

**United Nations Permanent Forum on Indigenous Issues  
Tenth Session – New York  
16-27 May 2011**

**Agenda Item 7:           Water**

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**Joint Intervention Delivered by Steven Ross on behalf of:**

Aboriginal Legal Service of Western Australia

Aboriginal Medical Service Western Sydney (AMSWS)

Amnesty International, Australia

Gugu Badhun Ltd

National Aboriginal and Islander Community Controlled Health Organisations

National Native Title Council

Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner

Victorian Aboriginal Legal Service

Yarkuwa Indigenous Knowledge Centre

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Thank you Madam Chair

Since the colonisation of Australia water has been quantified, mismanaged, polluted, stolen and of most concern, commodified. Currently in Australia Indigenous peoples are locked out of water discussions, emerging water markets and decision making on the management of commercial and environmental water flows.

In the undammed and unregulated rivers of Northern Australia, governments and corporations are proposing major developments, land acquisition, population growth and irrigation works. All of this is done without the free, prior and informed consent of traditional owners.

Australia is the world's driest continent and has the most variable climate in the world. The current and future threat of climate change will severely compound this variability and means low inflows into major river systems. For example, the Murray Darling Basin is a large geographical area that currently supports some 2 million people including 15% of Australia's Indigenous population and provides 40% of Australia's food and fibre. In 2006 the Basin

experienced the lowest inflows in recorded history, which was 80% drier than the previous record.

Water has sentience and has a right to be recognised as an ecological entity. Indigenous peoples as holders of the knowledge of water sources and of the songlines and stories related to water, have a right to decide its use, fully participate in management, hold water licenses, trade and use water for cultural and economic purposes.

In many parts of Australia rural and remote communities do not have access to adequate potable water, causing and compounding disparate social health indicators such as health.

Australia's provincial governments struggle to put in place practical policies and regulations that will satisfy residential, industrial and agricultural consumers, whilst at the same time ensuring sustainable water resources for our future.

The cultural rights of Indigenous peoples to water are therefore disadvantaged due to the lack of effective processes to fully recognise and incorporate those rights due to the pressures of competing interests. With the increasing commodification of water the space for Indigenous peoples within the management of water is severely limited.

Australian Governments are placing a high price on our vast mineral resources but are not putting a similar price on one of our greatest and most precious of resources – water.

Rectifying this situation would provide significant opportunities in the water market for Indigenous communities to trade in water, in particular through negotiation with the extractive industry that needs access to water for mine production. The extractive industry should enter into free, prior and informed consent negotiations with Indigenous communities for water extraction and we should be able to negotiate payments for water that is taken from our traditional lands.

This economic imperative also includes the right to fish and extract other resources from fresh and sea water to use for cultural and commercial purposes.

At present the extractive industry has very little accountability neither to the wider community nor to Indigenous peoples in gaining access to water for mining and other activities. Most disturbing the environment safeguards are wanting in Australia, evidenced by the common currently legal practice of insitu leeching, which is outlawed in the United States of America and other Nations.

Furthermore the right of Indigenous peoples to water for cultural purposes must be recognised. Cultural flows as we call them can provide both a beneficial ecological and

human outcome and provide the justice we deserve as a result of the dispossession of our traditional land and waters.

## **Recommendations**

That the Permanent Forum:

1. urges all States to ensure Indigenous People's cultural rights to water are recognised and protected; and
2. urges all States to recognise that water has its own rights as an ecological and sentient entity;
3. urges all States through legislation and policy to support the right of Indigenous peoples to hunt and gather resources from waters including fish, to be used for cultural and economic purposes including commercial purposes;
4. urges all States to fully include Indigenous peoples in decision making processes around water management including commercial, irrigation and environmental water management;
5. urges all States to incorporate the principles of the UN Declaration on the Rights of Indigenous Peoples in all policies relating to Indigenous cultural rights to water and that all water legislation and policy is consistent with Article 25