

Water Needs and Use – The future for WA and indigenous business landholders



Carolyn Dearing
Watershed Legal
cdearing@watershedlegal.com.au

Water Law Reform

Water law is changing in WA.

How can indigenous business landholders position themselves to take advantage of these changes?

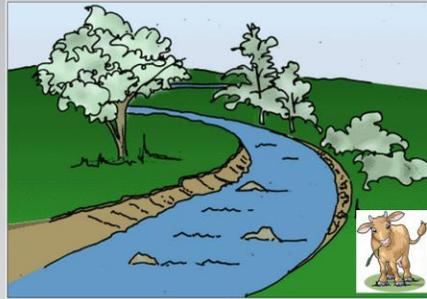
What are the risks?



Water Rights

Landholder rights

- Domestic Consumption
- Watering Stock
- Licence to extract water



Reasons for reform

- Climate Change
- Over use
- Environmental degradation and loss of biodiversity
- competition from other users

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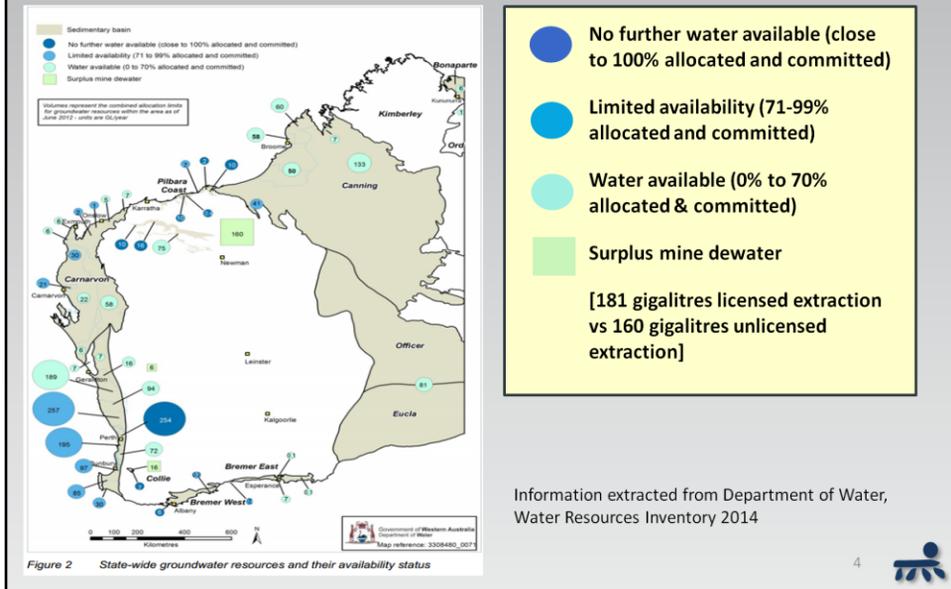


Under the current system, in non-urban areas, landholders have an automatic right to extract water for domestic consumption and small scale stock watering. You will need to have a licence for any other commercial purpose, including sinking wells.

So why is the government planning to change the law regulating water rights? The plan is part of a national reform agenda that extends back over a long period time and which aims to address various problems including the effects of climate change such as increasing weather extremes and reduced rainfall, over use and wastage of water, environmental degradation and loss of biodiversity as well as increasing competition among water users for this scarce resource.

Each of these challenges are present in the Pilbara and I'll be discussing the Pilbara as a case study to illustrate the urgent need for reform.

Pilbara Case Study



Recently I did an extended camping trip throughout the Pilbara region. I therefore read the EPA's August 2014 report on cumulative environmental impacts of development in the Pilbara region (http://www.epa.wa.gov.au/Policies_guidelines/strategicadvice/Pages/Pilbaras16e2014.aspx) and the Department of Water's 2014 Inventory of Water Resources (www.water.wa.gov.au/PublicationStore/first/107262.pdf) with great interest. Each report reveals important information and I'll be presenting a case study of the Pilbara to illustrate some of the pressures being placed on the state's water resources. This slide contains a map of WA's ground water resources. I extracted this copy for the Department's Inventory of Water Resources for 2014. The map uses a colour coded system which represents the allocation limits set by the Department for ground water use as at June 2012. The dark blue circles are areas where no more water is available to be allocated – this includes Port Healdland and Karratha. Circles with the lighter shade of blue represent areas where between 70-99% of water is allocated and committed.

Circles with the palest blue shading are areas with 70% or less allocated and committed. No part of the Pilbara is in this category.

The green square represents surplus water removed from mines. The Department reports that 181 gigalitres is licensed for extraction. The Department also estimates that 160 gigalitres per annum was removed from mines – this is called mine dewatering. The figures show that volume of ground water removed from mines in the Pilbara is almost equivalent to the volume licensed for extraction. This is a significant draw on the water resources of the area.

Of course, water is reserved for environmental needs and the cultural needs of indigenous peoples. However, the Department's analysis shows that in areas of high demand water is now in short supply, with various aquifers close to fully committed.

So what does this mean for the Pilbara's water?

Pilbara Water - Key Threats

Impact of development	Cumulative impacts	Key threats
Ground water in short supply in high demand areas	Largest volume extracted in the State	Conflicting land uses Water source depletion
Excessive land clearing	Inadequate system for biodiversity conservation	Piecemeal environmental assessments
Mine pit lakes	<ul style="list-style-type: none"> ▪ 97 lakes ▪ 178 proposed ▪ 670 open pits that could become pit lakes 	Risks of hydrogeological connection and permanent landscape changes

Information extracted from Dept of Water, Water Resources Inventory 2014, and the Environmental Protection Authority's Report on cumulative environmental impacts of development in the Pilbara, 2014

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In August the EPA released its report on Cumulative Environmental Impacts of Development in the Pilbara region. The report makes strong reading. It shows that the impact of development on the Pilbara's water is significant – with excessive land clearing, overstocking on pastoral leases and hydrogeology threats from ground water abstraction and mine water disposal being key threats.

Another risk that is not fully understood is the phenomena of mine pit lakes. These lakes form when mining below the water table stops and dewatering of the mine pit ends. This results in the pit being allowed to fill up with ground water. Pit lake water is typically contaminated with metals, metalloids, saline, acidic or alkaline properties. This water eventually forms corrupted lakes and the EPA observed that saline plumes from mine voids can extend for 10s of kilometres. The EPA's estimated numbers of actual and prospective pit lakes is shown on the table in the slide. The numbers are sobering.

So what water law reforms are proposed?

Reforming Water Law

Key reforms

- Licence term – increased to 40 years
- New right – Licence changed to Perpetual Access Entitlements
- Tradable rights
- Voluntary local advisory groups

What's missing?

- No indigenous reserves for future consumptive use
- Pricing of non-urban water use

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In September 2014 the Department of Water produced a report outlining its reform agenda, Securing WA's water future (www.water.wa.gov.au/PublicationStore/first/106021.pdf).

At this stage it's not possible to be definitive about the final form of the reforms proposed until a bill has been released for public comment. The Minister for Water released indicated that a bill could be produced in the 1st half of 2015.

For the purpose of our discussion I want to draw your attention to some key reform proposals:

The changing of licence tenure from 10 years to 40 years

This will be a significant extension and is intended to support business needs. Under this arrangement existing licensees will benefit most. With opportunities for public comment on licence renewal applications correspondingly reduced.

The introduction of perpetual rights

There is also a long term plan for a proposed perpetual right to access water – with existing licence holders to be automatically transferred to a perpetual Water Access Entitlement. This innovation would be particularly egregious for some indigenous peoples who don't presently hold licences in areas where water is already fully allocated.

Water trading – of sorts

Finally, **voluntary local advisory groups** will be implemented. It will be important for indigenous people to be part of the planning of water use in your regions.

So, what's missing?

There are 2 significant omissions in the government's reform program – special indigenous reserves for future economic use and the absence of pricing for non-urban water use.

All of these actions create opportunities as well as risks for indigenous business and landholders. Which brings me

to the heart of this discussion.

Opportunities and risks

Indigenous Business

- Accessing the market
- Planning for sustainable use - what can the ASX100 tell us?
- Technological innovation and green branding

Indigenous Landholders

- Dealing with third party access to land and water - setting limits and conditions
- Social offset agreements
- Environmental disclosure and holding people to account

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The creation of new licensing and access entitlements make accessing water a market imperative. Delays in obtaining a licence could result in businesses missing out on a water allocation in the future and forfeiture of the trading opportunities that follow.

With the increasing threats to water security in Australia some larger businesses have begun planning to reduce consumption and avoid, or at least limit, serious impacts like flooding and drought. Technological innovation is also featuring and this is an opportunity for indigenous business to investigate opportunities for technology transfer as well as green branding for products.

For landholders, the emerging ethics of water governance and corporate social responsibility plans can support contractual arrangements for the protection of their lands. These arrangements include limits on third party access to land and water and environmental and social offset agreements.

Finally, company reports to shareholders and regulators that disclose water use and water security issues can be used by you, and is increasingly used by insurers, asset owners and managers, banks and fund managers, including superannuation funds, for your own decision making and can be a tool to influence the behaviour of companies and other interested parties.

Conclusion

- **Planning for change**
- **Business opportunities**
- **Protecting your interests**

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Water law is changing in WA.

There are some strong positive changes proposed as well as some significant threats to indigenous business and landholders.

Access to water is a critical element of business operations and delays in acquiring water interests may compromise your future success or result in significant additional costs to business.

Early planning and good advice is key to protecting your cultural and commercial interests in water.



*Carolyn Dearing
Watershed Legal
cdearing@watershedlegal.com.au*

