendment* (press release). Retrieved from https://celdf.org/2018/09/press-release-ho-chunk-nation-general-council-approves-rights-of-nature-constitutional-amendment/

Community Environmental Legal Défense Fund. (2020). Community Environmental Legal Défense Fund. Retrieved from https://celdf.org/advancing-community-rights/rights-of-nature/

Connell, D., & R. Grafton, Q. (2011). Water Reform in the Murray-Darling Basin. *Water Resources Research, 47*(12), 1-9. Doi: 10.1029/2010WR009820

Connor, J. D., Regan, C., & Nicol, T. (2019). *Environmental, cultural and social capital as a core asset for the Martuwarra (Fitzroy River) and its people* (report prepared for Ninti One Ltd). University of South Australia. Retrieved from https://www.researchgate.net/publication/333232584_Environmental_cultural_and_social_capital_as_a_core_asset_for_the_Martuwarra_Fitzroy_River_and_its_people_Report_prepared_for_Internal_Contributors

Constitution Act 1889 (Western Australia). Retrieved from https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_185_homepage.html

Constitution of Bolivia 2009 (Bolivia). Retrieved from https://www.constituteproject.org/constitution/Bolivia_2009.pdf

Constitution of the Republic of Ecuador 2008 (Ecuador). Retrieved from https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html

Convention on the Prevention and Punishment of the Crime of Genocide (1951). United Nations General Assembly. Retrieved from https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

Cook, C., & Bakker, K. (2012). Water security: Debating an emerging paradigm. *Global Environmental Change 22*(1), 94-102. doi: 10.1016/j.gloenvcha.2011.10.011

Coria, J., & Calfucura, E. (2012). Ecotourism and the development of indigenous communities: The good, the bad, and the ugly. *Ecological Economics: The Journal of the International Society for Ecological Economics*, *73*, 47–55. doi: 10.1016/j.ecolecon.2011.10.024

Corntassel, J. (2008). Toward Sustainable Self-Determination: Rethinking the Contemporary Indigenous-Rights Discourse. *Alternatives:Global, Local, Political, 33*(1), 105–132. doi:10.1177/030437540803300106

Corntassel, J. (2012). Re-envisioning Resurgence: Indigenous Pathways to Decolonization and Sustainable Self-determination. *Decolonization: Indigeneity, Education & Society*, *1*(1). Retrieved from https://jps.library.utoronto.ca/index.php/des/article/view/18627

Council of Australian Governments. (2004). *Intergovernmental Agreement on a National Water Initiative between the Commonwealth of Australia and the Governments of New South Wales, Victoria, Queensland, South Australia, the Australian Capital Territory and the Northern Territory* (No. 1). Retrieved from https://www.pc.gov.au/inquiries/completed/water-reform/national-water-initiative-agreement-2004.pdf

Courtney, P. (2019, 2 November). Fitzroy Water Plan: Proposal to open water allocations. *ABC Landline*. Retrieved from https://www.abc.net.au/landline/fitzroy-water-plan:-proposal-to-open-water/11666628

Cranney, K. & Tan, P-L. (2011). Old Knowledge in Freshwater: Why Traditional Ecological Knowledge Is Essential for Determining Environmental Flows in Water Plans. *The Australasian Journal of Natural Resources Law and Policy, 14*(2): 71–114. Retrieved from https://www.researchgate.net/publication/287676720_Old_knowledge_in_freshwater_Why_traditional_ecological_knowledge_is_essential_for_determining_environmental_flows_in_water_plans

Crook, M., & Short, D. (2014). Marx, Lemkin and the Genocide-Ecocide Nexus. *The*

International Journal of Human Rights, 18(3), 298-319. Doi: 10.1080/13642987.2014.914703

Cullinan, C. (2011a). A History of Wild Law. In P. Burdon (Ed.), *Exploring Wild Law: the Philosophy of Earth Jurisprudence* (First edition) (pp. 12–13). Wakefield Press.

Cullinan, C. (2011b). *Wild Law: A Manifesto for Earth Justice* (Second edition). Chelsea Green Publishing.

Curran, D. (2019). Indigenous Processes of Consent: Repoliticizing Water Governance through Legal Pluralism. *WATER, 11*(3), 571-587. doi:10.3390/w11030571

Cutifani, M. (2013). *Mining's contribution to sustainable development* (conference presentation). Exposibram, Brazil. Retrieved from https://www.angloamerican.com/~/media/Files/A/Anglo-American-Group/PLC/media/presentations/2013pres/Exposibram-speech-241013.pdf

Dale, A. (2014). *Beyond the North South Culture Wars, Reconciling Northern Australia's Recent Past with Its Future*. Springer International Publishing

Dale, A., Pressey, B., Adams, V., Álvarez-Romero, J., Digby, M., Dobbs, R., Gobius, N. (2014). Catchment-scale governance in Northern Australia: a preliminary evaluation. *Journal of Economic and Social Policy*, *16*(1), 1-27. Retrieved from https://researchonline.jcu.edu.au/31493

Daly, E. (2012). The Ecuadorian Exemplar: The First Ever Vindications Of Constitutional Rights Of Nature (Case Note). *Review of European Community and International Environmental Law*, *21*(1), 63–66. doi:10.1111/j.1467-9388.2012.00744.x

David, R., & Brierley, J. (1985). *Major legal systems in the world today: an introduction to the comparative study of law*. Stevens and Sons Ltd.

Davidson, B. (1965). *The Northern Myth – A Study of the Physical and Economic Limits to Agricultural and Pastoral Development in Tropical Australia.* Melbourne University Press.

Davidson, M. (2009). Social sustainability: a potential for politics? *Local Environment, 14*(7), 607–619. doi:10.1080/13549830903089291

Davidson, H. (2016, September 12). Northern Territory Labor government announces majority female cabinet. *The Guardian*. Retrieved from http://www.theguardian.com/australia-news/2016/sep/12/northern-territory-labor-government-announces-majority-female-cabinet

Davidson, W. (1978). *Havens of refuge: A history of leprosy*. University of Western Australia Press.

Davis, M. (2012). To Bind or Not to Bind: The United Nations Declaration on the Rights of Indigenous Peoples Five Years On. *Australian International Law Journal, 3,* 17-48. Retrieved from http://www.austlii.edu.au/au/journals/AUIntLawJl/2012/3.html

Davis, P. (1975). Nationalization of Water Use Rights by the Australian States. *University of Queensland Law Journal*, *9*(1), 1-25. Retrieved from https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/qland9&section=6

Davis, W. (2009). *The wayfinders: Why ancient wisdom matters in the modern world*. House of Anansi Press.

De Barnier, V., Falcy, S., & Valette-Florence, P. (2012). Do consumers perceive three levels of luxury? A comparison of accessible, intermediate and inaccessible luxury brands. *Journal of Brand Management*, *19*(7), 623–636. doi:10.1057/bm.2012.11

de Castro, E. (2013). *Cannibal Metaphysics*. (P. Skafish, Trans.). University of Minnesota Press, Univocal Publishing.

De Poloni, G. (2015, June 8). WA Premier signs $1.3 billion Noongar native title settlement. *ABC News.* Retrieved from https://www.abc.net.au/news/2015-06-08/premier-signs-noongar-native-title-settlement/6530434

De Vattel, E. (1797). *The law of nations; or, principles of the law of nature: applied to the conduct and affairs of nations and sovereigns* (R. Whatmore & B. Kapossy Eds). Liberty Fund. Retrieved from https://oll.libertyfund.org/title/whatmore-the-law-of-nations-lf-ed

Dempsey, N., Bramley, G., Power, S., & Brown, C. 2011. The social dimension of sustainable development: defining urban social sustainability. *Sustainable Development 19*(5), 289–300. Doi: 10.1002/sd.417

Dennis-McCarthy, N. (2019). *Reconciliation and Self-Determination: Incorporating Indigenous Worldviews on the Environment into Non-Indigenous Legal Systems* (Legal Research Paper). Victoria University of Wellington. doi:10.2139/ssrn.3448934

Denzin, N. K. (1989). *The research act: A theoretical introduction to sociological methods*. Prentice Hall.

Dickie, M., & Walalakoo Aboriginal Corporation. (2018, June 26). The Martuwarra Council Calls for Water Allocation Moratorium. Retrieved from https://www.walalakoo.org.au/new-blog/2018/6/26/the-martuwarra-council-calls-for-water-allocation-moratorium

Dillard, J., Dujon, V., & King, M. (2008). *Understanding the Social Dimension of Sustainability*. Routledge.

Dixon, S., & Clifford, A. (2007). Ecopreneurship: A New Approach to Managing the Triple Bottom Line. *Journal of Organizational Change Management 20*(3), 32645. Doi: 10.1108/09534810710740164

Dockery, A. (2010). Culture and Wellbeing: The Case of Indigenous Australians. *Social Indicators Research*, *99*(2), 315–332. Doi:10.1007/s11205-010-9582-y.

Dockery, A. (2014). The Mining Boom and Indigenous Labour Market Outcomes. In M. Brueckner, A. Durey, R. Mayes, & C. Pforr (Eds.), *Resource Curse or Cure? On the*

Sustainability of Development in Western Australia (pp. 75-89). Springer-Verlag Berlin Heidelberg.

Donaldson, J. (2007). Tourism, Development and Poverty Reduction in Guizhou and Yunnan. *The China Quarterly*, *190*, 333-351. Retrieved from https://www.cambridge.org/core/journals/china-quarterly/article/abs/tourism-development-and-poverty-reduction-in-guizhou-and-yunnan/B26DE57BDCB40D8413CAC74497CAE4A1

Doring, J., & Nyawarra, P. (2014). Gwion artists and Wunan Law: The origin of society in Australia. *Rock Art Research*, *31*(1), 3–13. Retrieved from http://www.ifrao.com/wp-content/uploads/2015/04/31-1-Doring.pdf

Douglas, J., Fletcher, M., Gower, G., Jenkins, M., Kennett, R., Lehman, G., Walker, J. (2013). *Indigenous engagement with science: towards deeper understandings, Inspiring Australia: A National Strategy for engagement with the sciences* (Expert Working Group, Ed.). Inspiring Australia. Retrieved from https://www.industry.gov.au/sites/default/files/2018-10/inspiring_australia-indigenous_engagement_with_science-towards_deeper_understandings_2013.pdf

Douglas, M., Jackson, S., Setterfield, S., Pusey, B.J., Davies, J., Kennard, M., Burrows, D., and Bunn, S. (2011). Northern Futures: Threats and Opportunities for Freshwater Ecosystems. In B. Pusey (Ed) *Aquatic Biodiversity of the Wet-Dry Topics of Northern Australia: Patterns, Threats and Future* (pp. 203–221). Charles Darwin University Press.

Durack, M. (1969). *The rock and the sand*. Constable Limited.

Dyer, P., Aberdeen, L., & Schuler, S. (2003). Tourism impacts on an Australian indigenous community: a Djabugay case study. *Tourism Management*, *24*(1), 83–95. doi:10.1016/S0261-5177(02)00049-3

Eckstein, G., D'Andrea, A., Marshall, V., O'Donnell, E., Talbot-Jones, J., Curran, D., & O'Bryan, K. (2019). Conferring legal personality on the world's rivers: A brief intellectual assessment. *Water International, 44*(6-7), 804-829. doi:10.1080/02508060.2019.1631558

Egan, T. (2008). *Due inheritance: reviving the cultural and economic wellbeing of first Australians: a model for consideration*. Niblock Publishing

Egri, C., & Herman, S. (2000). Leadership in the North American Environmental Sector: Values, Leadership Styles, and Contexts of Environmental Leaders and their Organizations. *The Academy of Management Journal*, *43*(4), 571-604. doi: 10.2307/1556356

Ehman, J. (2000). *Ways of Knowing*. Retrieved from http://www.acperesearch.net/waysofknowing.pdf

Elkin, A. (1979). Aboriginal-European relations in Western Australia: a historical and personal record. In M. Berndt & C. Berndt (Eds.), *Aborigines of the West: Their past and their present* (pp. 85–323). University of Western Australia Press.

Environmental Protection & Biodiversity Conservation Act 1999 (Commonwealth). Retrieved from https://www.legislation.gov.au/Series/C2004A00485

Fejo v Northern Territory of Australia (1998). HCA 58. (Austl.). Retrieved from https://jade.io/article/68082

Fforde, C., Bamblett, L., Lovett, R., Gorringe, S., & Fogarty, B. (2013). Discourse, Deficit and Identity: Aboriginality, the Race Paradigm and the Language of Representation in Contemporary Australia. *Media International Australia, 149*(1), 162–173. Doi: 10.1177/1329878X1314900117

Finlayson, J. & Madden, R. (1995). *Regional tourism case studies: Indigenous participation in tourism in Victoria*. In *CAUTHE 1994: Tourism Research and Education in Australia: Proceeding of the Australian National Tourism Research and Education Conferences, 1994*. Bureau of Tourism Research. Retrieved from https://search.informit.com.au/documentSummary;dn=618995547402414;res=IELBUS

Finn, M., & Jackson, S. (2011). Protecting Indigenous Values in Water Management: A Challenge to Conventional Environmental Flow Assessments. *Ecosystems, 14*(8),1232-1248. Doi: 10.1007/s10021-011-9476-0

Fiszbein, A. (1997). The Emergence of local capacity: Lessons from Columbia. *World Development, 25*(7), 1029–1043. Doi: 10.1016/S0305-750X(97)00020-X

Fitzsimmons, H. (2016, February 26). Victorian Government to begin talks with First Nations on Australia's first Indigenous treaty. *ABC News*. Retrieved from https://www.abc.net.au/news/2016-02-26/victoria-to-begin-talks-for-first-indigenous-treaty/7202492

Fletcher, C., Pforr, C., & Brueckner, M. (2016). Factors influencing Indigenous engagement in tourism development: an international perspective. *Journal of Sustainable Tourism*, *24*(8-9), 1100–1120. doi:10.1080/09669582.2016.1173045

Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People (2019) FCAFC 177. (Austl.). Retrieved from https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2019/2019fcafc0177

Foucault, M. 1980. *Power/knowledge: Selected interviews and other writings, 1972-1977 (*C. Gordon, Ed.). Harvester Press.

Freire, P. (1968), *Pedagogy of the Oppressed*. Seabury Press.

Freire, P. (1970), *Pedagogy of the oppressed* (M. Ramos, Trans.). The Continuum International Publishing Group.

Freire, P. (1992). *Pedagogy of hope*. The Continuum International Publishing Group.

Freire, P. (2005). *Pedagogy of the Oppressed* (30th anniversary edition) (M. Ramos, Trans.). The Continuum International Publishing Group.

French, R. (2002). *Western Australia v Ward: devils and angels in the detail*. Federal Judicial Scholarship 14. Retrieved from http://www.austlii.edu.au/au/journals/FedJSchol/2002/14.html

Fuller, D., Antella, J., Cummings, E., Scales, J., & Simon, T., (2001), *Ngukurr field report: Stage two*. Research Report No. 5, Flinders University, Adelaide.

Fuller, D., Buultjens, J., & Cummings, E. (2005). Ecotourism and indigenous micro-enterprise formation in northern Australia opportunities and constraints. *Tourism Management, 26*(6), 891–904. doi:10.1016/j.tourman.2004.04.006

Gabcikovo-Nagymaros Project (Hungary v Slovakia) (1997). International Court of Justice. Retrieved from https://www.icj-cij.org/en/case/92/judgments

Gadgil, M., Berkes, F., & Folke, C. (1993). Indigenous knowledge for biodiversity conservation. *Ambio 22*(2), 151-156. Retrieved from https://www.jstor.org/stable/4314060?seq=1#metadata_info_tab_contents

Gadgil, M. (2018). *Sacred Groves: An Ancient Tradition of Nature Conservation*. Scientific American. Retrieved from https://www.scientificamerican.com/article/sacred-groves-an-ancient-tradition-of-nature-conservation/

Galárraga, M. (2018). Exploring the connection between indigenous peoples' human rights and international environmental law. *Revista Chilena de Derecho Y Ciencia Política*, *9*(2), 92–153. doi:10.7770/rchdcp-V9N2-art1468

Gallagher, D. (2012). *Environmental Leadership: A reference handbook.* SAGE Publications Inc.

Galtung, J. (1969). Violence, peace, and peace research. *Journal of Peace Research, 6*(3),167-191. doi:10.1177/002234336900600301

Galtung, J. (1996). *Peace by Peaceful Means: Peace and Conflict, Development and Civilization*. SAGE Publications Inc.

Gammage, B. (2011). *The biggest estate on earth: How Aborigines made Australia*. Allen & Unwin.

Ganesharajah, C., & Native Title Research Unit. (2009). *Indigenous Health and Wellbeing: The Importance of Country*. Australian Institute for Aboriginal and Torres Strait Islander Studies. Retrieved from https://aiatsis.gov.au/publication/35427

Gardetti, M. (2014). Stories from the social pioneers in the sustainable luxury sector: A conceptual vision. In M. Girón & M. Gardetti (Eds), *Sustainable Luxury and Social Entrepreneurship: Stories from the pioneers* (pp. 32-34). Greenleaf Publishing.

Gardetti, M. & Justo, R. (2017). Sustainable Luxury Fashion: The Entrepreneurs' Vision. In M. Gardetti (Ed.), *Sustainable Management of Luxury* (pp.347-360). Springer.

Gare, A. (2016). *The Philosophical Foundations of Ecological Civilization.* 2016

Geospatial Services. (2019). *Kimberley Native Title Claimant Applications and Determination Areas as per the Federal Court*. National Native Title Tribunal. Retrieved from http://www.nntt.gov.au/Maps/WA_Kimberley_NTDA_schedule.pdf

Gibson, L., & McKenzie, N. (2012). *Identification of Biodiversity Assets on Selected Kimberley Islands: Background and Implementation.* Western Australian Museum. Retrieved from http://museum.wa.gov.au/research/records-supplements/records/identification-biodiversity-assets-on-selected-kimberley-island

Gibson-Graham, J., Cameron, J. & Healy. S. (2013). *Take Back the Economy: An Ethical Guide for Transforming Our Communities*. University of Minnesota Press.

Girón, M., Han, T., Levine, J., O'Shea, C., Sapey, T., Taub, E. & Fisas, P. (2012). Diccionario LID sobre Lujo y Responsabilidad. Madrid, Spain: LID Editorial.

Glenn, P. (2014). *Legal Traditions of the World: Sustainable Diversity in Law*. Oxford University Press.

Global Alliance for the Rights of Nature. (2010). *Universal Declaration of Rights of Mother Earth*. World People's Conference on Climate Change and the Rights of Mother Earth. Retrieved from <https://therightsofnature.org/universal-declaration/>.

Global Alliance for the Rights of Nature. (2018). *International Rights of Nature Symposium – 10 year anniversary of Rights of Nature in Ecuador's Constitution*. Retrieved from https://therightsofnature.org/event/international-rights-of-nature-symposium-10-year-anniversary-of-rights-of-nature-in-ecuadors-constitution/

Godden, L. (1998). Preserving natural heritage: nature as other. *Melbourne University Law Review*, *22*(3), 719-742. Retrieved from https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/mulr22&section=39

Godden, L., & Cowell, S. (2016). Conservation planning and Indigenous governance in Australia's Indigenous Protected Areas: Conservation planning in Indigenous Protected Areas. *Restoration Ecology*, *24*(5), 692–697. doi:10.1111/rec.12394

Goffman, E., (1974), *Frame Analysis: An Essay on the Organization of Experiences*. Harper and Row.

Goldsmith, E. (2008). *The Way: An Ecological World-View*. University of Georgia Press.

Gómez Isa, F. (2019). The UNDRIP: an increasingly robust legal parameter. *The International Journal of Human Rights*, *23*(1-2), 7–21. doi:10.1080/13642987.2019.1568994

Goodall, A., (2005). Tai timu, tai pari… the ever-changing tide of Indigenous rights in Aotearoa New Zealand. In G. Cant, A. Goodall, & J. Inns (Eds.), *Discourses and Silences: Indigenous Peoples, Risks and Resistance* (pp.185-198). University of Canterbury.

Gooding, C. & Long, J. (1958). The Kimberley Wallaby Menace - Water Poisoning

Experiments, 1955-1957. *Journal of the Department of Agriculture of Western Australia, 3*(7), 173–180. Retrieved from https://researchlibrary.agric.wa.gov.au/journal_agriculture3/vol7/iss2/9/

Gover, K. (2019). Legal Pluralism and Indigenous Legal Traditions. In P. Berman (Ed.), *The Oxford Handbook on Legal Pluralism*. Oxford University Publishing.

Grace, P. (2016). Indigenous-led conservation: experiences from the Kimberley. *Australian Environmental Law Digest, 3*(3), 21-26. Retrieved from https://search.informit.org/doi/abs/10.3316/informit.494722464102065

Grafton, R. & Wheeler, S. (2018). Economics of Water Recovery in the Murray-Darling Basin, Australia. *Annual Review of Resource Economics, 10*(1), 487-510. Doi: 10.1146/annurev-resource-100517-023039

Graham, M. & Maloney, M. (2019). Caring for Country and Rights of Nature: A Conversation Between Earth Jurisprudence and Aboriginal Law and Ethics. In C. La Follette & C. Maser (Eds.), *Sustainability and the Rights of Nature in Practice* (pp.385-398). CRC Press.

Graham, N. (2011). *Lawscape: Property, Environment, Law*. Routledge.

Gray, J. (2002). Is Native Title A Proprietary Right? *Murdoch University Electronic Journal of Law, 9*(3), 1-13. Retrieved from https://opus.lib.uts.edu.au/handle/10453/1472

Gray, J. & Lee, L. (2016). National Water Initiative Styled Water Entitlements as Property: Legal and Practical Perspectives. *Environmental and Planning Law Journal, 33*(4), 284–300. Retrieved from http://sites.thomsonreuters.com.au/journals/2016/07/29/environmental-and-planning-law-journal-update-july-2016-special-issue-water-law/

Green, L. (2018). *The contemporary law of armed conflict* (Third edition.). Manchester University Press.

Gregory, C. (1923, April 22). Cotton Culture: West Kimberley and the Fitzroy Valley. *Sunday Times*. Retrieved from https://trove.nla.gov.au/newspaper/article/58047509

Gribble, J. (1987). *Dark deeds in a sunny land: or Blacks and Whites in North-West Australia*. University of Western Australia Press.

Grice, A., Stone, P. &Watson, I. (2013). *Mosaic Irrigation for the Northern Australian Beef Industry: An Assessment of Sustainability and Potential: Synthesis Report* (Report prepared for the Office of Northern Australia). CSIRO. Retrieved from https://www.csiro.au/en/Research/Major-initiatives/Northern-Australia/Achievements/Mosaic-irrigation

Griffiths, J. (1986). What is Legal Pluralism. *Journal of Legal Pluralism and Unofficial Law, 24,* 1-56. Doi: 10.1080/07329113.1986.10756387

Griffiths, S., & Kinnane, S. (2011). *Kimberley Aboriginal caring for country plan*. Kimberley Language Resource Centre. Retrieved from https://researchonline.nd.edu.au/arts_books/18/

Grudnoff, M., & Campbell, R. (2017). *Dam the Expense: The Ord River Irrigation Scheme and the Development of Northern Australia*. The Australia Institute. Retrieved from https://australiainstitute.org.au/report/dam-the-expense-the-ord-river-irrigation-scheme-and-the-development-of-northern-australia/

Gunningham, N., Kagan, R., & Thornton, D. (2004). Social License and Environmental Protection: Why Businesses Go Beyond Compliance. *Law Social Inquiry 29*(2), 307-341. doi:10.1111/j.1747-4469.2004.tb00338.x

Hall, S. (1997). *Representation and signifying practices*. SAGE Publications Inc.

Hall, N., Lacey, J., Carr-Cornish, S., & Dowd, A. (2015). Social licence to operate: understanding how a concept has been translated into practice in energy industries. *Journal of Cleaner Production, 86*(6), 301-310. Doi: 10.1016/j.jclepro.2014.08.020

Haraway, D. (2016). *Staying with the Trouble: Making Kin in the Chthulucene*. Duke University Press.

Hardman, E. (1884). *Report on the geology of the Kimberley District, Western Australia.* Retrieved from https://catalogue.nla.gov.au/Record/2334292

Harman, E., & Head, B. (1982). *State, capital and resources in the north and west of Australia*. University of Western Australia Press.

Harris, D. (2004). The Sources of International Law. In *Cases and Materials on International Law* (Sixth Edition) (pp. 18-65). Sweet & Maxwell.

Hart, B., O'Donnell, E., & Horne, A. (2019). Sustainable water resources development in northern Australia: the need for coordination, integration and representation. *International Journal of Water Resources Development, 36*(5), 777-799. doi:10.1080/07900627.2019.1578199

Hartwig, L., Jackson, S., & Osborne, N. (2018). Recognition of Barkandji Water Rights in Australian Settler-Colonial Water Regimes. *Resources, 7*(1), 16. doi:10.3390/resources7010016

Hartwig, L., Jackson, S., & Osborne, N. (2020). Trends in Aboriginal Water Ownership in New South Wales, Australia: The Continuities between Colonial and Neoliberal Forms of Dispossession. *Land Use Policy, 99*, 1-13. Doi: 10.1016/j.landusepol.2020.104869

Harvey, D. (1997). *Justice, Nature and the Geography of Difference*. Wiley.

Hasluck, S. P. (1942). *Black Australians: A Survey of Native Policy in Western Australia, 1829-1897*. Melbourne University Press.

Hattersley, C., (2009), *Woonyoomboo & Jandamarra*, Madjulla Inc.

Hattersley, C., (2014). *Birr Nganka: The Source of Nyikina Language with Reference to Lower Nyikina.* Madjulla Inc.

Hay, A. (2012). Comments on David Zierler's The Invention of Ecocide (Book Review). *H-Environment Roundtable Reviews Pan-American, 2*(1), 8-12. Retrieved from https://networks.h-net.org/system/files/contributed-files/env-roundtable-2-1.pdf

Heine, K. (2012). *The Concept of Luxury Brands*. Technische Universität Berlin.

Hemming, S., & Rigney. G., (2008). Unsettling Sustainability: Ngarrindjeri political literacies, strategies of engagement and transformation. *Continuum: Journal of Media and Cultural Studies 22*(6), 757-775. Doi: 10.1080/10304310802452438

Hemming, S. J., & Rigney, D., (2014). *Indigenous Engagement in Environmental Water Planning, Research and Management: Innovation in South Australia's Murray-Darling Basin Region*.Goyder Institute for Water Research. Retrieved from http://www.goyderinstitute.org/_r123/media/system/attrib/file/114/Goyder%20report%20Hemming%20and%20Rigney%202015_web.pdf

Hemming, S., Rigney, D., Bignall, S., Berg, S., & Rigney, G. (2019). Indigenous Nation Building for Environmental Futures: Murrundi Flows through Ngarrindjeri Country. *Australasian Journal of Environmental Management, 26*(3), 216–235. Doi: 10.1080/14486563.2019.1651227

Henson, E., Tatlor, J., Cornwall, S., Curtis, C., Grant, K., The Harvard Project on American Indian Economic Development, Jorgensen, M., Kalt, J,. & Lee, A. (2008). The State of the Native Nations: Conditions Under U.S. Policies of Self-determination. Oxford University Press.

Hepburn, S. (2005). Disinterested Truth: Legitimation of the Doctrine of Tenure Post-Mabo. *Melbourne University Law Review*, *29*(1). Retrieved from http://classic.austlii.edu.au/au/journals/MelbULawRw/2005/1.html

Heritage Council (1995). *Geikie Gorge – Place Number 04434*. Western Australian Government. Retrieved from http://inherit.stateheritage.wa.gov.au/Public/Inventory/Details/931de8a8-7503-4535-883e-1cee7af9ecf5

Heritage Council (2009). *Geikie Gorge National Park - Place No 18638.* Western Australian Government. Retrieved from http://inherit.stateheritage.wa.gov.au/Public/Inventory/Details/0920c55d-ee8c-4bfc-9845-a0254ef6b065

Heron, J. (1996). *Co-operative Inquiry: Research into the human condition*. SAGE Publications Inc.

Heron, J., & Reason, P. (2011). Extending epistemology within a co-operative inquiry. In P. Reason & H. Bradbury (Eds.), *Handbook of Action Research* (pp. 366 - 380). SAGE Publications Inc.

Hetherington, M. (2002). *Our Day* (Poem). Creative Spirits. Retrieved from https://www.creativespirits.info/aboriginalculture/arts/poems/our-day

Higgins, P. (2012). *Eradicating Ecocide: Exposing the Corporate and Political Practices Destroying the Planet and Proposing the Laws Needed to Eradicate Ecocide.* Shepheard-Walwyn Publishers Ltd.

Higgins-Desbiolles, F., Trevorrow, G., & Sparrow, S. (2014). The Coorong Wilderness Lodge: A case study of planning failures in Indigenous tourism. *Tourism Management, 44*, 46–57. doi:10.1016/j.tourman.2014.02.003

Hill, R. (2006). *Kimberley Appropriate Economies Roundtable Forum Proceedings* (prepared with Australian Conservation Foundation, Kimberley Land Council & Environs Kimberley Inc.) Australian Conservation Foundation. Retrieved from http://www.worldcat.org/oclc/224748336

Hill, R., Harding, E., Edwards, D., O'Dempsey, J., Hill, D., Martin, A., & McIntyre-Tamwoy, S. (2008). *A cultural and conservation economy for Northern Australia: A proof-of-concept-study*. Land and Water Australia. Retrieved from https://researchonline.jcu.edu.au/8030/2/8030_Hill_et_al_2008_front_pages.pdf

Ho, L. (2013). *Public policy and the public interest*. Routledge.

Hobbs, H. (2016, December 20). *Will Treaties With Indigenous Australians Overtake Constitutional Recognition*? Retrieved from https://theconversation.com/will-treaties-with-indigenous-australians-overtake-constitutional-recognition-70524

Hockerts, K., & Wüstenhagen, R. (2010). Emerging Davids versus Greening Goliaths. *Journal of Business Venturing, 25*(5), 481-492. Doi: 10.1016/j.jbusvent.2009.07.005

Hohfeld, W. (1913). Some Fundamental Legal Conceptions as Applied in Judicial Reasoning. *The Yale Law Journal 26*(8), 710-770. doi:10.2307/785533

Hooke, M. (2013, July 15). When the boom is over. *Australian Broadcasting Corporation, Q&A.* Retrieved from https://www.abc.net.au/qanda/when-the-boom-is-over/10658750

Horton, D. (2000). *The pure state of nature: Sacred cows, destructive myths and the environment.* Allen & Unwin.

Howlett, C., Seini, M., McCallum, D., & Osborne, N. (2011). Neoliberalism, Mineral Development and Indigenous People: a framework for analysis. *Australian Geographer, 42*(3), 309-323. doi:10.1080/00049182.2011.595890

Hughes, O., Howes, R. (Directors). (1981). *On Sacred Ground* (Film). Linfield.

Hughey, K., Jacobson, C., & Smith, E. (2017). A framework for comparing collaborative management of Australian and New Zealand water resources. *Ecology and Society, 22*(4), 28-46. doi:10.5751/ES-09582-220428

Human Rights and Peace for Bangladesh v Government of Bangladesh and Others. (2016). Bangladesh. Retrieved from https://sandrp.in/2020/01/27/bangladesh-drp-overview-2019/#more-

Humane Society International. (2018). *Biodiversity Hotspots*. Retrieved from https://www.wildlifelandtrust.org.au/index.php/resources/heritage-and-hotspots/44-hotspots

Hunt, S. (1986). *Spinifex and Hessian: Women's Lives in North-Western Australia 1860-1900*. University of Western Australia Press.

Hunt, J., Smith D., Garling, S. & Sanders, W. (Eds.) (2008). *Contested Governance: Culture, Power and Institutions in Indigenous Australia*. Australian National University Press.

Hunter, B., Howlett, M., & Gray, M. (2015). The Economic Impact of the Mining Boom on Indigenous and Non-Indigenous Australians. *Asia & the Pacific Policy Studies, 2*(3), 517-530. Doi: 10.1002/app5.99

Intergovernmental Panel on Climate Change (IPCC). (2018). *Global warming of 1.5 C; Summary for Policymakers.* Retrieved from http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf

Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES). (2018). *The regional assessment report on biodiversity and ecosystem services for Europe and Central Asia*. Retrieved from https://www.ipbes.net/sites/default/files/spm_2b_eca_digital_0.pdf

Isaac, G. & Torres, M. (2002). *Whispering in our hearts: The Mowla Bluff massacre* (Film). Ronin Films.

Ivory, B. (2003). Poverty and enterprise. In S. Carr, & T. Sloane (Eds.), *Poverty and Psychology: Emergent Critical Practice* (pp. 251-266). Kluwer Academic/Plenum Publishers.

Jackson, S. (2015). Indigenous Social and Cultural Values Relating to Water in the Fitzroy Valley, Kimberley (WA): Information Availability, Knowledge Gaps and Research Needs. Australian Rivers Institute. Retrieved from https://www.agric.wa.gov.au/sites/gateway/files/indigenous%20social%20and%20cultural%20values%20relating%20to%20water%20in%20the%20fitzroy%20valley.pdf.

Jackson, S. (2017a). Enduring and persistent injustices in water access in Australia. In A. Lukasiewicz, S. Dovers, L. Robin, J. McKay, S. Schilizzi, & S. Graham (Eds.), *Natural Resources and Environmental Justice: Australian Perspectives* (pp.121–132). CSRIO.

Jackson, S. (2017b). How Much Water Does a Culture Need? Environmental Water Management's Cultural Challenge and Indigenous Responses. In A. Horne, J. Webb, M. Stewardson, B. Richter & M. Acreman (Eds.), *Water for the Environment* (pp.173–188). Elsevier.

Jackson, S. (2019). Building trust and establishing legitimacy across scientific, water management and Indigenous cultures. *Australasian Journal of Water Resources*, *23*(1), 14–23. doi:10.1080/13241583.2018.1505994

Jackson, S., & Barber, M. (2016). Historical and contemporary waterscapes of North Australia: Indigenous attitudes to dams and water diversions. *Water Hist, 8,* 385–404. https://doi.org/10.1007/s12685-016-0168-8

Jackson, S., & Douglas, M. (2015). Indigenous Engagement in Tropical River Research in Australia: The TRaCK Program. *The International Indigenous Policy Journal*, *6*(2), 3. doi:10.18584/iipj.2015.6.2.3

Jackson, S., & Morrison, J. (2007). Indigenous Perspectives in Water Management, Reforms and Implementation. In K. Hussey & S. Dovers (Eds.), *Managing Water for Australia: The Social and InstitutionalChallenges* (pp. 22–41). CSIRO.

Jackson, S., & O'Leary, P. (2006). *Indigenous interests in tropical rivers Research and Management: A Scoping Study for Land and Water Australia's Tropical Rivers Program*. CSIRO. Retrieved from https://publications.csiro.au/rpr/pub?list=BRO&pid=procite:df98d702-c03a-4fd8-9607-20803bd341df

Jackson, S., Finn, M., & Featherston, P. (2012). Aquatic Resource Use by Indigenous Australians in Two Tropical River Catchments: the Fitzroy River and Daly River. *Human Ecology*, *40*(6), 893–908. Retrieved from 10.1007/s10745-012-9518-z

Jackson, S., Finn, M., & Scheepers, K. (2014). The use of replacement cost method to assess and manage the impacts of water resource development on Australian indigenous customary economies. *Journal of Environmental Management*, *135*, 100–109. doi:10.1016/j.jenvman.2014.01.018

Jakob, D., Imielska, A., Charles, S., Fu, G., Frederiksen, C., Frederiksen, J., Zidikheri, M., Hope, P., Keay, K., Ganter, C., Li, Y., Phatak, A., Palmer, M., Wormworth, J.A.,. McBride, J., Dare, R., Lavender, S., Abbs, D., Rotstayn, L., Rafter, T., Lau, R., and Bates, B., (2012). *Western Australia's Weather and Climate: A Synthesis of Indian Ocean Climate Initiative Stage 3 Research*. CSIRO. Retrieved from https://publications.csiro.au/rpr/pub?pid=csiro:EP125374

James, A. (2018, July 21). Episode 21 Waking Up The Snake (Podcast). *The RegenNarration*. Retrieved from https://www.regennarration.com/episodes/021-waking-up-the-snake

Jarvis, D., Stoeckl, N., Addison, J., Larson, S., Hill, R., Pert, P., & Lui, F. W. (2018). Are Indigenous land and sea management programs a pathway to Indigenous economic independence? *Rangeland Journal*, *40*(4), 415–429. doi:10.1071/RJ18051

Jenkins, K. (2018). Can I see your social license please? *Policy Quarterly, 14*(4), 27-35. Doi:10.26686/pq.v14i4.5146

Jensen, J., & Gardner, A. (2016). *Legal Duties for Restoration of Waterways & Wetlands: A Western Australian Analysis and Case Study*. Cooperative Research Centre for Water Sensitive Cities. Retrieved from https://watersensitivecities.org.au/wp-content/uploads/2016/12/A3.2-Legal-Duties-for-Restoration-of-Waterways-Wetlands-V2.pdf

Jensen, J., & Gardner, A. (2017). Legal duties for environmental water provisions in Western Australia. *University of Western Australia Law Review*, *42*(1), 206-246. Retrieved from https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/uwatlw42&section=12

Jorgensen A. (2007). *Rebuilding native nations, strategies for governance and development*. The University of Arizona Press.

Joyce, S., & Thomson, I. (2000). Earning a social licence to operate: Social acceptability and resource development in Latin America. *CIM Bulletin, 93*(1037), 49–53. Retrieved from https://www.researchgate.net/publication/283774124_Earning_a_social_licence_to_operate_Social_acceptability_and_resource_development_in_Latin_America

Kahui, V., & Richards, A. (2014). Lessons from resource management by indigenous Maori in New Zealand: Governing the ecosystems as a commons. *Ecological Economics: The Journal of the International Society for Ecological Economics*, *102*, 1–7. doi:10.1016/j.ecolecon.2014.03.006

Kapferer, J. (2010). All that glitters is not green: the challenge of sustainable luxury. *European Business Review*, *2*, 40–45. Retrieved from https://www.researchgate.net/profile/Jean_Noel_Kapferer/publication/306152247_All_that_glitters_is_not_green_The_challenge_of_sustainable_luxury/links/57bb181308ae9fdf82ef020c/All-that-glitters-is-not-green-The-challenge-of-sustainable-luxury.pdf

Kapferer, J., & Bastien, V. (2012). *The Luxury Strategy: Break the Rules of Marketing to Build Luxury Brands*. Kogan Page Publishers.

Kapferer, J., & Michaut, A. (2015). Luxury and sustainability: a common future? The match depends on how consumers define luxury. *Luxury Research Journal*, *1*(1), 3–17. doi:10.1504/LRJ.2015.069828

Karlsson, B., & Subba, T. (Eds). (2006). *Indigeneity in India.* Routledge.

Karpany v Dietman (2003). HCA 47 (Austl.). http://eresources.hcourt.gov.au/showCase/2013/HCA/47

Kellow, A., & Niemeyer, S. (1999). The development of environmental administration in Queensland and Western Australia: Why are they different? *Australian Journal of Political Science*, *34*(2), 205–222. Doi: 10.1080/10361149950371

Keon-Cohen, B. (2017). From Euphoria to Extinguishment to Co-Existence. *James Cook University Law Review*, *23*, 9-30. Retrieved from https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/jamcook23&section=4

Kerins, S. (2015). *Kimberley Conservation Threatens to Take a Step Back on Indigenous Rights*. Retrieved from http://theconversation.com/ kimberley-conservation-threatens-to-take-a-step-back-on-indigenous-rights-50778

Kimberley Aboriginal Law and Culture Centre (KALACC). (2017). *Cultural solutions: Shared pathways for engagement in the Kimberley* (No. 1). Retrieved from

https://www.wa.gov.au/sites/default/files/2020-10/Kimberley%20Aboriginal%20Law%20and%20Cultural%20Centre%20%28Feb%202020%29.pdf

Kimberley Development Commission. (2018). *Annual Report 2017-2018* (No. 1.0). Retrieved from https://kdc.wa.gov.au/publications/kdc-annual-report-2017-2018/

Kimberley Land Council (KLC). (2016a). *Native title at Heart of Fitzroy River Declaration*. Retrieved from https://www.klc.org.au/native-title-at-heart-of-fitzroy-river-declaration

Kimberley Land Council (KLC). (2016b). *Fitzroy River Declaration*. Retrieved from https://www.klc.org.au/kimberley-traditional-owners-unite-for-the-fitzroy-river

Kimberley Land Council (KLC). (2018). *Kimberley Traditional Owners establish Martuwarra Fitzroy River Council*. Retrieved from https://www.klc.org.au/kimberley-traditional-owners-establish-martuwarra-fitzroy-river-council

Kimberley Land Council (KLC). 2020. *What is native tile*? Retrieved from https://www.klc.org.au/what-is-native-title

Kimberley Water Resources Development Office. (1993). *Fitzroy Valley Irrigation: a Conceptual Study* (Report prepared with ACIL Economics & Policy Pty Ltd.). Water Authority of Western Australia. Retrieved from https://catalogue.nla.gov.au/Record/2787686

Kinnane, S. (2003). *Shadow Lines*, Fremantle Art Centre Press.

Knox, J. H., & Pejan, R. (Eds.) (2018). *The Human Right to a Healthy Environment*. Cambridge University Press.

Kovach, M. (2010). Conversation method in indigenous research. *First Peoples Child and Family Review*, *5*(1), 40-148. Retrieved from https://fpcfr.com/index.php/FPCFR/article/view/172

Kurki, V. (2019). *A Theory of Legal Personhood*. Oxford University Press.

Kwaymullina, A. (2005). Seeing the light: Aboriginal law, learning and sustainable living in country. *Indigenous Law Bulletin*, *6*(11), 12–15. Retrieved from http://www7.austlii.edu.au/au/journals/IndigLawB/2005/27.html

Kwaymullina, A., & Kwaymullina, B. (2010). Learning to read the signs: law in an Indigenous reality. *Journal of Australian Studies, 34*(2), 195–208. doi:10.1080/14443051003721189

Kyne, P. (2018, April 18). *Australian Endangered Species: Largetooth Sawfish*. Retrieved from http://theconversation.com/australian-endangered-species-largetooth-sawfish-24558

Laborde, S., & Jackson, S. (2018, June 21). *New river council will give traditional owners in the Kimberley a unified voice*. Retrieved from http://theconversation.com/new-river-council-will-give-traditional-owners-in-the-kimberley-a-unified-voice-98390

Lambert, L. (2011). *Two eyed seeing: Indigenous research methodologies* (Conference Presentation). The Eberhard Wenzel Oration, 20th National Australian Health Promotion Association Conference. Retrieved from https://www.healthpromotion.org.au/images/eberhard_oration_by_lori_lambert.doc

Langdon, J. (Ed.) (2009). *Indigenous knowledges, development and education*. Sene Publishers.

Langton, M. (1999). Freshwater: Water Rights and the New Frontier in Northern Australia. Darwin, Northern Territory Australia: Centre for Indigenous Natural and Cultural Resource Management.

Langton, M. (2003). The 'wild', the market and the native: Indigenous people face new forms of global colonization. In W. Adams & M. Martin (Eds.), *Decolonizing Nature: Strategies for Conservation in a Post-Colonial Era*, (pp. 79-108). Taylor & Francis.

Langton, M., Rhea, Z., & Palmer, L. (2005). Community-Oriented Protected Areas for Indigenous Peoples and Local Communities. *Journal of Political Ecology*, *12*(1), 23–50. doi:10.2458/v12i1.21672

LaPensée, E., Jaakola, L., Day, S., & Noodin, M. (2018). Honour Water: Gameplay as a Pathway to Anishinaabe Water Teachings. *Decolonisation-Indigeneity Education & Society,* 7(1), 115-130. Retrieved from https://www.academia.edu/41716439/_Honour_Water_Gameplay_as_a_Pathway_to_Anishinaabe_Water_Teachings_Decolonization_2018_114_130

Larson, S., & Alexandridis, K. (2009). *Socio-economic Profiling of Tropical Rivers*. Australian Government. Retrieved from http://lwa.gov.au/products/pn30095

Lawford, E. (2011). Crowbar saved my life. In P. Marshall (Ed.), *Raparapa: Stories from the Fitzroy River drovers* (pp. 21–50). Magabala Books.

Lea, T. (2020). *Wild policy: Indigeneity and the unruly logics of intervention*. Stanford University Press.

Lemkin, R. (1944). *Axis Rule in Occupied Europe: Laws of Occupation – Analysis of Government – Proposals for Redress.* Publication of the Carnegie Endowment for International Peace.

Leopold, A. (1949). *A Sand County Almanac, and Sketches Here and There*. Oxford University Press.

Ley De Derechos De La Madre Tierra (Law of Mother Earth) 2010 (Bolivia). Retrieved from http://14ug3411bmyv3qn58y1rxkcc.wpengine.netdna-cdn.com/wp-content/uploads/2013/04/Ley-071-Derechos-Madre-Tierra.pdf

Ley marco De La Madre Tierra y Desarrollo Integral Para Vivir Bien 2012 (Bolivia). Retrieved from http://www.ipsnoticias.net/2014/05/ley-boliviana-de-la-madre-tierra-dura-de-implementar/

Liedloff, A., Woodward, E., Harrington, G., & Jackson, S. (2013). Integrating indigenous ecological and scientific hydro-geological knowledge using a Bayesian Network in the context of water resource development. *Journal of Hydrology, 499*, 177-187. Doi:10.1016/j.jhydrol.2013.06.051.

Lilienthal, G. (2020). Water rights and correlative duties in New South Wales. *Commonwealth Law Bulletin 46*(2), 215-235. doi:10.1080/03050718.2020.1756882

Lilienthal, G., & Ahmad, N. (2017). The Australian 'Songlines': Some Glosses for Reconciliation. *James Cook University Law Review, 23*, 79–102. Retrieved from http://www.austlii.edu.au/au/journals/JCULRev/2017/17.pdf

Lim, M. (2014). Is Water Different from Biodiversity? Governance Criteria for the Effective Management of Transboundary Resources. Review of European, Comparative & International Environmental Law, 23(1), 96–110. doi:10.1111/reel.12072

Lim, M. (2016). Governance criteria for effective transboundary biodiversity conservation. *International Environmental Agreements: Politics, Law and Economics*, *16*(6), 797–813. doi:10.1007/s10784-015-9296-3

Lim, M., Poelina, A., & Bagnall, D. (2017). Can the Fitzroy River Declaration ensure the realisation of the First Laws of the River and secure sustainable and equitable futures for the West Kimberley?. *Australian Environment Review*, *32*(1), 18–24. Retrieved from https://researchers.mq.edu.au/en/publications/can-the-fitzroy-river-declaration-ensure-the-realisation-of-the-f

Lingiari Foundation. (2002). *Onshore Water Rights Discussion Booklet One*. Retrieved from https://webarchive.nla.gov.au/awa/20060224010343/http://pandora.nla.gov.au/pan/41033/20060106-0000/ATSIC/issues/Indigenous_Rights/Indigenous_Rights_Waters/docs/layout_onshore.pdf

Littig, B., & Griessler, E. (2005). Social sustainability: a catchword between political pragmatism and social theory. *International Journal of Sustainable Development*, *8*(1-2), 65–79. doi:10.1504/IJSD.2005.007375

Longboat, S. (2013). First Nations Water Security: Security for Mother Earth. *Canadian Woman Studies*, *30*(2/3), 6–13. Retrieved from https://cws.journals.yorku.ca/index.php/cws/article/view/37446

Louis, R. (2007). Can You Hear Us Now? Voices from the Margin: Using Indigenous Methodologies in Geographic Research'. *Geographical Research, 45*(2), 130–39. Doi: 10.1111/j.1745-5871.2007.00443.x

Ludes, P. (1997). Aufstieg und Niedergang von Stars als Teilprozess der Menschheitsentwicklung i W. Faulstich, och H. Korte (red) Der Star Geschichte Rezeption Bedeutung, München: Wilhelm Fink Verlag.

Luke, H. (2017). Social resistance to coal seam gas development in the Northern Rivers region of Eastern Australia: Proposing a diamond model of social license to operate. *Land Use Policy*, *69*, 266–280. doi:10.1016/j.landusepol.2017.09.006

Luke, H., Brueckner, M., & Emmanouil, N. (2018). Unconventional gas development in Australia: A critical review of its social license. *The Extractive Industries and Society 5*(4), 648-662. Doi: 10.1016/j.exis.2018.10.006

Mabo v Queensland (No.2) (1992). 175 CLR 1 (Austl.). Retrieved from https://jade.io/article/67683

Maclean, K., & The Bana Yarralji Bubu Inc. (2014). Crossing Cultural Boundaries: Integrating Indigenous Water Knowledge Into Water Governance Through co- Research in the Queensland Wet Tropics, Australia. *Geoforum; Journal of Physical, Human, and Regional Geosciences*, *59*, 142–152. doi:10.1016/j. geoforum.2014.12.008

Macpherson, E. (2017). Beyond Recognition: Lessons from Chile for Allocating Indigenous Water Rights in Australia. *University of New South Wales Law Journal, 40*(3), 1130-1169. Retrieved from https://ir.canterbury.ac.nz/handle/10092/101556

Macpherson, E. (2019). *Indigenous Water Rights in Law and Regulation*. Cambridge University Press. Retrieved from https://play.google.com/store/books/details?id=dCmhDwAAQBAJ

Macpherson, E., & Ospina, F. (2018). The Pluralism of River Rights in Aotearoa New Zealand and Colombia. *Journal of Water Law*, *25*(6), 283–293. Doi: 10.31235/osf.io/rdh4x

Mair, J., & Laing, J. H. (2013). Encouraging pro-environmental behaviour: the role of sustainability-focused events. *Journal of Sustainable Tourism*, *21*(8), 1113–1128. doi:10.1080/09669582.2012.756494

Marcuse, P. (1998). Sustainability is not enough. *Environment and Urbanization*, *10*(2), 103–112. doi:10.1177/095624789801000201

Marshall, L., & Hattersley, C. (2004). *Reflections of a Kimberley woman*. Madjulla Inc.

Marshall, P. (Ed.). (1989). *Raparapa: Stories from the Fitzroy River drovers*. Magabala Books.

Marshall, V. (2017). *Overturning aqua nullius: securing Aboriginal water rights*. Aboriginal Studies Press.

Martin, J. (1864). *Journal and Reports of Two Voyages to the Glenelg River and the North West Coast of Australia (1863-1864)*. A Shenton. Retrieved from https://trove.nla.gov.au/work/18239231

Martin, K., & Mirraboopa, B. (2009). Ways of knowing, being and doing: A theoretical framework and methods for indigenous and indigenist re-search. *Australian Journal of French Studies*, *27*(76), 203–214. doi:10.1080/14443050309387838

Martuwarra Fitzroy River Council (MFRC). (2018). *Martuwarra Fitzroy River Council Statement: Combined Meeting of Traditional Owner Groups for the Fitzroy River Catchment* (No. 1.0). Martuwarra Fitzroy River Council.

Martuwarra Fitzroy River Council, Jones, M., Nicol, T., & Poelina, A. (Producers), (2021), *The Serpent's Tale* (Online film, restricted for cultural authority to release). Gaia Media.

Matten, D., & Crane, A. (2005). Corporate Citizenship: Toward an Extended Theoretical Conceptualization. *Academy of Management Review*, *30*(1), 166–179. doi:10.5465/amr.2005.15281448

McDuffie, M. (2019). *Jimbin Kaboo Yimardoowarra Marninil: Listening to Nyikina Women's Voices, from the inside to the outside. Nyikina women's agency: an intergenerational journey of cultural actions, economic and self-determination initiatives, through film* (Doctor of Philosophy). Australian National University. Retrieved from https://openresearch-repository.anu.edu.au/handle/1885/165459

McDuffie, M., & Poelina, A. (2012). *Standing Together for Kandri* (Online film presented at conference). WACOSS Conference 8-10 May 2012. Retrieved from https://player.vimeo.com/video/87175648

McDuffie, M., & Poelina, A. (2019). *Nyikina Collaborative Filmmaking in the Kimberley: 'Learning to Listen with Your Eyes, and See with Your Ears*. In P. Morrissey & C. Healy (Eds.), *Reading the Country* (pp. 229–238). University of Technology Sydney ePress. doi:10.5130/978-0-6481242-2-1.t

McGregor, D. (2015). Indigenous Women, Water Justice and Zaagidowin (Love). *Canadian Woman Studies*, *30*(2-3). Retrieved from https://cws.journals.yorku.ca/index.php/cws/article/view/37455

McGregor, R. (2016). *Environment, Race, and Nationhood in Australia: Revisiting the Empty North*. Palgrave Macmillan.

McInerney, M. (2017, March 4). *Climate Justice: a call to broaden science with Indigenous knowledge.* Retrieved from https://croakey.org/climate-justice-a-call-to-broaden-science-with-indigenous-knowledge/

McMahon, E., Hayes, A., & McDuffie, M. (2019). *On Australian shores, survivors' stories: Sue Sinclair* (Online Film). Retrieved from https://www.youtube.com/watch?v=emeA3aKP-KQ

McRae, A. (1881). *Report by Alexander McRae of a Trip to the Fitzroy River from Roebuck Bay in the Year 1866*. Western Australia Government Printer. Retrieved from https://trove.nla.gov.au/work/16683981

Michelmore, K. (2020, October 16). Rio Tinto accused of 'incremental genocide' after grilling at Juukan Gorge inquiry. *ABC News*. Retrieved from https://www.abc.net.au/news/2020-10-16/rio-tinto-grilled-at-juukan-gorge-inquiry/12775866)

Milgin, A. (2008). Woonyoomboo. In L. Thompson (Ed.), *Woonyoomboo : A Story from Jarlmadangah Community*. Pearson Rigby.

Milgin, A., Nardea, L., Grey, H., Laborde, S., & Jackson, S. (2020). Sustainability Crises Are Crises of Relationship: Lessons from Nyikina Ecology and Ethics. *People and Nature, 2*(4), 1210-1222. Doi: 10.1002/pan3.10149

Miller, G., Rathouse, K., Scarles, C., Holmes, K., & Tribe, J. (2010). Public understanding of sustainable tourism. *Annals of Tourism Research, 37*(3), 627–645. Doi: 10.1016/j.annals.2009.12.002

Mjoberg, E. (1915). *Among wild animals and people in Australia*. (M. Luotsinen & K. Akerman, Trans.). Hesperian Press.

Moffat, K., & Zhang, A. (2014). The paths to social licence to operate: An integrative model explaining community acceptance of mining. *Resources Policy, 39*(1):61-70. doi:10.1016/j.resourpol.2013.11.003

Moggridge, B., & Mihinui, R. (2018). *National Water Quality Management Strategy (NWQMS) 2018 - Indigenous Principles for Water Quality. Australian and New Zealand Guidelines for Fresh and Marine Water Quality* (Version 1.0). Water Quality Australia. Retrieved from http://www.waterquality.gov.au/anz-guidelines/guideline-values/derive/cultural-values/principles

Moggridge, B., Betterridge, L., & Thompson, R. (2019). Integrating Aboriginal Cultural Values into Water Planning: A Case Study from New South Wales, Australia. *Australasian Journal of Environmental Management, 26*(3): 273-286. https://doi.org/10.1080/14486563.2019.1650837

Mohd Salim v State of Uttarakhand & Others (2017). India. Retrieved from https://www.informea.org/en/court-decision/mohd-salim-v-state-uttarakhand-others

Molinari, S. (2016). Ord Scheme Economics (Paper 112). *Australasian Agribusiness Perspectives*. Retrieved from: https://www.agrifood.info/perspectives/2016/Molinari.pdf

Moran, K. (2009). *Sand and stone, foreign footprints: Police in the Kimberley 1880-1890s*. Hesperian Press.

Morgan, D., Allen, M., Bedford, P., & Horstman, M. (2004). Fish fauna of the Fitzroy River in the Kimberley region of Western Australia - including the Bunuba, Gooniyandi, Ngarinyin, Nyikina and Walmajarri Aboriginal names. *Records of the Western Australian Museum. Western Australian Museum, 22*(2), 147–161. Retrieved from https://researchrepository.murdoch.edu.au/id/eprint/5789/

Morgan, R. (2015). *Running Out? Water in Western Australia*. UWA Publishing.

Morris, J., & Ruru, J. (2010). Giving voice to Rivers: Legal Personality as a vehicle for recognising Indigenous relationships to water. *Australian Indigenous Law Review, 14*(2), 49–62. Retrieved from https://www.jstor.org/stable/26423181

Morrison, J. (2014). *The Social License: How to Keep Your Organization Legitimate*. Palgrave Macmillan.

Mowforth, M., & Munt, I. (1998). *Tourism and sustainability: New tourism in the third world*. Routledge.

Muecke, S. (2020). After Nature: Totemism Revisited. In T. Van Dooren & M. Churlew (Eds.), *Kin: Thinking with Deborah Bird Rose*. Duke University Press.

Muecke, S., & Roe, P. (2020). *The Childrens Country: The Creation of a Goolarabooloo Future in NorthWest Western Australia*. Rowman & Littlefield.

Mulrennan, M., & Bussières, V. 2020. Indigenous Environmental Stewardship: Do Mechanisms of Biodiversity Conservation Align with or Undermine It?. In N. Turner (Ed.), *Plants, People, and Places: The Roles of Ethnobotany and Ethnoecology in Indigenous Peoples' Land Rights in Canada and Beyond* (pp. 282- 312). McGill-Queen's University Press.

Naffine, N. (2003). Who are Law's Persons? From Cheshire Cats to Responsible Subjects. *The Modern Law Review, 66*(3), 346–367. doi:10.1111/1468-2230.6603002

Naffine, N. (2009). *Law's Meaning of Life: Philosophy, Religion, Darwin and the Legal Person*. Bloomsbury Publishing.

Nangan, J., & Edwards, H. (1976). *Joe Nangan's dreaming aboriginal legends of the North-West*. Thomas Nelson Publishers.

Nash, R. (1989). *The Rights of Nature*. University of Wisconsin.

National Native Title Tribunal. (1999). *Nyikina-Mangala claim*. Australian Government. Retrieved from http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/NNTR_details.aspx?NNTT_Fileno=WCD2014/003

National Water Commission. (2011). *Water Markets in Australia: A Short History*. Australian Government. Retrieved from https://apo.org.au/sites/default/files/resource-files/2011-12/apo-nid27438.pdf

Native Title Act 1993 (Commonwealth of Australia). Retrieved from https://www.legislation.gov.au/Details/C2017C00178
Native Title Amendment Act 1998 (Commonwealth of Australia). Retrieved from https://www.legislation.gov.au/details/c2004a00354

Neale, T. (2012, August 2). *Overturn, Axe and Bury: the LNP and Queensland's Wild Rivers Act.* Retrieved from https://theconversation.com/overturn-axe-and-bury-the-lnp-and-queenslands-wild-rivers-act-8576

Neale, T., & Vincent, E. (2017). Mining, indigeneity, alterity: or, mining Indigenous alterity? *Cultural Studies, 31*(2-3), 417-439. doi:10.1080/09502386.2017.1303435

Neidjie, B. (1989). *Story About Feeling.* Magabala Books.

Nelson, R. (2003). Environmental Colonialism: 'Saving' Africa from Africans. *Independent Review*, *8*(1), 65–86. Retrieved from https://www.jstor.org/stable/24562597

Nelson, R., Godden, L., & Lindsay, B. (2018). *A Pathway to Cultural Flows in Australia.* National Cultural Flows Project. Retrieved from https://nban.org.au/wp-content/uploads/2020/06/A-Pathway-to-Cultural-Flows-in-Australia.pdf

Neville, A. (1936). Relations between settlers and aborigines in Western Australia. *Journal and Proceedings of the Western Australian Historical Society 2*(19), 10–46. Retieved from https://trove.nla.gov.au/work/11371825

Nikolakis, W., & Grafton, R. (2014). Fairness and Justice in Indigenous Water Allocations: Insights from Northern Australia. *Water Policy*, *16*(S2), 19–35. Doi: 10.2166/wp.2014.206

Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act 2016 (Western Australia). Retrieved from https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_13755_homepage.html

Norman, D., Lincoln, Y., & Smith, L. (2008). *Handbook of Critical and Indigenous Methodologies*. SAGE Publications Inc.

Norman, E. (2012). Cultural politics and transboundary resource governance in the Salish Sea. *Water Alternatives*, *5*(1), 138. Retrieved from http://www.water-alternatives.org/index.php/all-abs/162-a5-1-9/file

Northern Australia Indigenous Land and Sea Management Alliance (NAILSMA). (2009). *An Overview of Indigenous Rights in Water Resource Management* (Prepared with the Lingiari Foundation). Retrieved from https://nailsma.org.au/uploads/resources/NAILSMA_WaterResManag_web_Aug09.pdf
Northern Australia Land & Water Taskforce. (2009). *Sustainable Development of Northern Australia: A Report to Government from the Northern Australia Land and Water Taskforce*. Retrieved from https://apo.org.au/sites/default/files/resource-files/2010-02/apo-nid159366.pdf

Nulyarimma v Thompson (1999). FCA 1192 (Austl.). Retrieved from https://jade.io/j/?a=outline&id=117369

O'Bryan, K. (2017). Giving a voice to the river and the role of indigenous people: The Whanganui River settlement and river management in Victoria. *Australian Indigenous Law Review, 20,* 48-77. Retrieved from https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/austindlr20&section=7

O'Bryan, K. (2019). *Indigenous Rights and Water Resource Management: Not Just Another Stakeholder*. Routledge.

O'Donnell, M. (2013). The National Water Initiative: Native Title Rights to Water and the Emergent Recognition of Indigenous Specific Commercial Rights to Water in Northern Australia. *Australasian Journal of Natural Resources Law and Policy*, *16*(1), 83–100. Retrieved from https://search.informit.com.au/documentSummary;dn=508049150340957;res=IELHSS

O'Donnell, E. (2017). Competition or collaboration? Using legal persons to manage water for the environment in Australia and the United States. *Environmental and Planning Law Journal*, *34*(6), 503–521. Retrieved from https://www.researchgate.net/publication/322592750_Competition_or_Collaboration_Using_Legal_Persons_to_Manage_Water_for_the_Environment_in_Australia_and_the_United_States

O'Donnell, E. (2018a). *Legal Rights for Rivers: Competition, Collaboration and Water Governance*. Routledge.

O'Donnell, E. (2018b). At the Intersection of the Sacred and the Legal: Rights for Nature in Uttarakhand, India. *Journal of Environmental Law & Practice*, *30*(1), 135–144. doi:10.1093/jel /eqx026

O'Donnell, E., & Talbot-Jones, J. (2017). Legal rights for rivers: what does this actually mean?. *Australian Environment Review*, *32*(6), 159–162. Retrieved from https://www.researchgate.net/publication/322592839_Legal_rights_for_rivers_what_does_it_actually_mean

O'Donnell, E., & Macpherson, E. (2019). Voice, Power and Legitimacy: the Role of the Legal Person in River Management in New Zealand, Chile and Australia. *Australasian Journal of Water Resources, 23*(1), 35-44. Doi: 10.1080/13241583.2018.1552545

O'Donnell, E. L., & Talbot-Jones, J. (2018). Creating legal rights for rivers. *Ecology and Society*, *23*(1). Retrieved from https://www.jstor.org/stable/26799037

O'Faircheallaigh, C. (2009). Effectiveness in social impact assessment: Aboriginal peoples and resource development in Australia. *Impact Assessment and Project Appraisal, 27*(2):95-110. Doi: 10.3152/146155109X438715

O'Neill, L., Godden, L. C., Macpherson, E., & O'Donnell, E. (2016). Australia, Wet or Dry, North or South: Addressing Environmental Impacts and the Exclusion of Aboriginal Peoples in Northern Water Development. *Environmental and Planning Law Journal*, *33*, 402–17. Retrieved from https://papers.ssrn.com/abstract=2784598

Ockwell D & Mallett A. (2013). Low carbon innovation and technology transfer. In F. Urban & J Nordensvärd (Eds.), *Low Carbon Development: Key Issues.* Routledge.

Office of the Auditor General. (2017). *Management of Pastoral Lands in Western Australia* (No. 1.0). Western Australian Government. Retrieved from https://audit.wa.gov.au/reports-and-publications/reports/management-pastoral-lands-western-australia/auditor-generals-overview/

Olsen, W. (2004). Triangulation in Social Research: Qualitative and Quantitative Methods Can Really Be Mixed. In M. Holborn (Ed.), *Developments in Sociology* (pp. 103–118). Causeway Press.

Ouzman, S., Veth, P., Myers, C., Heaney, P., & Kenneally, K. F. (2017). Plants before animals?: Aboriginal rock art as evidence of ecoscaping in Australia's Kimberley. In David,

B., & McNiven, I., (Eds.), *The Oxford handbook of the archaeology and anthropology of rock art. Oxford Handbook*, Oxford University Press.

Overduin, N., & Moore, M.-L. (2017). Social license to operate: Not a proxy for accountability in water governance. *Geoforum, 85*,72-81. doi:10.1016/j.geoforum.2017.07.008

Owen, C. (2016). *'Every Mother's Son is Guilty': Policing the Kimberley Frontier of Western Australia 1882 - 1905*. UWA Publishing.

Owen, J. (2016). Social license and the fear of Mineras Interruptus. *Geoforum 77*, 102-105. doi:10.1016/j.geoforum.2016.10.014

Owen, J., & Kemp, D. (2013). Social licence and mining: A critical perspective. *Resources Policy, 38*(1), 29-35. Doi: 10.1016/j.resourpol.2012.06.016

Palmer, D. (2016). *We know they healthy cos they on country with old people: Demonstrating the value of the Yiriman Project*: *Submission to Inquiry into Aboriginal Youth Suicide*. Education and Health Standing Committee. Retrieved from https://researchrepository.murdoch.edu.au/id/eprint/42383/1/Yiriman%20Project.pdf

Pannell, D., Ridley, A., Seymour, E., Regan, P., & Gale, G. (2008). Regional natural resource management arrangements for Australian states: structures, legislation and relationships to government agencies. *Regional NRM arrangements in Australian states*. Retrieved from https://dpannell.science.uwa.edu.au/cmbs3.pdf

Pannell, S. (2009). West Kimberley Place Report – One Place Many Stories, Final Assessment Australian Heritage Council, Accessed 18th March 2021 https://www.environment.gov.au/system/files/pages/ed0b4e39-41eb-4cee-84f6-049a932c5d46/files/ahc-final-assessment-full.pdf

Parmar., P. (2015). *Indigeneity and Legal Pluralism in India: Claims, Histories, Meanings.* Cambridge University Press.

Parsons, M., & Fisher, K. (2020). Indigenous peoples and transformations in freshwater governance and management. *Current Opinion in Environmental Sustainability, 44, 124-139*. doi:10.1016/j.cosust.2020.03.006

Parsons, R., Lacey, J., & Moffat, K. (2014). Maintaining legitimacy of a contested practice: How the minerals industry understands its 'social licence to operate'. *Resources Policy, 41*(0), 83-90. doi:10.1016/j.resourpol.2014.04.002

Pascoe, B. (2014). *Dark Emu, Black Seeds; Agriculture or Accident?* Magabala Books.

Pearce, D., Campbell, E., & Harding, D. (1987). *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission*. Commonwealth Tertiary Education Commission. Australian Government Publishing Service.

Peeling, A. (2004). *Traditional Governance and Constitution Making among the Gitanyow*. The National Centre for First Nations Governance. Retrieved from

https://nnigovernance.arizona.edu/traditional-governance-and-constitution-making-among-gitanyow

Pelizzon, A. (2014). Earth laws, rights of nature and legal pluralism. In M. Maloney & P. Burdon (Eds.), *Wild Law-In Practice* (pp. 176–190). Routledge.

Pepper, M., & Keogh, S. (2014). Biogeography of the Kimberley, Western Australia: a review of landscape evolution and biotic response in an ancient refugium. *Journal of Biogeography*, *41*(8), 1443 –1455. doi:10.1111/jbi.12324

Phillimore, J. (2014). The politics of resource development in Western Australia. In M. Brueckner, A. Durey, R. Mayes, & C. Pforr (Eds.), *Resource Curse or Cure? On the Sustainability of Development in Western Australia* (pp. 25-40). Springer-Verlag Berlin Heidelberg.

Pilbara & Kimberley Aboriginal Media (PAKAM) (Producer), McDuffie, M., & Dixon, C. (Directors). (2018). *Return to Walkali. Australia*. Indigenous Community Television. Retrieved from https://ictv.com.au/video/item/5803

Pilmer, R. (1998). *Northern patrol: an Australian saga*. Hesperian Press.

Pink, B., & Allbon, P. (2008). *The health and welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008* (No. 1.0). Australian Bureau of Statistics & Australian Institute of Health and Welfare. Retrieved from https://www.aihw.gov.au/getmedia/9b239e26-6e93-4c94-bfb1-fdc9e28aa06e/hwaatsip08.pdf.aspx?inline=true

Pleshet, N. (2018). Caring for Country: History and Alchemy in the Making and Management of Indigenous Australian Land. *Oceania, 88*(2), 183–201. doi: 10.1002/ocea.5188

Poelina, A. (2009). *Action Research to Build the Capacity of Nyikina Indigenous Australians; (Unpublished doctoral dissertation)* (PhD). University of New England, Armidale.

Poelina, A. (2015). *Managing Kimberley Water Now for The Future*. Retrieved from http://majala.com.au/Mardoowarra/Martuwarra/managing-kimberley-water-now-for-the-future

Poelina, A. (2016). A Lucky Country and a Fair Go. In I. Tadros (Ed.), *This Is My Country* (pp. 18–23). Foto Evidence Press.

Poelina, A. (2017a). Protecting the River of Life. In K. Aigner (Ed.), *Australia: Vatican Museums Indigenous Collection* (pp. 217–223). Aboriginal Studies Press.

Poelina, A. (2017b). *Yoongoorrookoo: Creator of the Law* (Film). Madjulla Inc. Retrieved from https://vimeo.com/425874378/8321a51bca

Poelina, A. (2019a). Country. In A. Kothari, A. Salleh, A. Escobar, F. Demaria, & A. Acosta (Eds.), *Pluriverse: A Post Development Dictionary* (Vol.1) (pp. 142–144). Tulika Books.

Poelina, A. (2019b, March 7). *Balginjirr: A Special Place on our Home River Country*. Westerly Magazine. Retrieved from https://westerlymag.com.au/balginjirr-a-special-place-on-our-home-river-country/

Poelina, A. (2020a). *Water Is the New Gold* (Podcast). Ngaarda Media. Retrieved from https://martuwarrafitzroyriver.org/news/water-is-the-new-gold

Poelina, A. (2020b). A Coalition of Hope! A Regional Governance Approach to Indigenous Australian Cultural Wellbeing. In A. Campbell, M. Duffy, & B. Edmondson (Eds.), *Located Research: Regional places, transitions and challenges* (pp. 153–180). Singapore: Springer Singapore. doi:10.1007/978-981-32-9694-7_10

Poelina, A. (2020c). *Eco-activism and Social Work*. (D. Ross, M. Brueckner, M. Palmer, & W. Eaglehawk, Eds.) (Vol. 1, p. 13). Foreword, London: Routledge. Retrieved from https://www.routledge.com/Eco-activism-and-Social-Work-New-Directions-in-Leadership-and-Group-Work/Ross-Brueckner-Palmer-Eaglehawk/p/book/9780367250041

Poelina, A., Brueckner, M. & McDuffie, M. (In Press). For the greater good? Questioning the social licence of extractive-led development in Western Australia's Martuwarra Fitzroy River Catchment. In M. Brueckner et al. (Eds.), Mapping mining legacies: On their problems and potential. Special Issue, *The Extractive Industries and Society*, 7(4). Doi: 10.1016/j.exis.2020.10.010

Poelina, A., & Fisher, J. (2020). *Martuwarra Fitzroy River Council Strategic Communications Brief*. Retrieved from https://figshare.com/articles/online_resource/Martuwarra_Fitzroy_River_Council_Strategic_Communications_Brief/12362921

Poelina, A., & McDuffie, M. (2016). *Our Shared and Common Future* (Online Film). Madjulla Inc. Retrieved from https://vimeo.com/132022090 (Password: Kimberley)

Poelina, A., & McDuffie, M. (2017). *Mardoowarra's Right to Life* (Online Film). Madjulla Inc. Retrieved from https://vimeo.com/205996720

Poelina, A., (Producer), & McDuffie, M. (Director). (2019a). *Balginjirr Poem* (Online Film). Retrieved from Retrieved from: https://vimeo.com/376460849

Poelina, A., (Producer), & McDuffie, M. (Director). (2019b). *Singing Yoongoorrookoo* (Online Film). Retrieved from https://vimeo.com/376460849

Poelina, A., & McDuffie, M. (Director), & Pandanus Park, (Producers). (2016). Our Community, Our Rights (Online Film). Retrieved from https://vimeo.com/182265353

Poelina, A., & Nordensvärd, J. (2018). Sustainable Luxury Tourism, Indigenous Communities and Governance. In M. Gardetti & S. Muthu (Eds.), *Sustainable Luxury, Entrepreneurship, and Innovation* (pp. 147–166). Singapore: Springer.

Poelina, A., Perdrisat, I., (Producers), McDuffie, B., & McDuffie, M. (Directors). (2008). *The Majala Wilderness Centre* (Online Film). Retrieved from http://www.magalimcduffie.com/films/2017/12/9/the-majala-wilderness-centre

Poelina, A., & Taylor, K. (2017). *Productivity Commission Draft Report: National Water Reform 2017* (No. 1). Madjulla Incorporated. Retrieved from Retrieved from https://www.pc.gov.au/__data/assets/pdf_file/0004/222772/subdr112-water-reform.pdf

Poelina, A., Taylor, K. S., & Perdrisat, I. (2019). Martuwarra Fitzroy River Council: An Indigenous cultural approach to collaborative water governance. *Australasian Journal of Environmental Management, 26*(3), 236-254. Doi: 10.1080/14486563.2019.1651226

Poelina, A., Webb, T., Dhimurru Aboriginal Corporation, Smith, A. S., Smith, N., Wright, S., & Hill, R. (2020). Foundations of Our Knowledge Our Way. In NAILSMA & CSIRO (Eds.), *Our Knowledge Our Way in Caring for Country* (pp. 1–20). CSIRO. Retrieved from https://www.csiro.au/en/Research/LWF/Areas/Pathways/Sustainable-Indigenous/Our-Knowledge-Our-Way/OKOW-resources

Preece, N. (2017, November 3). *Australia among the world's worst on biodiversity conservation*. Retrieved from https://theconversation.com/australia-among-the-worlds-worst-on-biodiverstity-conservation-86685

Pritchard, B. (2005). Beyond the resource enclave: regional development challenges in northern remote Australia. *Journal of Australian Political Economy, 55*, 77-93. Retrieved from http://inform.regionalaustralia.org.au/process/regional-development-processes/item/beyond-the-resource-enclave-regional-development-challenges-in-northern-remote-australia

Prno, J., & Slocombe, S. (2012). Exploring the origins of 'social license to operate' in the mining sector: Perspectives from governance and sustainability theories. *Resources Policy*, *37*(3), 346–357. doi: 10.1016/j.resourpol.2012.04.002

Productivity Commission. (2017a). *National Water Reform, Report No. 87*. Australian Government. Retrieved from https://www.pc.gov.au/__data/assets/pdf_file/0007/228175/water-reform.pdf

Productivity Commission. (2017b). *National Water Reform: Issues Paper*. Australian Government. https://www.atse.org.au/research-and-policy/publications/publication/productivity-commissions-national-water-reform-inquiry-issues-paper/

Productivity Commission. (2018). *Rising Inequality Report: A stocktake of the evidence.* Australian Government. Retrieved from https://www.pc.gov.au/research/completed/rising-inequality/rising-inequality.pdf

Productivity Commission. (2020). *National Water Reform: Issues Paper*. Australian Government. Retrieved from https://www.pc.gov.au/inquiries/current/water-reform-2020/issues/water-2020-issues.pdf

Purdie, N., Milgate, G., & Bell, H. R. (2011). *Two Way Teaching and Learning: Toward Culturally Reflective and Relevant Education*. ACER Press.

Pyke, M., Toussaint, S., Close, P., Dobbs, R., Davey, I., George, K., Oades, D., Sibosado, D., McCarthy, P., Tigan, C., Angus, B., (Jnr), Riley, E., Cox, D., Cox, Z., Smith, B., Cox, P., Wiggan, A,. & Clifton, J (2018). Wetlands need people: a framework for understanding and promoting Australian indigenous wetland management. *Ecology and Society*, *23*(3). Doi: 10.5751/ES-10283-230343

Rea, N., & Anmatyerr Water Project Team. (2008). *Provision for Cultural Values in Water Management: The Anmatyerr Story* (Research Project No.NTU18 of the Innovations Research Program). Land & Water Australia. Retrieved from https://library.dbca.wa.gov.au/static/FullTextFiles/069383.pdf

Redvers, N.; Poelina, A.; Schultz, C.; Kobei, D.M.; Githaiga, C.; Perdrisat, M.; Prince, D.; Blondin, B. (2020). Indigenous Natural and First Law in Planetary Health. *Challenges 2020, 11*, 29. Doi: 10.3390/challe11020029

Reyes-García, V., & Benyei, P. (2019). Indigenous knowledge for conservation. *Nature Sustainability, 2*(8), 657-658. Doi: 10.1038/s41893-019-0341-z

Reynolds, H. (1981). *The other side of the frontier: Aboriginal resistance to the European invasion of Australia*. Penguin Books.

Reynolds, H. (2005). *North of Capricorn: The untold story of the people of Australia's north*. Allen & Unwin.

Rights in Water Irrigation Act 1914 (Western Australia). Retrieved from https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_844_homepage.html

Global Alliance for the Rights of Nature: Anniversary Forum. (2018). Retrieved 8 March 2020, from https://therightsofnature.org/event/international-rights-of-nature-symposium-10-year-anniversary-of-rights-of-nature-in-ecuadors-constitution/

Rimmer, M. (2018). Northern exposure: Alaska, climate change, indigenous rights, and atmospheric trust litigation. In M. Rimmer (Ed.), *Intellectual Property and Clean Energy.* (pp. 639-686). Springer.

RiverOfLife, M., McDuffie, M., & Poelina, A., (2020a). *Martuwarra Country: A historical perspective (1838-present)*. Martuwarra Fitzroy River Council; Nulungu Research Institute, The University of Notre Dame Australia. Retrieved from https://researchonline.nd.edu.au/nulungu_research/5/

RiverOfLife, M., Poelina, A., Alexandra, J., & Samnakay, N. (et al., 2020c). *A Conservation and Management Plan for the National Heritage listed Fitzroy River Catchment Estate (No. 1)*. Martuwarra Fitzroy River Council; Nulungu Research Institute, The University of Notre Dame Australia. https://www.doi.org/10.32613/nrp/2020.4

RiverOfLife, M., Poelina, A., Bagnall, D., & Lim, M. (2020e). Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being. *Transnational Environmental Law*, *9*(3), 541-568. doi:10.1017/S2047102520000163

RiverOfLife, M., Poelina, A., Davis, M., Taylor, K., & Grafton, R. (2020d). *Submission to the National Water Reform Inquiry into progress of the Intergovernmental Agreement on a National Water Initiative* (NWI). (A. Hayes, Ed.). Martuwarra Fitzroy River Council. doi.org/10.6084/m9.figshare.13077560

RiverOfLife, M., Poelina, A., & McDuffie, M. (2020b). *Bookarrarra Liyan Mardoowarra Booroo* (Online Film). Retrieved from https://.vimeo.com/340675044

RiverOfLife, M., Poelina, A., & McDuffie, M. (2020f). *Voices for the Martuwarra* (Online Film). Martuwarra Fitzroy River Council. doi:10.5281/zenodo.3831836

RiverOfLife, M., Poelina, A., & Taylor, K. (2020g). *Submission 108 to the Joint Standing Committee on Northern Australia Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia*. Martuwarra Fitzroy River Council. doi.org/10.6084/m9.figshare.13077563.v1

RiverOfLife, M., Poelina, A., & Taylor, K. (2020h). Submission to the Western Australian Government on the Aboriginal Cultural Heritage Bill 2020/ Aboriginal Heritage Act Review: Reform Not Review an On Just Terms. (A. Hayes, Ed.). Fitzroy Crossing, Western Australia: Martuwarra Fitzroy River Council. doi:10.6084/m9.figshare.13077554.v1 (Original work published 9 October 2020)

RiverOfLife, M., Taylor, K., & Poelina, A. (In Press). Living Waters, Law First: Nyikina and Mangala water governance in the Kimberley, Western Australia. *Australasian Journal of Water Resources*. Vol 25(1)

Robinson, F., & York, B. (1977). *The black resistance: an introduction to the history of the Aborigines' struggle against British colonialism*. Widescope International.

Robison, J., Cosens, B. A., Jackson, S., Leonard, K., & McCool, D. (2017). Indigenous Water Justice. *SSRN Electronic Journal*. doi:10.2139/ssrn.3013470

Roche, C., Brueckner, M., John, E., Walim, N., & Sindana, H. (In Press). Understanding why Impact Assessment fails; a case study of theory and practice from Wafi-Golpu, Papua New Guinea. *Environmental Impact Assessment Review x* (x): xx.

Roche, C., & Mudd, G. (2014). An Overview of Mining and the Environment in Western Australia. In M. Brueckner, A. Durey, R. Mayes, & C. Pforr (Eds.), *Resource curse or cure? On the sustainability of development in Western Australia* (pp. 179-194). Heidelberg: Springer.

Rosa, E. (1998). Metatheoretical foundations for post-normal risk. *Journal of risk Research, 1*(1), 15-44. doi:10.1080/136698798377303

Ross, H., Grant, C., Robinson, C. J., AIzurieta, A., Smyth, D., & Rist, P. (2009). Co-management and Indigenous protected areas in Australia: achievements and ways forward. *Australasian Journal of Environmental Management*, *16*(4), 242–252. doi:10.1080/14486563.2009.9725240

Roth, W. (1905). *Royal Commission on the condition of the Natives*. Australian Government.

Retrieved from https://www.parliament.wa.gov.au/intranet/libpages.nsf/WebFiles/Royal+Commissions+-+Report+of+the+Royal+Commission+on+the+condition+of+the+natives/$FILE/Report+of+the+Royal+Commission+on+the+condition+of+the+natives.pdf

Roy, E. (2017, March 16). New Zealand river granted same legal rights as human being. *The Guardian.* Retrieved from https://www.theguardian.com/world/2017/mar/16/new-zealand-river-granted-same-legal-rights-as-human-being

Ruru, J. (2014). Tūhoe-Crown settlement--Te Urewera Act 2014. *Māori Law Review*. Retrieved from https://maorilawreview.co.nz/2014/10/tuhoe-crown-settlement-te-urewera-act-2014/

Ruru, J. (2018). Listening to Papatūānuku: a call to reform water law. *Journal of the Royal Society of New Zealand, 48*(2-3), 215–224. doi:10.1080/03036758.2018.1442358

Ryan, C., & Huyton, J. (2002). Tourists and Aboriginal people. *Annals of Tourism Research, 29*(3), 631–647. doi:10.1016/S0160-7383(01)00073-1

Sachs, W. (1999). One World. In W. Sachs (Ed.), *The Development Dictionary: a guide to knowledge as power* (pp. 102–116). Witwatersrand.

Scambary, B. (2013). *My country, mine country: Indigenous people, mining and development contestation in remote Australia.* Centre for Aboriginal Economic Policy Research. ANU E Press.

Schertow, J. (2019, May 21). *The Yurok Nation just established the rights of the Klamath River*. Retrieved from https://www.culturalsurvival.org/news/yurok-nation-just-established-rights-klamath-river

Schillmoller, A., & Pelizzon, A., (2013). Mapping the terrain of earth jurisprudence: Landscape, thresholds and horizons. *Environmental and Earth Law Journal, 3*(1), 1-32. Retrieved from https://lawpublications.barry.edu/cgi/viewcontent.cgi?article=1005&context=ejejj

Schlosberg, D., & Carruthers, D. (2010). Indigenous Struggles, Environmental Justice, and Community Capabilities. *Global Environmental Politics*, *10*(4), 12–35. doi:10.1162/GLEP_a_00029

Schlosberg, D. (2013). Theorising environmental justice: the expanding sphere of a discourse, *Environmental Politics, 22*(1), 37-55. Doi: 10.1080/09644016.2013.755387

Schmiechen, J., & Boyle, A., (2007). Aboriginal tourism research in Australia. In R. Butler, & T. Hinch (Eds.), *Tourism and Indigenous peoples: issues and implications* (pp. 58–72). Butterworth-Heinemann.

Scholtz, W. (2008). Custodial Sovereignty: Reconciling Sovereignty and Global Environmental Challenges Amongst the Vestiges of Colonialism. *Netherlands International Law Review*, *55*(3), 323–341. doi:10.1017/S0165070X08003239

Scott, J. (1998). *Seeing like a state: How certain schemes to improve the human condition have failed*. University Press.

Scott, I., Takacs, D., Bratspies, R., Perez, V., Craig, R., Hirokawa, K., Hudson, B., Krakoff, S., Fischer, K., Owley, J., Powers, E., Roesler, S., Rosenbloom, J., & Ryan, E. (2019). Environmental Law. Disrupted. *Envtl. L. Rep. News & Analysis*, *49*, 10038. Retrieved from https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/elrna49&section=9

Sen, A. (1999). *Development as freedom*. Oxford University Press.

Senge, P., Smith, B., Kruschwitz, N., Laur, J., & Schley, S. (2008). *The necessary revolution: How individuals and organizations are working together to create a sustainable world*. Nicholas Brealey Publishing.

Shiva, V. (1999). Resources. In W. Sachs (Ed.), *The Development Dictionary: a guide to knowledge as power* (pp. 2016–2019). Witwatersrand.

Short, D. (2007). The Social Construction of Indigenous Native Title Land Rights in Australia. *Current Sociology. La Sociologie Contemporaine*, *55*(6), 857–876. doi: 10.1177/0011392107081989

Simms, R., Harris, L., Joe, N., & Bakker, K. (2016). Navigating the Tensions in Collaborative Watershed Governance: Water Governance and Indigenous Communities in British Columbia, Canada'. *Geoforum, 73,* 6–16. Doi: 10.1016/j.geoforum.2016.04.005

Smith, L. (1999). *Decolonizing Methodologies: Research and Indigenous Peoples*. Zed Books.

Smith, L., Maxwell, T., Puke, H., & Temara, P. (2016). Indigenous knowledge, methodology and mayhem: What is the role of methodology in producing indigenous insights? A discussion from Mātauranga Maori. *Knowledge Cultures*, *4*(3), 131-156. Retrieved from https://researchcommons.waikato.ac.nz/handle/10289/11493

Smith, L., Tuck, E., & Yang, K. W. (2018). Introduction. In L. Tuhiwai Smith, E. Tuck, & K. Yang (Eds.), *Indigenous and Decolonizing Studies in Education: Mapping the Long View*. Routledge.

Solomon, F., Katz, E., & Lovel, R. (2008). Social dimensions of mining: Research, policy and practice challenges for the minerals industry in Australia. *Resources Policy*, *33*(3), 142–149. Doi: 10.1016/j.resourpol.2008.01.005

South Australian Murray Darling Basin Royal Commission (SAMDBRC). (2019). *Murray-Darling Basin Royal Commission Report.* Government of South Australia. Retrieved from https://www.environment.sa.gov.au/topics/river-murray-new/basin-plan/murray-darling-basin-commission

Sparrow, J. (2019). 'Climate emergency' endangers democracy. *Eureka Street*, *29*(12), 32. Retrieved from https://search.informit.com.au/documentSummary;dn=491226726096513;res=IELLCC

Srivastav, P. (2019). Legal Personality of Ganga and Ecocentrism: A Critical Review. *Cambridge Law Review*, *4*(1), 151-168. Retrieved from https://www.cambridgelawreview.org/issues-volume-iv

Stamm, A., Dantas, E., Fischer, D., Ganguly, S., & Rennkamp, B. (2009). *Sustainability-oriented innovation systems: Towards decoupling economic growth from environmental pressures?* (Discussion Paper). German Development Institute. Retrieved from https://www.econstor.eu/bitstream/10419/199330/1/die-dp-2009-20.pdf

Stanner, W., & Manne, R. 2011. *The Dreaming & Other Essays*. Black Inc Books.

State of Western Australia v Ward (2002). HCA 28. Retrieved from http://eresources.hcourt.gov.au/showCase/2002/HCA/28

Steering Committee for the Review of Government Service Provision (SCRGSP), (2016), *Overcoming Indigenous Disadvantage: Key Indicators 2016*. Productivity Commission. Retrieved from: https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016/report-documents/oid-2016-overcoming-indigenous-disadvantage-key-indicators-2016-overview.pdf

Stockton, E. (1995). *The Aboriginal gift – Spirituality for a nation*. Millennium Books.

Stokes, J. (1846). *Discoveries in Australia: With an account of the coasts and rivers explored and surveyed during the voyage of H.M.S. Beagle in the years 1837-1843*. T&W Boone. Retrieved from https://library.museum.wa.gov.au/fullRecord.jsp?recnoListAttr=recnoList&recno=3657

Stone, C. (1972). Should Trees Have Standing? Towards Legal Rights for Natural Objects. *Southern California Law Review*, (45), 450–501. Retrieved from https://heinonline.org/HOL/LandingPage?handle=hein.journals/scal45&div=17&id=&page

Streeter, E. (1886). *Pearls and pearling life*. Bell & Sons.

Suchet, S. (2002). 'Totally Wild'? Colonising discourses, indigenous knowledges and managing wildlife. *The Australian Geographer*, *33*(2), 141–157. doi:10.1080/00049180220150972

Sullivan, P. (2011). *Belonging together: dealing with the politics of disenchantment in Australian Indigenous policy*. Aboriginal Studies Press.

Sullivan, P., Boxer, H., Bujiman, W., & Moor, D. (2012). The Kalpurtu Water Cycle: Bringing Life to the Desert of the South West Kimberley. In J. Weir (Ed.), *Country, Native Title and Ecology* (pp.47-57). ANU Press.

Swan, P., Raphael, B. (1995). *Ways Forward: National Consultancy Report on Aboriginal and Torres Strait Islander Mental Health.* Australian Government Publishing Service.

Takacs, D. (2017). Are Koalas Fungible: Biodiversity Offsetting and the Law. *New York University Environmental Law Journal*, *26,* 161-266. Retrieved from

https://www.nyuelj.org/wp-content/uploads/2018/06/edited_Takacs-ready-for-printing-2-1.pdf

Talbot-Jones, J. (2017). *The institutional economics of granting a river legal standing* (PhD thesis). Crawford School of Public Policy, Australian National University. Retrieved from https://openresearch-repository.anu.edu.au/bitstream/1885/132935/6/Talbot-Jones%20Thesis%202017.pdf

Tan, P-L., Bowmer, K., & Baldwin, C. (2012). Continued Challenges in the Policy and Legal Framework for Collaborative Water Planning. *Journal of Hydrology, 474*, 84–91. Doi: 10.1016/j.jhydrol.2012.02.021

Tan, P-L., & Jackson, S. (2013). Impossible dreaming—does Australia's water law and policy fulfil Indigenous aspirations. *Environmental and Planning Law Journal, 30*(2), 132–149. Retrieved from https://core.ac.uk/download/pdf/143905933.pdf

Taylor, K., Longboat, S., & Grafton, R. (2019). Whose Rules? A Water Justice Critique of the OECD's 12 Principles on Water Governance. *Water, 11*(4), 809. Doi: 10.3390/w11040809

Taylor, K., Moggridge, B., & Poelina, A. (2017). Australian Indigenous Water Policy and the impacts of the ever-changing political cycle. *Australasian Journal of Water Resources*, *20*(2), 132–147. doi:10.1080/13241583.2017.1348887

Te Aho, L. (2010). Indigenous challenges to enhance freshwater governance and management in Aotearoa New Zealand - the Waikato river settlement. *The Journal of Water Law, 20*(5), 285-292. Retrieved from https://researchcommons.waikato.ac.nz/handle/10289/5705

Te Aho, L. (2016). Te Awa Tupua (Whanganui River claims settlement) Bill—the endless quest for justice. *Maori Law Review*. Retrieved from http://maorilawreview.co.nz/2016/08/

Te Aho L., & Morgan. T. (2013). Waikato Taniwharau: Prioritising competing needs in the management of the Waikato River. In J. Daniels (Ed.), *Advances in Environmental Research* (pp. 85–105). Nova Science Publishers.

Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (New Zealand). Retrieved from http://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html

Te Urewera Act 2014 (New Zealand). Retrieved from http://www.legislation.govt.nz/act/public/2014/0051/latest/whole.html

The Coalition. (2013). *The Coalition's 2030 Vision for Developing Northern Australia*. Authorised by Brian Loughnane, The Liberal Party. Retrieved from https://parlinfo.aph.gov.au/parlInfo/download/library/partypol/2550511/upload_binary/2550511.pdf;fileType=application%2Fpdf#search=%22library/partypol/2550511%22

The Waitangi Tribunal. (1999). *Whanganui River Report* (No. Case WAI167). Ministry of Justice, New Zealand. Retrieved from

https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68450539/Whanganui%20River%20Report%201999.pdf

The Waitangi Tribunal. (2019). *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims.* Waitangi Tribunal. Retrieved from https://waitangitribunal.govt.nz/news/tribunal-releases-stage-2-report-on-freshwater-and-geothermal-resources/

Thomson, I., & Boutilier, R. (2011). The social licence to operate. In P. Darling (Ed.), *SME mining engineering handbook* (pp. 1779–1796). Society for Mining, Metallurgy and Exploration.

Thorburn, D., Morgan, D. L., Gill, H., & Johnson, M. (2004). *Biology and Cultural Significance of the Freshwater Sawfish (Pristis microdon) in the Fitzroy River Kimberley, Western Australia: Report to the Threatened Species Network*. Murdoch University, Kimberley Land Council, Kimberley Language Resource Centre. Retrieved from https://library.dbca.wa.gov.au/static/FullTextFiles/628158.pdf

Toledo Municipal Code. (2021). *Chapter XVII, Lake Erie Bill of Rights*. Retrieved from https://codelibrary.amlegal.com/codes/toledo/latest/toledo_oh/0-0-0-158818

Tonts, M., McKenzie, F., & Plummer, P. (2016). The Resource 'Super-Cycle' and Australia's Remote Cities. *Built Environment 42*(1), 174-188. Doi: 10.2148/benv.42.1.174

Tourism Research Australia. (2010). *Indigenous tourism in Australia: Profiling the domestic market*. Retrieved from https://sustain.pata.org/wp-content/uploads/2014/12/TRA-Indigenous-Tourism-in-Australia1.pdf

Toussaint, S. (2008). Kimberley Friction: Complex Attachments to Water-Places in Northern Australia. *Oceania; a Journal Devoted to the Study of the Native Peoples of Australia, New Guinea, and the Islands of the Pacific, 78*(1), 46–61. doi:10.1002/j.1834-4461.2008.tb00027.x

Toussaint, S., Sullivan, P., Yu, S., & Mularty Jnr., M. (2001). *Fitzroy Valley Indigenous Cultural Values Study (a Preliminary Assessment)*. Centre for Anthropological Research, The University of Western Australia. Retrieved from https://www.water.wa.gov.au/__data/assets/pdf_file/0018/4842/46326.pdf

Tran, T. (2015). Chapter 8: The non-legal guide to meaningful recognition: a case study from the Canning Basin, West Kimberley. In P. Sillitoe (Ed.), *Indigenous Studies and Engaged Anthropology: The Collaborative Moment* (pp. 163-174). Routledge.

Tribe, L. (1974). Ways Not to Think about Plastic Trees: New Foundations for Environmental Law. *The Yale Law Journal, 83*(7), 1315–1348. doi:10.2307/795326

Trigger, D. (1997). Mining, Landscape and the Culture of Development Ideology in Australia. *Ecumene, 4*(2), 161-180. doi:10.1177/147447409700400203

Triggs, G. (1999). Australia's Indigenous Peoples and International Law: validity of the Native Title Amendment Act 1998 (Cth). *Melbourne University Law Review*, *16*(23). Retrieved from http://classic.austlii.edu.au/au/journals/MelbULawRw/1999/16.html

Tsing, A. (2011). *Friction: An Ethnography of Global Connection*. Princeton University Press.

Tuck, E., & Yang, W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, Education & Society*, *1*(1), 1–40. Retrieved from https://jps.library.utoronto.ca/index.php/des/article/view/18630

Turner, K., Berkes, F., & Turner, N. (2012). Indigenous perspectives on ecotourism development: a British Columbia case study. *Journal of Enterprising Communities: People and Places in the Global Economy*, *6*(3), 213–229. Retrieved from https://ideas.repec.org/a/eme/jecpps/v6y2012i3p213-229.html

United Dominions Corporation Ltd v Brian Pty Ltd (1983) 157 CLR 1. (Austl.). Retrieved from https://staging.hcourt.gov.au/assets/publications/judgments/1985/046--UNITED_DOMINIONS_CORPORATION_LTD._v._BRIAN_PTY._LTD--(1985)_157_CLR_1.html

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007. (United Nations). Retrieved from https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

United Nations. (n.d.). *Rights of Nature Law, Policy and Education*. Retrieved from http://www.harmonywithnatureun.org/rightsOfNature/

Urban, F., Nordensvärd, J., & Zhou, Y. (2012). Key actors and their motives for wind energy innovation in China. *Innovation and Development, 2*(1), 111-130. doi:10.1080/2157930x.2012.664034

V & C Semeniuk Research Group, (VCSRG). (2017). *Review of the Environment and Archaeology of Mardoowarra Valley Tract and Tributaries from its Mid Reaches to King Sound*. Madjulla Inc.

van Hoecke, M. (2011). *Methodologies of Legal Research Which kind of Method for What Kind of Discipline?* Hart Publishing.

van Meijl, T. (2015). The Waikato River: Changing Properties of a Living Māori Ancestor. *Oceania, 85*(2), 219-237. Doi: 10.1002/ocea.5086

van Toorn, P. (2001). Indigenous Australian life writing: tactics and transformations. In B. Attwood & F. Magowan (Eds.), *Telling stories: Indigenous history and memory in Australia and New Zealand* (pp. 1–20). Allen and Unwin.

Vanclay, F. (2020). Reflections on Social Impact Assessment in the 21st century. *Impact Assessment and Project Appraisal, 38*(2), 126-131. Doi: 10.1080/14615517.2019.1685807

Vasseur, L., Horning, D., Thornbush, M., Cohen-Shacham, E., Andrade, A., Barrow, E., Edwards, S., Wit, P., & Jones, M. (2017). Complex problems and unchallenged solutions: Bringing ecosystem governance to the forefront of the UN sustainable development goals. *Ambio*, *46*(7), 731-742. doi: 10.1007/s13280-017-0918-6

Vaughan, L. (2016). From Weebo to Walmadan: Making sense of Aboriginal heritage protection (de)evolution in Western Australia. In P. McGrath (Ed.), *The right to protect sites: Indigenous heritage management in the era of Native Title* (pp. 253–285). AIATSIS Research Publications.

Vifell, A. & Thedvall, R. (2012). Organizing for social sustainability: governance through bureaucratization in meta-organizations. *Sustainability: Science, Practice, & Policy 8*(1), 50-58. Doi: 10.1080/15487733.2012.11908084

Vogwill, R. (2015). *Water Resources of the Mardoowarra (Fitzroy River) Catchment: Kimberley, Western Australia*. University of Western Australia. Retrieved from https://play.google.com/store/books/details?id=A_xOjwEACAAJ

von der Porten, S., & de Loë, R. (2014). Water Policy Reform and Indigenous Governance. *Water Policy*, *16*(2), 222–43. Doi: 10.2166/wp.2013.046

Wahlquist, C. (2019, August 5). Sawfish deaths on Gina Rinehart station kept quiet by WA government, FOI reveals. *The Guardian.* Retrieved from https://www.theguardian.com/australia-news/2019/aug/05/sawfish-deaths-on-gina-rinehart-station-kept-quiet-by-wa-government-foi-reveals

Walalakoo Aboriginal Corporation RNTBC. (2017). *Walalakoo Healthy Country Plan 2017–2027*. Walalakoo Aboriginal Corporation. Retrieved from https://maps.northwestatlas.org/files/montara/links_to_plans/WA/WA_3_Walalakoo_Healthy_Country_Plan_2017_2027_Nyikina%20Mangala%20IPA.pdf

Walalakoo Aboriginal Corporation. (2019). *Who We Are*. Walalakoo Aboriginal Corporation RNTBC. https://www.walalakoo.org.au/who-we-are.

Ward, T. (2011). The Right to Free, Prior and Informed Consent: Indigenous Peoples' Participation Rights within International Law. *Journal of International Human Rights*, *10*(2), 54–84. Retrieved from https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1125&context=njihr

Warren, S., McDonald, D., & and McAuliffe, D. (2015). Homelessness in Queensland mining communities: A down payment on Australia's wealth or inevitable product of a neo-liberalist society's response to the cyclical fortunes of mining. *Journal of Social Inclusion*, *6*(1), 103-119. Doi: 10.36251/josi.94

Water Act 1989 (VIC). Retrieved from https://www.legislation.vic.gov.au/in-force/acts/water-act-1989/131

Water Act 1992 (NT). Retrieved from https://legislation.nt.gov.au/Legislation/WATER-ACT-1992

Water Act 2000 (QLD). Retrieved from https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2000-034

Water Management Act 2000 (NSW). Retrieved from https://www.legislation.nsw.gov.au/view/html/inforce/current/act-2000-092

Water Resources Act 2007 (ACT). Retrieved from https://www.legislation.act.gov.au/a/2007-19/

Watson, I. (2015). *Aboriginal Peoples, Colonialism and International Law: Raw Law*. Routledge.

Watson, I. (2017). What is the Mainstream? The Laws of First Nations Peoples. In R. Levy, M. O'Brien, S. Rice, P. Ridge & M. Thornton (Eds.), *New Directions for Law in Australia: Essays in Contemporary Law Reform* (pp. 213–220). ANU Press.

Watson, I. (2000). Kaldowinyeri-Munaintya-In the Beginning. *Flinders Journal of Law Reform, 4*(1), 3–17. Retrieved from https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/flinlj4&section=5

Watson, I. (2002). Buried Alive. *Law and Critique, 13*(3), 253–269. doi:10.1023/A:1021248403613

Watson, J., Watson, A., Poelina, A., Poelina, N., Watson, W., & Camilleri, J. (2011). *Nyikina and Mangala Mardoowarra Wila Booroo Natural and Cultural Heritage Plan*. World Wide Fund for Nature. Retrieved from https://www.yumpu.com/en/document/view/49036615/nyikina-and-mangala-mardoowarra-wila-booroo-wwf-australia

Weaver, D. (2010). Indigenous tourism stages and their implications for sustainability. *Journal of Sustainable Tourism, 18*(1), 43–60. doi:10.1080/09669580903072001

Webb, R. (2016). The 2016 Sir Frank Kitto Lecture: Whither Native Title? *Australian Indigenous Law Review, 19*(2), 114-128. Retrieved from https://www.jstor.org/stable/26423318?seq=1

Weir, J., Stacey, C., Youngetob, K. (2011). *The benefits associated with caring for Country*: *literature review*. Australian Institute of Aboriginal and Torres Strait Islander Studies. Retrieved from https://aiatsis.gov.au/sites/default/files/research_pub/benefits-cfc_0_2.pdf

Wergin, C. (2016). Dreamings beyond 'opportunity': the collaborative economics of an aboriginal heritage trail. *Journal of Cultural Economy*, *9*(5), 488–506. Doi: 10.1080/17530350.2016.1210532

Wesley, A., & MacCallum, D. (2014). The political economy of corporate social responsibility in the resource sector in Western Australia. A case study of the proposed James Price Point LNG precinct. In M. Brueckner, A. Durey, R. Mayes, & C. Pforr (Eds.), *Resource Curse or Cure? On the Sustainability of Development in Western Australia* (pp. 59-73). Springer-Verlag Berlin Heidelberg.

Western Australia v Brown (2014). HCA 8. (Austl.). Retrieved from http://eresources.hcourt.gov.au/showCase/2014/HCA/8

Western Australia v Fazeldean (No 2) (2013). FCAFC 58. (Austl.). Retrieved from https://jade.io/article/296376

Western Australian Department of Indigenous Affairs (DIA), (2005), Overcoming Indigenous Disadvantage in Western Australia. Retrieved from https://www.indigenousjustice.gov.au/resources/overcoming-indigenous-disadvantage-in-western-australia-report-key-indicators-2005/

Western Australian Department of Regional Development. (2014). *Kimberley: A Region in profile 2014*. Retrieved from https://kdc.wa.gov.au/wp-content/uploads/2016/08/Kimberley-A-Region-in-Profile-2014.pdf

Western Australian Department of Water (2008). *Kimberley Water Forum Proceedings*. Retrieved from https://www.slideshare.net/BruceGorring/kimberleywaterforum

Western Australian Department of Water. (2009). *Fitzroy catchment subregion overview and future directions: Kimberley regional water plan working discussion paper*. Retrieved from https://www.water.wa.gov.au/__data/assets/pdf_file/0019/5554/89814.pdf

Western Australian Department of Water. (2010). *Kimberley Regional Water Plan: Strategic Directions and Actions 2010– 2030* (No. 1.0). Retrieved from https://www.water.wa.gov.au/__data/assets/pdf_file/0017/5228/95832.pdf

Western Australian Department of Water. (2013). *Securing Western Australia's Water Future* (No. 1). Western Australian Government. Retrieved from https://www.water.wa.gov.au/__data/assets/pdf_file/0019/1765/106021.pdf

Western Australian Department of Water & Environmental Regulation. (2018). *Managing our waterways*. Retrieved from http://www.water.wa.gov.au/water-topics/waterways/managing-our-waterways2

Western Australian Department of Water & Environmental Regulation. (2019). *Water planning in the Fitzroy River catchment*. Retrieved from https://www.water.wa.gov.au/__data/assets/pdf_file/0003/9678/115160.pdf
Western Australian Government. (2018). *Media Statements - Consultation begins on visionary plan for Fitzroy River*. Retrieved from https://www.mediastatements.wa.gov.au/Pages/McGowan/2018/03/Consultation-begins-on-visionary-plan-for-Fitzroy-River.aspx

Western Australian Government & Kelly, D. (2018). State Moves to Secure Water Future with Reform of Century-Old Laws. Retrieved from https://www.mediastatements.wa.gov.au/Pages/McGowan/2018/08/State-moves-to-secure-water-future-with-reform-of-century-old-laws.aspx

Whitford, M., & Ruhanen, L. (2009). *Indigenous tourism businesses in Queensland: Criteria*

for success: Towards the development of a national diagnostic tool for Indigenous tourism businesses. Retrieved from https://espace.library.uq.edu.au/view/UQ:216771

Whitford, M., & Ruhanen, L. (2010). Australian Indigenous tourism policy: Practical and sustainable policies. *Journal of Sustainable Tourism, 18*(4), 475-496. Doi: 10.1080/09669581003602325

Whittenmore, M. (2011). The Problem of Enforcing Nature's Rights under Ecuador's Constitution: Why the 2008 Environmental Amendments Have No Bite. *Washington International Law Journal*, *20*(3), 659. Retrieved from https://digitalcommons.law.uw.edu/wilj/vol20/iss3/8/

Wik Peoples v Queensland (1996). HCA 40. (Austl.). Retrieved from https://jade.io/j/?a=outline&id=67973

Williams, R., & Walton, A. (2013). *The social licence to operate and coal seam gas development. A literature review report to the Gas Industry Social and Environmental Research Alliance*. Retrieved from: https://gisera.csiro.au/wp-content/uploads/2018/03/Social-5-Literature-Review-Report.pdf

Wilson, N. (2020). Querying water co-governance: Yukon First Nations and water governance in the context of modern land claim agreements. *Water Alternatives*, *13*(1), 93–118. Retrieved from http://www.water-alternatives.org/index.php/alldoc/articles/volume-13/issue-1/566-a13-1-5/file

Wilson, R. (1997). *Bringing them home: report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*. Human Rights and Equal Opportunity Commission. Retrieved from https://humanrights.gov.au/our-work/bringing-them-home-report-1997

Wilson, G., & Lee, D. (2019). Rights of rivers enter the mainstream. *The Ecological Citizen*, *2*(2), 183-187. Retreived from https://www.ecologicalcitizen.net/pdfs/v02n2-13.pdf

WINTA, (2012), The Larrakia Declaration, Retrieved from http://www.winta.org/wp-content/uploads/2012/08/The-Larrakia-Declaration.pdf).

Winter, C. (2016, December 14). *Treaty: South Australian Government enters historic discussions with Aboriginal nations*. Retrieved from www.abc.net.au/news/2016-12-14/south-ausn·alia-enters-historictreaty-discussions/8l 20162

Wolfe, P. (1999). *Settler colonialism and the transformation of anthropology: The politics and poetics of an ethnographic event*. Cassell.

Woodward, E., Hill, R., Harkness, P., & Archer, R. (Eds.) (2020). *Our Knowledge Our Way in Caring for Country: Indigenous-Led Approaches to Strengthening and Sharing Our Knowledge for Land and Sea Management. Best Practice Guidelines from Australian Experiences*. NAILSMA & CSIRO. www.csiro.au/ourknowledgeourway.

World Commission on Environment and Development. (1987). *Our Common Future*. Oxford University Press. Retrieved from https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf

World Health Organization (WHO). (1999). *The Mental Health of Indigenous Peoples: An international Overview*. Retrieved from https://apps.who.int/iris/handle/10665/65596

World Meteorological Organisation. (n.d.). *The Dublin Statement on Water and Sustainable Development.* Retrieved from http://www.wmo.int/pages/prog/hwrp/documents/english/icwedece

Wooltorton, S., Collard, L., & Horwitz, P. (2018). Living water: Groundwater and wetlands in Gnangara, Noongar boodjar. *PAN: Philosophy Activism Nature, 14*, 5-23. Retrieved from https://search.informit.com.au/documentSummary;dn=236364945226853;res=IELHSS

Wooltorton, S., Poelina, A., Collard, L., Horwitz, P., Harben, S., & Palmer, D. (2020, October). Becoming Family with Place. *Resurgence & Ecologist*, pp. 34–35.

Yanner v Eaton (1999). HCA 53 (Austl.). Retrieved from https://jade.io/article/68155

Yarra River Protection Ministerial Advisory Committee. (2016). *Protecting The Yarra River (Birrarung).* Victorian State Government. Retrieved from https://www.planning.vic.gov.au/__data/assets/pdf_file/0011/101711/DELWP0032.10_YarraRiverProtection_MACrecommendations_v14_weba.pdf

Young, E. (1988). *Aboriginal Economic Enterprises: Problems and Prospects*. In D. Wade-Marshall, & P. Loveday (Eds.), *Contemporary Issues in Development: North Australia: Progress and Prospects* (pp. 182–200). NARU Darwin.

Yu, P. (2016). *Keynote Address: Peter Yu – CEO – Nyambu Buru Yawuru Ltd*. Northern Development Conference, Darwin, June 20. Retrieved from https://www.aph.gov.au/DocumentStore.ashx?id=d96c9edc-6aa7-4288-a588-9fa7770b0d0f&subId=671266

Yu, S. (2000a). *Cultural Values of Water in the Fitzroy River Valley: Lower Fitzroy and Hann River, River,* Perth: Centre for Antropological Research, University of Western Australia.

Yu, S. (2000b). *Ngapa Kunangkul: Living Water: Report on the Aboriginal Cultural Values of Groundwater in the La Grange Sub-basin* (Prepared for The Water & Rivers Commission of Western Australia). The Centre for Anthropological Research, University of Western Australia. Retrieved from https://catalogue.nla.gov.au/Record/508176

Yunkaporta, T. (2019). *Sand Talk: How Indigenous Thinking Can Save the World*. Text Publishing.

Zambrana, I. (2019). *Mother Earth and Education* (Conference Presentation). UN General Assembly Ninth Interactive Dialogue of the General Assembly on Harmony with Nature. Retrieved from

http://www.harmonywithnatureun.org/dialogue/NB4NAxoVAbP3O4UHBW6LjVt+ekA2cCG0IZPc2LusDKC6unP4am1iqWrquMWxG85BgfyjOkjAvkdEmX3F+HyjDw==

Zeppel, H. (2001). *Aboriginal cultures and Indigenous tourism*. In N. Douglas, N. Douglas, & R. Derrett (Eds.), *Special interest tourism* (pp. 232–259). John Wiley & Sons Australia Ltd.

Zwarteveen, M., & Boelens, R. (2014). Defining, Researching and Struggling for Water Justice: Some Conceptual Building Blocks for Research and Action. *Water International, 39*(2), 143–58. Doi: 10.1080/02508060.2014.891168

Zweigert, K., & Kötz, H. (1998). *Introduction to Comparative Law* (3rd ed.). Clarendon Press.