

Gunanurang: (Kununurra) Big River
Aboriginal Cultural Values of the Ord River and Wetlands

**A Study And Report Prepared For The Water And Rivers
Commission**

by

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Table of Contents

Table of Contents	2
<i>Acknowledgments</i>	4
<i>Note on Orthography</i>	4
<i>Acronyms used in the Report</i>	5
1.0 INTRODUCTION	7
1.1 THE BRIEF.....	8
1.2 THE STUDY AREA	9
Map 1 The Study Area.....	10
1.3 ABORIGINAL GROUPS WITH RIGHTS AND INTERESTS IN THE STUDY AREA	11
1.4 LITERATURE REVIEW	11
2.0 METHODOLOGY	13
2.1 WORK PROGRAMME	13
3.0 ABORIGINAL CULTURAL VALUES IN THE STUDY AREA	14
3.1 THE DREAMING: THE CONCEPTUAL BASIS OF RIGHTS AND INTERESTS	14
Map 2: The Miriung and Gajerrong #1 & #2 Native Title Claims	15
3.2 INDIGENOUS ENVIRONMENTAL AND ECOLOGICAL CLASSIFICATION: THE CULTURAL, SOCIAL AND ECONOMIC CONTEXT OF WATER SOURCES IN THE STUDY AREA.....	16
3.3 THE DEVELOPMENT OF THE ORD RIVER IRRIGATION SYSTEM STAGE 1	18
3.3.1 <i>The Pre-Dam Context</i>	18
3.3.2 <i>The Lower Ord and Traditional Concepts of Water Use in the Post-Dam Era</i>	20
3.4 STRUCTURES AND MANAGEMENT PRACTICES: AGENCIES WITH INTERESTS IN THE ORD RIVER AREA	25
3.5 TRADITIONAL OWNERS AND MANAGEMENT OF THE ORD: THE CURRENT CONTEXT	27
4.0 HISTORICAL OUTLINE OF ABORIGINAL WATER USE IN THE LOWER ORD VALLEY	29
4.1 RECENT BACKGROUND OF ABORIGINAL WATER USE IN THE ORD VALLEY.....	30
4.2 CURRENT GENERAL CONTEXT: ABORIGINAL INVOLVEMENT IN THE MANAGEMENT OF THE LOWER ORD VALLEY	32
4.3 OUTLINE OF RECENT WATER USE AND WATER USE PROPOSALS	33
4.4 THE POST-CLAIM INVOLVEMENT OF ABORIGINAL PEOPLE IN MANAGEMENT OF THE ORD RIVER BASIN.....	36
4.5 SUMMARY	46
5.0 CONCLUSIONS	47
5.1 ADDRESSING THE BRIEF.....	49
5.2 RECOMMENDATIONS.....	50
5.3 ADDITIONAL COMMENTS	53
6.0 REFERENCES	55

7.0 APPENDIX 1: SUMMARY OF CHRONOLOGY OF POST CONTACT IMPACT AND DEVELOPMENTS IN THE ORD RIVER AREA	60
8.0 APPENDIX 2: EXTRACTS FROM MARY DURACK’S (1986) ‘LAMENT FOR A DROWNED COUNTRY’.	62
9.0 APPENDIX 3: SOME MIRIUWUNG WORDS AND TERMS RELATED TO WATER	64

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Note on Orthography

We have adopted a standard orthography. Voiced and unvoiced consonants are interchangeable. Both appear in the text. In some words vowels may be prolonged. We have chosen not to distinguish these in the orthography. We include here the letters and their use in English words to assist in the pronunciation of Miriwung and other terms.

k/g	“ “	as in w <u>o</u> ken or g <u>i</u> ggle
p/b	“ “	p <u>i</u> p, b <u>i</u> b
m	“ “	<u>m</u> other
n	“ “	<u>n</u> oun
ng	“ “	sail <u>ng</u>
nh	“ “	no equivalent in English (put the blade of the tongue behind the teeth and try to say n)
ny	“ “	on <u>ny</u> on
l	“ “	<u>l</u> ate

rr	” “	b <u>ri</u> ght (Scottish pronunciation)
r	“ ”	<u>r</u> ight
rt/ rd	“ “	no equivalent in English (similar to t or d but with the tip of the tongue turned) back
rn	“ “	no equivalent in English; similar to n but with the tip of the tongue turned back
rl	“ “	no equivalent in English; similar to l but with the tip of the tongue turned back.
t	“ “	wri <u>t</u> e
th	“ “	<u>th</u> eory
tj/ dj	“ “	<u>ch</u> urch/ <u>j</u> am
w	“ “	<u>w</u> et, sometimes not pronounced before the vowel u.
y	“ “	<u>y</u> et, sometimes not pronounced before the vowel i.
a	“ “	<u>f</u> ather/ <u>s</u> ung
u	“ “	pu <u>t</u> / po <u>o</u> l
I	“ “	b <u>i</u> t/ be <u>a</u> n
e	“ “	bu <u>t</u> ter

Acronyms used in the Report

AGWEST	Agriculture Western Australia
ASEIA	Aboriginal Socio-Economic Impact Assessment
ATSIC	Aboriginal and Torres Strait Islander Commission
CALM	Department of Conservation and Land Management
CHMP	Cultural Heritage Management Plan
COAG	Council of Australian Governments
COVE	Care of the Ord Valley Environment
DIA	Department of Indigenous Affairs
DOLA	Department of Land Administration
DRD	Department of Resources Development
EIS	Environmental Impact Statement
EKAMS	East Kimberley Aboriginal Medical Service
EKPCC	East Kimberley Planning Co-ordinating Committee
EME	Environmental Management Entity
EPA	Environmental Protection Agency
ERMP	Environmental Review and Management Programme
KDC	Kimberley Development Commission
KLC	Kimberley Land Council
KRC	Kimberley Regional Council
KWADS	Kununurra Wyndham Area Development Strategy
MDWG	Miriuwung Dawang Woorlab-gerring, Language and Culture Centre
MG#1,#2,#3	Miriuwung and Gajerrong Native Title Claims #1, #2 and #3
MGF	Miriuwung and Gajerrong Families, Heritage and Land Council
MOU	Memorandum of Understanding
NFF	National Farmers' Federation
NHT	National Heritage Trust

NLC	Northern Land Council
NPNCA	National Parks and Nature Conservation Authority
NRM	Natural Resource Management
N.T.	Northern Territory
OLW	Ord Land and Water
ORIA	Ord River Irrigation Authority
ORWMG	Ord River Waterway Management Group
PBC	Prescribed Body Corporate
SECWA	State Electricity Commission of Western Australia
SWEK	Shire of Wyndham East Kimberley
TOs	Traditional Owners (Aboriginal people with rights and interests in the study area)
W.A.	Western Australia
WC	Water Corporation
WPC	Work Programme Clearance
WRC	Water and Rivers Commission

1.0 Introduction

The Water and Rivers Commission (WRC) is the State's primary water resource management agency and has overall responsibility for the assessment, protection and allocation of water resources in Western Australia (W.A.). The WRC has a responsibility to equitably share water resources between ecological needs, social expectations and demands to consume water for economic benefit.

In May 1999, the WRC released its Draft Interim Water Allocation Plan for the Ord River in the East Kimberley region of W.A.. In giving its response to this plan and advising the Minister for the Environment in December of the same year, the Environmental Protection Authority (EPA) noted that some submissions which had been received pointed out that there was no account taken in this Draft Interim Water Allocation Plan for the Ord River of the rights and interests of native title holders/claimants. The WRC had attempted to consult Aboriginal people through the Miriuwung-Gajerrong Families, Heritage and Land Council (MGF) about the water allocation plan process before the draft was released, but agreement for the report to progress did not occur until 2000. Even then, the MGF was opposed to this type of report.

Thereafter, the WRC undertook a commitment to ensure that Aboriginal people's cultural values associated with the Ord River would be considered in the development of a Final Water Allocation Plan expected in 2006. As a result, the WRC has commissioned this study into Aboriginal values of the Ord River and Wetlands in order to record and articulate the cultural, environmental, social and economic values which TOs and Aboriginal communities attach to the Ord River and associated flood-plains and wetlands. The WRC wishes through this study to record these current values as well as to acknowledge past effects on Aboriginal people of the damming of the Ord River, both at the Diversion Dam in Kununurra in 1963 and at the Top Dam creating Lake Argyle in 1972.

Through this study, the WRC wishes to achieve a number of objectives. These are outlined in the initial research brief provided by the WRC to the anthropological consultants as described below.

It is anticipated that this study will provide information and recommendations, which will facilitate Aboriginal involvement in waterway management and future water allocation planning.

1.1 The Brief

The objectives of this study of Aboriginal values of the Ord River and wetlands are ambitious and include the following:

1. develop protocols for the provision of information by TOs
2. develop measures to protect the intellectual property rights of informants and the cultural sensitivities of the information itself
3. provide a brief, relevant literature review
4. describe an Aboriginal-derived framework for understanding water as a cultural and natural resource
5. identify and document environmental features and ecological processes dependent on surface water regarded as of cultural, social and economic significance to TOs in the study region
6. identify and map riparian areas and adjacent land integral to the identified water features
7. describe the cultural, social and economic context and significance of different water sources and the inter-relationship between these
8. assess and evaluate the cultural significance of any ecological features

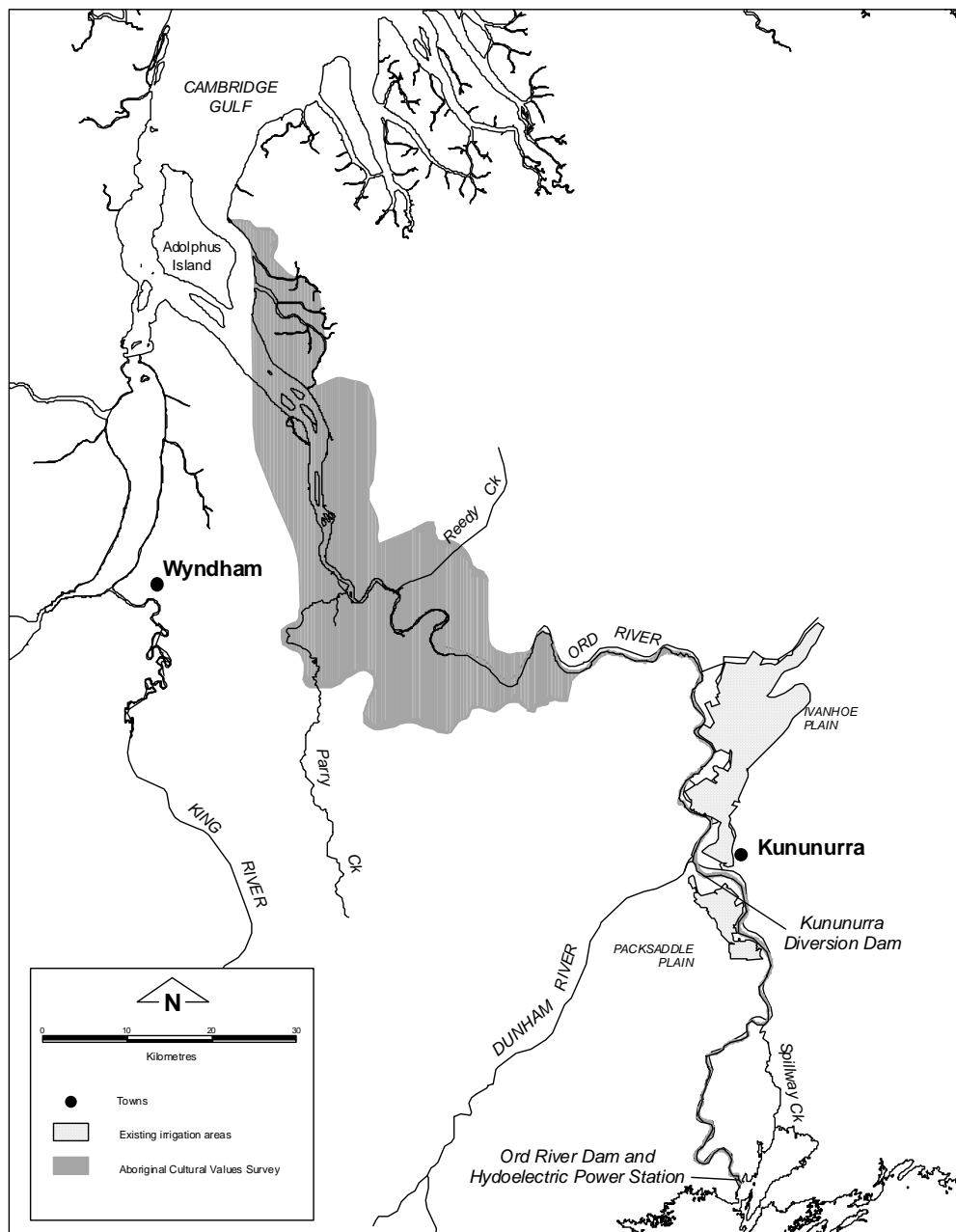
9. identify and document impacts of current dam structures, water use and flow regimes on Aboriginal values and ecological features of importance to TOs
10. investigate any distinction between Aboriginal values relating to environmental features of pre-dam and post-dam river systems
11. make recommendations regarding the minimisation or avoidance of negative impacts (or the enhancement of positive impacts) on water-dependent values of TOs in the study area
12. produce a report integrating the research findings, ensuring the results are understood and endorsed by the TOs involved.

In relation to objectives 1 & 2, preliminary discussion with the TOs and their advisors indicated that the TOs required that detailed information relating to this study, held by themselves and provided to the consultants, be kept confidential and only be used for purposes of their choosing, particularly in the context of ongoing native title claims and heritage matters.

Through this mechanism the TOs intend to protect their intellectual property rights and their sensitive cultural information.

1.2 The Study Area

The study area extends from Lake Argyle and the Ord River Dam downstream through Lake Kununurra to the Diversion Dam and on downstream to the mouth of the Ord River in the Cambridge Gulf (see Map 1). This includes flood-plains and wetlands on the east and west of the lower Ord River as well as land currently under irrigation. It also includes arable land earmarked for potential irrigation in the vicinity of Carlton Plain on the northern side of the Ord River, as well as land on the southern side of the river in the Mantinea area and on the west bank of the Ord River adjacent to the old Ivanhoe homestead.



Map 1 The Study Area

1.3 Aboriginal Groups with Rights and Interests in the Study Area

The Ord River basin, from the southern side of Lake Argyle in the vicinity of the junction of the Bow and Ord Rivers to the tidal limit near the Cambridge Gulf, includes the traditional lands of the Gidja, Malngin, Miriuwung, Wadainybung, Dulbung and Kuluwaring language groups. This study focuses on the views of Miriuwung, Kuluwaring, Gajerrabeng and other TOs relating to the cultural, environmental, social and economic significance of the Ord River ecosystem. The native title rights and interests of these Aboriginal groups lie in the lower Ord River valley, downstream from the Argyle Dam.

A majority of members of these groups reside in Kununurra, Wyndham, Turkey Creek, Goose Hill, Mandangala, Ningbing, Molly Springs, Emu Creek and other small communities within the lower Ord valley. Senior TOs from these localities possess detailed cultural and geographic knowledge of and hold rights and interests in land in the study area.

1.4 Literature Review

Yu's (2000: 11-15) report provides a brief review of some anthropological literature relevant to the cultural significance of water to Aboriginal people. Her conclusion based on literary sources, is that Aboriginal concepts of serpents living in water holes (water snakes), rainmaking and 'living water' were found throughout much of Aboriginal Australia (*ibid.*). Her focus, however, was on the arid zone, not a riverine environment, and she noted that literature focusing on Kimberley wetland areas was scarce (*ibid.*). Yu further pointed out that the preservation of wetlands has become both a national and international concern.

Toussaint, Sullivan, Yu & Mularty's report (2001) provides a preliminary assessment of indigenous cultural values of the Fitzroy valley in the West Kimberley. It thus goes some way to filling the gap noted by Yu on material focusing on a riverine environment in the Kimberley. The authors note that the different language groups of the region all

conceptualise water sources and rivers, along with the land, as derived from the Dreaming. As Yu had concluded previously, this study also notes the importance of mythic beings (rainbow serpents or water snakes) as significant in the origin as well as the regeneration of all water sources. Aboriginal people have continuing responsibilities for caring for water as well as land in their respective 'countries'. Water resources and other water-dependent flora and fauna are central to their lives and various religious, legal, social and economic beliefs and practices are based on them and/ or relate to them. Aboriginal relationships to waters and rivers are also expressed through local knowledge, language terms and paintings. The report makes numerous recommendations to the WRC, particularly stressing the need for regular consultation with Aboriginal people in communities in the Fitzroy valley.

Surprisingly little anthropological work has been published on the impact of the Ord River Irrigation Scheme on Aboriginal people, though some useful comments and insights are provided in the historical introductions to Shaw's publications (Shaw 1981, 1983, 1986, 1992).

Yu (*op. cit.*: 15) notes that numerous recent publications from both government and non-government departments and agencies discuss and make recommendations for planning the sustainable use of groundwater.

It is the intention of this study to review some of these more recent publications noted but not discussed by Yu which are relevant to the Ord valley and wetlands study area from the point of view of the account taken of Aboriginal cultural values relating to surface and groundwater. It is also intended to examine whether recommendations for Aboriginal involvement in water-use management and planning are included in these reports and what action, if any has occurred.

2.0 Methodology

2.1 Work Programme

Senior TOs from localities in the study area were consulted because of their detailed cultural and geographic knowledge of the area and the rights and interests they hold in land in the study area.

In order to achieve most of the objectives of the study (i.e. to identify Aboriginal cultural values relating to the Ord River waterway, including lakes, wetlands, groundwater, springs, flood-plains, smaller watercourses and tributaries as well as riparian zones and adjacent land integral to the study area) it was essential to hold discussions and site visits with appropriate TOs. To gain an adequate understanding of these values and the complex ecosystems from an Aboriginal perspective it was necessary to conduct comprehensive discussions, consultations and fieldwork with Aboriginal people from all of the language groups mentioned who have an interest in the study area.

The land tenure systems and cultural values of these riverine groups are complex. This fact, when combined with the limited period and resources available for research and consultation, as well as the rugged terrain in the study area, limited the scope of investigations.

Prior to consulting Aboriginal people, extensive preliminary reference was made to existing environmental, ethno-botanical and other relevant documents. The Ord River basin has already been subject to a number of environmental, ecological and geomorphological studies which emphasise the complexity and variety of ecosystems and the biodiversity of the area.

It is clear from the anthropological consultants' own existing knowledge that the cultural values of the Aboriginal groups who have traditional interests in the study area match this complexity. In this respect, particular use was made of research conducted during the

Miriuwung Gajerrong Native Title Claim (MG#1) into indigenous environmental and taxonomic classifications (see Barber & Palmer 1996).

The exploration and documentation of Aboriginal cultural values was coordinated with the WRC and the other agencies and groups which are involved in the process of reviewing the Draft Interim Water Allocation Plan for the Ord River. Although this material was constructed from a non-Aboriginal scientific perspective, it provided a valuable tool for the consultants in their exploration and representation of Aboriginal cultural values of the Ord River and wetlands.

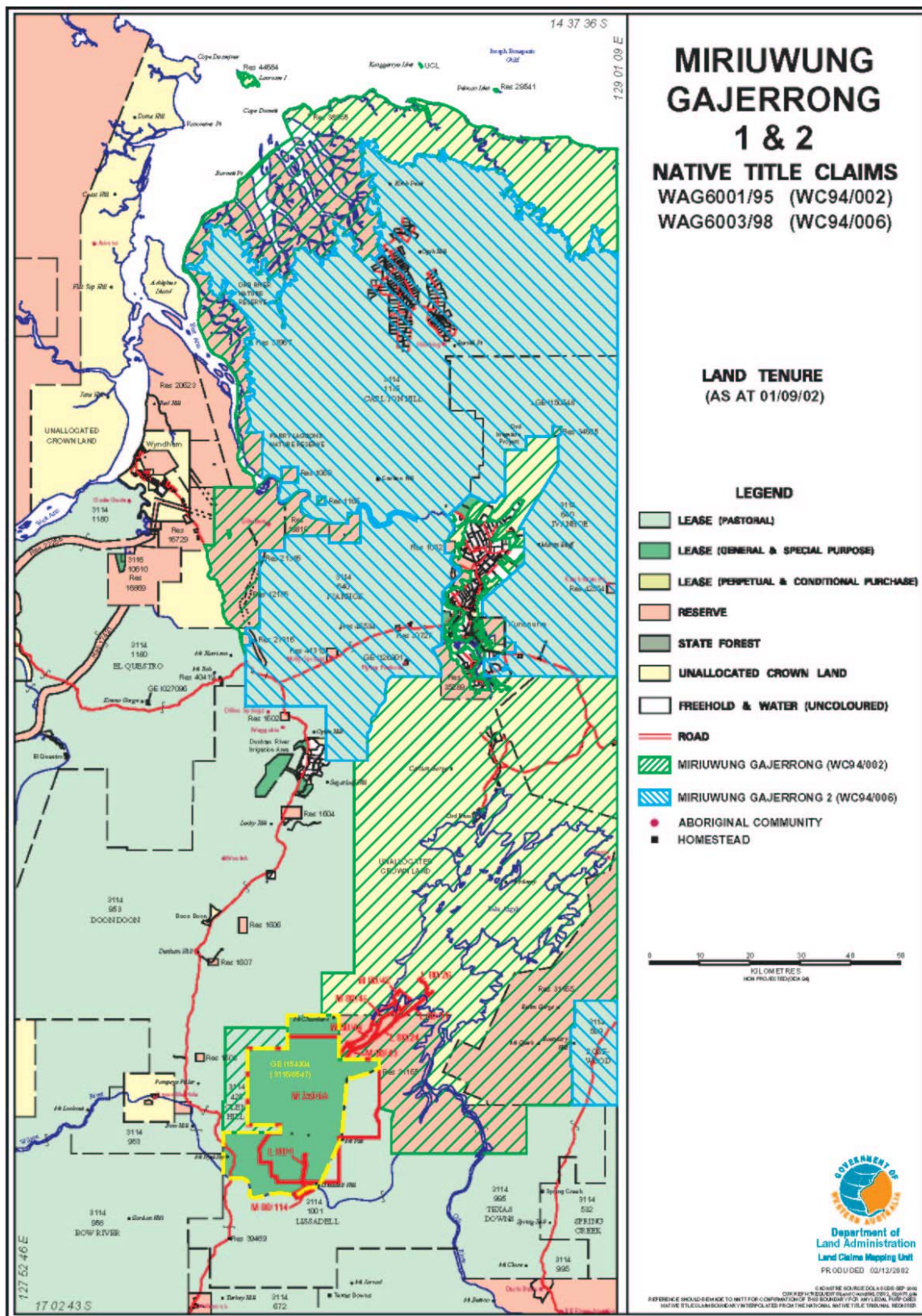
3.0 Aboriginal Cultural Values in the Study Area

3.1 The Dreaming: The Conceptual Basis of Rights and Interests

The TOs believe that their rights and interests were created and distributed to their ancestors in the time they refer to as the *Ngarangani*, or Dreaming. They believe that at the dawn of time the land was covered by the waters of an enormous flood. The waters eventually receded, placing some of the Dreamings - the mythical ancestors of the TOs - on the landscape. Other Dreamings roamed the land. During their adventures they created creeks, billabongs, the hills and escarpments of the Ord River valley. The routes they took interweave throughout the study area.

They also created the different soil types and flora and fauna which populate the land. They created the seasonality of the wet and dry and the corresponding changes in the landscape which accompany these seasonal changes. During this period some of the Dreamings turned into features of the land where the TOs believe they remain to this day. Because of the activities of the Dreamings, the TOs believe that the spiritual essence of the Dreamings remains in the landscape they formed.

Significant evidence of a large number of Dreamings was provided by the TOs both in evidence during MG#1 and during the period of fieldwork for this project. The TOs indicated that each Dreaming created different geographic features and portions of the



Map 2: The Miriuwung and Gajerrong #1 & #2 Native Title Claims

landscape of the Ord River and Ord River valley. These features are referred to as *kuning*. Some of these places are dangerous because of the nature of the events which happened there during the Dreaming. These places are referred to as *dumerriny* (lit. dangerous). In this context, water sources such as water holes, creeks, springs and portions of the river were created by different Dreamings. The entire landscape and the environment of the study area is a consequence of the collective activity of the Dreamings.

When viewed in this manner it becomes apparent that the Ord River and valley is a complex of cultural values. These values vary from location to location depending on the activity which occurred there during the Dreaming. The TOs believe that the Dreaming is both a continuing force, which began in the remote past and continues in the present and will continue into the future. In this respect the cultural values of the Ord River are considered to be ever-present. The Dreamings also created the cultural institutions which comprise the claimants' system of rights and interests which they hold to this day. Within this system, the TOs (often referred as the *Dawawang*) have rights and interests in their land (*Dawang*) which was formed by the Dreaming and which they inherited from their ancestors. The traditional rights and interests of the TOs are therefore broad, encompassing all matters within the Ord valley and beyond.

3.2 Indigenous Environmental and Ecological Classification: The Cultural, Social and Economic Context of Water Sources in the Study Area.

The cultural forms created by the Dreaming also included a system of classification for all plants and animals which are within the study area and the environments in which they are found. Within this system of classification, the environmental forms of the landscape in the study area and the flora and fauna associated with them, may be classified by reference to soil type: *Djaminydjem* (black-soil plain) is found on the flood plains of the Ord River and tributaries; *Dadadang* (red-soil plain) is found in certain areas of the same valley; *Wirrdjining dawang* (sand country) is also found in some sections of the Ord valley, particularly close to the ranges which surround it; *Djibgam* or jungle country was, in pre-dam times, found in a number of the valleys which feed into

the Ord River valley; *Djiyiling dawang*, spring country which is found around the numerous springs and the base of the ranges which border the Ord River and the Ord River plain; billabongs and permanent pools, which are generally known by their specific place name; and *Gilidjing* or smaller creeks.

The system of reference is, however, multidimensional. Each element within it is understood in relation to all others. For example the TOs know that *gilbang* or *bardi* (the file or rasp-tailed goanna) will be found on the *badadang* or red-soil plain throughout the year but is more plentiful during the cold time of the year. They know that the flowering and fruit of the *djugurrong* (bush orange), also found on red soil, indicates the wet season and that the *namuwarding* (bush banana) is found in the same area during the dry (see Barber & Palmer 1996).¹

Features of their traditional economy or the environment are not separated from spiritual and cultural heritage. They are all considered to have derived from the Dreaming; the cultural interests of the *Dawawang* include the flora, fauna, the land and waters of the country as well as their intellectual and religious property.

In this respect, a reference to *Tharram* (Bandicoot Bar, site of the Diversion Dam), for example, evokes the rocky pool which was formed by women, who, in the Dreamtime, tried to trap the Barramundi with rolls of spinifex. The Barramundi leapt to avoid the trap and the rolls turned into the rocky bars on which the dam is constructed. It also evokes the red soil and river gums and the wildlife and fauna which were and still are present at that place. The reference also contains personal historic references to events which have occurred there, such as births and deaths of those who camped, hunted and traveled through the area. Both are historic and cultural elements and are considered contemporary in the sense that the mythological meaning and spirituality of the place are ever-present.

¹ The seasons are also classified. The claimants refer to *yiwiny* or *nyinggiyeng*, the wet season. The end of the wet season when the cane grass is longest is called *marli-mageny*.

Taken together, the historic knowledge and the mythologically derived context give cultural value and significance to each specific location. Within this culturally-defined landscape each location is a unique combination of cultural features. Whilst generic and specific classifications can be made they are only understandable in their broader cultural context of which a primary component is the totemic geography.

Because of the manner in which different areas of the river, plain and hinterland were formed, the TOs view different areas along the river as distinctive, since they contain a combination of historic, cultural and environmental elements which are unique to that place.

3.3 The Development of the Ord River Irrigation System Stage 1

3.3.1 The Pre-Dam Context

The TOs believe that through ritual activity they maintain the water sources in their country as well as the environment and natural species in general. In particular, the seasonality of the wet and dry, the force of the tides and seasonal flooding, are integral components of the claimants' cultural design. Evidence was given in MG#1 of this set of cultural beliefs which are part of the claimants' system of native title.

In this way, the cultural landscape provides the claimants with a framework which makes the geography of the study area, its seasonal variation and all of the living things within it, understandable and predictable.

TOs described the traditional seasonal rhythm of the wet and dry; the flooding of the river and surrounding plain during the wet season fed by waters from the southern and upper reaches of the Ord and Bow Rivers; the flooding of the country surrounding *Bilbildjing* (Mount Misery) caused by the backing-up of waters at the narrow gorge, now the site of Argyle Dam (See Appendix 2).

The dry season, the coldest period of the year is warnkam, wamkemageny (lit. cold time) or wuniya-

When the flood waters were of this scale the beds and banks of the river channel in the lower Ord River were scoured free of dense grasses and foliage, leaving a landscape which the TOs described as “clear” or “open”. This landscape was characterized by *bardigi* trees and perennial grasses on the flood plains with lines of river gums along the banks of the permanent river channel. Billabongs on the plain were filled by the rain and run-off from the surrounding plain and the source of springs was replenished as the aquifer filled. The grasses were burnt off by the TOs as the vegetation dried when the season itself became progressively drier. This burning off cleared the country to make hunting and travel easier and also assisted plant re-generation.

As the dry season progressed, the headwaters of the Ord slowed and ceased flowing. The water pooled into a series of water holes and billabongs in river and creek beds. The large permanent water holes are referred to as *gunanurang*. This Miriuwung environmental and geographic classification has been anglicised to Kununurra and adopted as the name of the town established by the creation of the Ord River Scheme, located near a billabong or *gunanurang*.

The pooling of the river during the dry season created opportunities for the TOs which they exploited. For example, they camped and hunted along the Ord River as they favoured the sandy soil or the river banks as comfortable camping areas. They exploited the permanent pools in which species such as barramundi, salt and fresh water crocodiles and other riverine species were confined by the pooling of the river. Their hunting techniques were also devised to take advantage of the change in the river’s flow. Fish were caught in smaller, still pools, by using the crushed leaves of the fresh-water mangrove (*malawarn*) to stun the fish, causing them to rise to the surface where they were easily speared or trapped. Rolls of spinifex were also used in these pools to entangle and trap the fish.

The current TOs’ recollections of the study area are drawn largely from the period of the 1940s to the present. At the beginning of that period the pastoral regime was well

mageny (lit burnt grass time) (see Barber & Palmer 1996).

established in the Ord. During the dry season they worked as drovers and station hands on cattle stations and drove the cattle along the stock route which runs through the study area to the port of Wyndham. In their understanding, at this time the broader environmental features of the country were little impacted by the cattle that used the existing water holes and fed upon the native grasses. The seasonality of the wet and dry continued, as did Aboriginal exploitation of the river and its surrounds, even though the environment was shared with cattle and the pastoral regime.

For example the claimants recall walking between Argyle Station (much of which is now under Lake Argyle) through the gorge, the site of Argyle Dam, and following the river valley while hunting and camping along the river near Packsaddle Plain and numerous other locations along the river. They traveled extensively during the dry season, crossing the river at locations where it was dry or divided by rocky bars.

Within the cultural understandings of the TOs the land has remained unchanged since it was formed by their ancestors, the Dreamings. As noted, the Dreaming provided explanations for the form of the land and the complexity of the environmental process, as well as explaining the place of the TOs within the social and physical world. The Dreaming thereby provided, and still provides, the TOs with a worldview in which the physical and metaphysical universe is understood as a predictable set of culturally-defined values.

3.3.2 The Lower Ord and Traditional Concepts of Water Use in the Post-Dam Era

Prior to the damming of the Ord the seasonal and cyclical changes in the water table were generally predictable to the TOs. The location of water sources was enunciated in traditional myths and their seasonal availability known from mythological references and the passing of knowledge from one generation to another.

In the view of the TOs' the seasonality of the river, the availability and distribution of plant and animal life at various seasons as well as water sources and drainage lines were largely unaffected by the pastoral regime at that time. The claimants worked as stockmen and labourers for the pastoralists but, when not working, continued to hunt and gather in the river country in the fashion of their ancestors. Their knowledge of the location and availability of water sources and the best grass also informed their role as pastoral workers.

After half a century of existence, the pastoral industry was however to become an increasingly significant factor in altering the landscape. Major problems associated with the pastoral industry such as overgrazing, soil erosion and the introduction of exotic species became apparent in the 1960s.

The construction of the Diversion Dam and Argyle Dam in 1963 and 1972 respectively also had a significant impact on the river. The wet/ dry season cycle flow of the river was regulated by the two dams. Increased flows in the lower Ord became customary during the dry season as the Argyle Dam filled. Eventually the seasonal changes in the river were altered as it became a constantly-flowing river course and the land between Argyle Dam and the Diversion Dam was drowned under Lake Kununurra.

The Weaber and Ord River plains were transformed into irrigated farms. The natural drainage and flow of water from the surrounding hills into rivulets, swamps and billabongs during the wet season was diverted and controlled by levee banks and channels. During this process, billabongs created by the Dreamings on the black soil disappeared. Other features were surrounded by fields.

A significant amount of water was diverted to the M1 channel from the Diversion Dam and thence to the fields in the Ord River Irrigation Area Stage 1 (ORIA 1) intensive agricultural zone. The excess water spilt into the middle of Weaber Plain, creating swampland in what had previously been land which only flooded during the wettest of seasons.

The TOs expressed concern for those billabongs which did not disappear with the creation of the scheme. They are concerned that the effective cessation of the flooding of the lower Ord Valley has had an impact on the levels of various billabongs causing them to fill less frequently. In some cases they appear not to have had water in them for significant periods of time.

In the time which has passed since the creation of the ORIA 1, vegetation appears to have stabilized along the now constantly-flowing river. In some areas around Lake Kununurra and sections of the Ord River, TOs indicated problems of access for fishing caused by the growth of cumbungi. Where this growth is particularly dense, TOs not only have difficulty getting to the riverbank but also expressed concerns about the increased protection it affords to crocodiles which can easily remain hidden in the reed-like growth.

The vegetation is, however, a composite of species previously found in other environmental niches. This vegetation includes species traditionally found along the permanent course of the river and plains. These species and others are now arrayed along the banks of the river in a composition and density previously unseen. In this post-Argyle Dam environment, species which were once found in riparian zones and around springs and in jungle pockets, are now established together in large complex communities along the banks of the river. In this new environment, these indigenous species are also interspersed with introduced species such as caltrophe.

Within this altered environment, traditional vegetable foods and animal species are still found by TOs. The hunting and gathering of fauna and flora, however, is not as effective or efficient in the post-Dam environment since a number of traditional strategies cannot be used and, as noted, access to the river is limited.

Access to the river has also been effectively reduced owing to the enclosure of many properties by fences. The creation of Lake Kununurra and other developments make sections of the river less attractive for fishing by TOs. The amount of traffic and other

movement also removes its attraction for hunting other game traditionally found around water sources.

Some landholders appear to be treating the river frontage as private property by barring access to the river, forcing TOs to travel further to gain access to the water. Other uses of the river are also confined by the arrangement of fences and farmland thereby creating significant competition for those parts of the river which are accessible. In this context the TOs must compete with other recreational users of the river for a limited number of fishing locations.

Lack of access to private vehicles compounds the impact of these trends on TOs. A majority of TOs live in the vicinity of Mirima Reserve in Kununurra and areas nearby. Farmland adjacent to the areas of river closest to their homes effectively bars access to the most convenient sections of the river. Those without transport must then walk further to good fishing locations. In some cases, particularly for older, less mobile people, the creation of farmland and fencing of properties fronting some sections of the river has effectively barred them from using the river.

During the course of this research the TOs raised concerns about the long-term health of the river, creeks and billabongs in the area.

Older TOs recall large fish kills which occurred following the establishment of the ORIA 1 and associate this event with the use of pesticides. TOs continue to be concerned about the long-term impact this may have had on the riverine environment. They are also concerned about the run-off from the farmland and the amount of pesticides, herbicides, fertilizer and other agricultural chemicals which may be in the water. Senior women, in particular, expressed concern about the quality of water at the junction of the Ord and Dunham Rivers, an area where they frequently fish and camp and which they use as a source of drinking water on hunting expeditions and whilst involved in cultural activities.

Nonetheless, the TOs continue to exploit the river. They use their traditional knowledge to find vegetable foods and to hunt animals; they still use river banks for the hunting of goannas, turtles and wallabies and also fish next to the spillway of the Diversion Dam and other parts of the river.

The development of ORIA 1 has altered the environment in such a fashion that elements are now disjuncted from the historic past and the myths which are an important component of the TOs' cultural heritage. In doing so, the ORIA 1 process and subsequent land use has removed the certainty provided to the TOs by the Dreaming.

In the upper region, now under the waters of Lake Argyle, and in the lower Ord Valley, information was given by TOs of their grief and concern over the flooding and transformation of their traditional land (See Appendix 2).

Nonetheless, the TOs indicated that they were still responsible for their country and for the values it contains. In this respect the land retains its cultural meaning and importance, despite the impact and changes on the physical landscape created by the construction of both the Diversion Dam and Argyle Dam. Similar sentiments were expressed by those with rights and interests in the area of the Lower Ord River.

Indeed a strong theme in the claimants' evidence in MG#1 was the continued importance of the Dreaming as a basic philosophy and the continued veracity of the complex of rights and interests which are described by it. Despite the construction of dams and associated infrastructure, the cultural values embedded in the landscape are, in the view of the TOs, current and remain central to their worldview.

The consequences of the European development ethos and the use of western agribusiness techniques on the environment has become evident to the TOs. The contrast between the pre-dam and post-dam use of the environment could not be more stark. From the TOs' perspective, non-Aboriginal people appear to treat the environment with

reckless abandon. The ORIA 1 development has transformed the TOs' understanding of the potential of humans to alter the landscape.

It is in this context that they have come to the view that in order to maintain their rights and interests, including the environment of the study area, they need to be assertive. It was with this aim that the MG#1 and #2 claims were lodged.

3.4 Structures and Management Practices: Agencies with Interests in the Ord River Area

Since the creation of ORIA 1, government agencies have, however, taken on the role of the management of the Ord River and the study area. In this respect there are a range of state government agencies which have interests in the Ord River in general: the Water Corporation; Agriculture W.A., Fisheries W.A.; the Environmental Planning Authority (EPA); the Department of Indigenous Affairs (DIA); the Department of Resource Development; the Department of Land Administration (DOLA); the Department of Planning and Infrastructure; the Kimberley Development Commission (KDC) and the Department of Conservation & Land Management (CALM).

In addition, there are also other state and federally funded and private organisations that state an interest in the Ord area. Some of these groups seek to have influence in the management of the Ord River and in some instances their activities directly impact on the river. These organisations include the following: the KLC; the Kimberley Regional Council (KRC); the MGF; the Waringarri Aboriginal Corporation; the Ord Hydro Consortium; the Aboriginal Lands Trust; the Aboriginal and Torres Strait Islander Commission (ATSIC); the East Kimberley Aboriginal Medical Service (EKAMS); the National Farmers Federation (NFF); the Shire of Wyndham/East Kimberley (SWEK); Environment Australia and recreational fishing groups.

In addition to these agencies and interest groups, a number of committees have been established to manage various environmental and planning issues within the Ord River

basin. The membership of some of these is drawn from the bodies listed above. Other members appear to be individuals with an interest in conservation. These committees include: the East Kimberley Planning Coordinating Committee; Kununurra-Wyndham Area Development Strategy (KWADS) Steering Committee; Care of the Ord Valley Environment (COVE); the Ord Land & Water (OLW) community group and the Ord River Waterways Management Group (ORWMG).

These committees act in an advisory capacity, their members reporting back to the bodies from which they are drawn. There was no information available as to whether or not the deliberations of these committees were decisive in the management of the lower Ord River.

As indicated, the claimants have specific and broad interests in the study area. However, they have limited engagement in the various agencies and committees which manage the Ord. As a consequence they are impeded in their ability to oversee specific developments occurring in the study area which impact on their interests. This situation is also a consequence of the structure of the overall management of the Ord River.

The current management structures of agencies with interests in the Ord River are fragmented. No single agency has overall control or oversight of activities within the Ord Valley nor do there appear to be arrangements in place which would allow organised cooperation on Ord management issues.

The role of the TOs in the context of the overall management of the Ord River is therefore reduced to being one amongst a plethora of other interest or lobby groups.

The powers of the West Australian state government agencies are ultimately based in ministerial authority and divided along portfolio/ function divisions. The WRC is but one of these agencies.

3.5 Traditional Owners and Management of the Ord: The Current Context

For example Aboriginal site-related issues within the Ord Valley are dealt with within the parameters of the *Aboriginal Heritage Act 1972*. In matters of site protection or in applications to destroy sites it is the relevant minister who is empowered to make decisions.²

In contrast to the non-Aboriginal management structure, the structures based in the claimants' traditional law and custom, theoretically enable the claimants to manage all cultural and physical resources within the Ord Valley.

In this respect, from an Aboriginal perspective, the claimants are responsible for all matters within the bounds of their land and the scope of their rights and interests. This includes the broad range of rights and interests which are described in the MG #1, #2 and #3 applications for determinations of native title.

The traditional system of rights and interests passed to the claimants by the Dreamings is comprehensive. The rights claimed in the MG#1 claim and granted by Lee J in his determination (Ben Ward & Ors 24th November 2001) encompass the following rights:

- (a) A right to possess, occupy, use and enjoy the “*determination area*”.
- (b) A right to make decisions about the use and enjoyment of the “*determination area*”
- (c) A right of access to the “*determination area*”.
- (d) A right to control the access of others to the “*determination area*”.

² Section 5 of the *Aboriginal Heritage Act 1972* applies to: (a) any place of importance and significance where persons of Aboriginal descent have, or appear to have, left any object natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of the Aboriginal people, past or present; (b) any sacred, ritual or ceremonial site, which is of importance and special significance to persons of Aboriginal descent; (c) any place which, in the opinion of the Trustees (of the Western Australian Museum), is or was associated with the Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and should be preserved because of its importance and significance to the cultural heritage of the State; (d) any place where objects to which this Act applies are traditionally stored, or to which, under the provisions of this Act, such objects have been taken or removed.

- (e) A right to use and enjoy resources of the “*determination area*”.
- (f) A right to control the use and enjoyment of others of resources of the “*determination area*”.
- (g) A right to trade in resources of the “*determination area*”.
- (h) A right to receive a portion of any resources taken by others from the “*determination area*”.
- (i) A right to maintain and protect places of importance under traditional laws, customs and practices in the “*determination area*”; and
- (j) A right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the “*determination area*”.³

Within this schema the rights and interests of the TOs are comprehensive. The area of MG#1 is limited. However, similar claims have been made for the area of MG#2 (see Map 2). In this respect the TOs claim comprehensive rights for the entirety of the study area and beyond.

The findings of Lee J were subsequently overturned in appeal. They were then appealed to the High Court which, referred questions back to the Federal Court.

Notwithstanding the view of the Courts it is clear that there is a significant disjunction between the rights accorded to TOs by their tradition and the way in which TOs are engaged by European agencies.

In the context of the WRC’s role in devising a Draft Interim Water Allocation Plan for the Ord River and associated wetlands the traditional interests of the TOs overlap with those of non-government and government agencies, including the WRC.

³ The judgment qualifies these rights to the extent that:

“The native title rights and interests” described in par 3 hereof and the “other interests” described in par 4 hereof are concurrent rights and interests in relation to that part of the “determination area” to which the other interests relate, but by operation of legislation or by the nature and extent of the other interests created by the Crown, regulation, control, curtailment, restriction, suspension or postponement may operate (Ben Ward & Ors 1998: 11).

4.0 Historical Outline of Aboriginal Water Use in the Lower Ord Valley

Kaberry undertook anthropological research in the general vicinity of the North East Kimberley in the 1930s. Her work included descriptions of Aboriginal use of water and water-related resources in the area. She described some features of the landscape and the way in which water sources were a focus of Aboriginal daily life:

The trees, except by the river, are stunted.... [a]nd an occasional pandanus near a pool in the mountains. Around the billabongs are depressions in the earth, each one a family hearth where food is prepared and eaten and much of the gossip, quiet talk, and arguments are carried on.⁴

Close by are generally billies (formerly shells) for fetching water from the pool about a hundred yards away or more, for as a rule, the natives do not camp by the edge of their water supply. In summer there will be floods, and at any time there are always snakes and insects in the rank grasses (ibid.).

Kaberry (*op cit*: 6) went on to note that women usually returned to the camp with such edible items as lily buds from which the seeds were gouged out and pounded on a flat stone, then mixed with water to make damper. Aboriginal women also gathered lily-roots and caught fish.

Kaberry also noted Aboriginal terms for five different seasons, mainly relating to the onset and duration of the rain as well as the dry season. In addition, she (*op cit*: 11) noted that various food sources hunted or gathered by Aboriginal people in the North East Kimberley were water dependent (e.g. grubs in the river gums, lily-roots and fish).

⁴ Kaberry (1939:5) notes that a: Billabong is an aboriginal term that has passed into general currency in Australia. It is a lake fed by a stream, and shaded by trees.

Kaberry also noted that all Kimberley tribes had terms for up and down the river (*op. cit.*: 12). In addition:

Towards the close of the "wet", a dam may be constructed of mud six or eight inches high, so that the men and women can scoop out the fish. When the pools are shallow, bark from certain trees may be thrown in to stupefy the fish, which then float to the surface... One type of bark is effective after a few hours; another takes three or four days (op cit: 18).

After three or four miles we approach a billabong where the lubras dive in, swim, and incidentally gather lily roots and buds... Bulagil... goes higher up to fish, and to search for mussels and crabs. She catches about fifteen perch... (op cit: 22).

4.1 Recent Background of Aboriginal Water Use in the Ord Valley

ORIA 1 which commenced in 1960 created significant changes to the seasonality of the flow of the Ord River. The subsequent flooding of country by Lakes Kununurra and Argyle created permanent change by submerging significant portions of the river valley and flood plain. During this period significant sites, graves and areas of economic, cultural and social value to Aboriginal people were inundated and/ or damaged in the construction process. As previously noted, surprisingly little anthropological work has been produced on the impact of the ORIA 1 scheme on Aboriginal people, though some insights are provided in the introductions to Shaw's work (1981, 1983, 1986, 1992). For example, Shaw (1986: 9) noted that the building of the Diversion Dam on Bandicoot Bar, the development of the town of Kununurra and ancillary works were profoundly important agents of change which began a period of radical adjustments for most Aboriginal people in areas near the new town and farmlands. Overall there was little regard taken of Aboriginal interests in the area of the development and little or no consultation undertaken with Aboriginal people during the process of planning and construction of the scheme (see Graham-Taylor 1995).

As a Member of the Legislative Council for the region including the study area, Stephens noted in 1991 that the Ord Development Scheme became the precursor for W.A.'s "development" ethic, sometimes characterised as "development no matter what the cost"

(Minister for North West, Agriculture, Water Resources, Ord Development Council, 1991). He went on to say that the scheme became intertwined with a variety of themes, such as “populate or perish” and “defend the north”. It also, in his view, took on the style typical of the 1960s and 1970s W.A. “frontier” - tough, disruptive, often brutal and generally with considerable cultural misunderstanding and ignorance. ORIA 1 had significant and continuing negative social impacts on the local Aboriginal people. In particular, Stephens indicated that the physical dislocation of Aboriginal people as a result of the development of the scheme created long-standing problems and conflicts regarding Aboriginal/ non-Aboriginal relations.

Furthermore, the sense of loss of country was/ is very painful to Aboriginal people and in Stephens’ view should not be underestimated. The loss of land to artificially-created lakes and farmland disrupted Aboriginal connections to land in a spiritual, cultural and material sense. Not only were sites inundated, but Aboriginal access was cut off, thus increasing resentment about restrictions on traditional activities. Hunting, fishing and gathering become problematic with a consequent impact on diet and health.

Stephens also pointed out that a 1978 Joint Commonwealth/ State ORIA Review was given, as one of its terms of reference, a requirement to look at the impact of the Ord scheme on Aboriginal people. The Review team, however, declined to undertake any detailed analysis of this impact, suggesting instead that another study should be done. In its own Review it was simply noted that the scheme had contributed to the dislocation of the life and religion of Aboriginal people living in the area by destroying land of sacred and traditional value. This statement was presumably a response to recommendations made by Gulmirr (*sic.*) (Ben) Ward for the Moongoong Darwung Aboriginal Centre (Kununurra) in a submission to the Ord Review Committee in 1978.

Many Aboriginal sites were destroyed or damaged and cultural values impacted upon by further developments which followed the creation of the ORIA 1. These included the creation of Argyle Diamond mine at Kalkalnyim (location of Argyle Diamond Mine) in 1979; the creation of the Normandy Poseidon Bow River Diamond Mine (at the junction

of the Bow and Ord Rivers at the southern extent of Lake Argyle) in 1987; continued exploration and mining on Normandy Poseidon's tenements to the east and western side of the Bow and Ord River junction.

Mining exploration intensified in the area in the 1980s and 1990s. As a consequence, a number of infrastructure projects were undertaken, including the creation of a hydropower station at the base of the Argyle Dam and the building of power lines from the dam to Argyle Diamond Mine and to Kununurra (see Balme and Bindon, 1979, Barber *et. al* 1995). A power line was also constructed by the then State Electricity Commission of W.A. (SECWA) through the lower Ord River basin to link the Kununurra grid to that of Wyndham.

Other large projects proceeded. During this period there was also renewed interest in expanding the existing ORIA 1 to a second stage (ORIA 2). TOs became aware of the scale of the proposal in their country and attempted to protect sites within the upper and lower Ord River basin. Frustration with the heritage process which was limited in its ability to protect sites in the Ord River Valley combined with the threat of proposed expansion of the ORIA scheme led to the lodgment of MG#1 in 1994. The claim was lodged over the area of land resumed for the ORIA 1, which remained vacant crown land.

A second native title claim was lodged in 1996 over the remainder of the pastoral land in the Ord and Keep River valleys. This was followed by the lodgment of a third claim over pastoral stations in the Northern Territory (see Barber & Palmer 1994).

4.2 Current General Context: Aboriginal Involvement in the Management of the Lower Ord Valley

The following general context is outlined here in order to provide an overview of the ways in which Aboriginal people of the Lower Ord valley have not only been systematically ignored in economic and social changes which have occurred in their country but have also been excluded from any consultation or involvement in these until relatively recently. Only in recent times have there been concerted attempts to consult

Aboriginal people in the area over various mining, infrastructure or water-related developments because of legal requirements under the State's *Aboriginal Heritage Act (1972)* and the Commonwealth's *Native Title Act (1994)*. Government agencies such as the EPA and the WRC have only recently consulted and involved Aboriginal people in the Ord valley in management plans for the area.

4.3 Outline of Recent Water Use and Water Use Proposals

In the 1990s and up to the present, at least three strands of change have been occurring in the Ord Valley relevant to water use. Some of these changes, though occurring concurrently, have been relatively independent of each other and therefore mutually autonomous. Others however have had a direct influence on each other. These may be summarised as:

1. conservation issues
2. Aboriginal heritage issues and native title claims
3. development plans

These strands of change have taken on a significant impetus over the last decade and are discussed here in more detail to enable a fuller understanding of the context of the present study and, as a consequence, the consultants' brief.

ORIA 1 has now been in existence for nearly 40 years. Community opinion in Kununurra (and elsewhere) became divided during that time over the costs and benefits of changes brought about by ORIA 1 to the Lower Ord waterway and ecosystem (*Kimberley Echo*, 15/3/2001). In fact, the 'health' of Australia's rivers has become a concern of national proportions. In its December 1999 advice to the W.A. Minister for the Environment, the EPA noted that multiple and sometimes competing uses now prevail for the waters of the Ord River (EPA Bulletin 965, p 3). Various interest groups have emerged (and some have ceased to exist) to lobby for different issues which they regard as crucial in the management of the Lower Ord river system. In Appendices 1 and

2 of the *Ord Land and Water Management Plan 2000* prepared by the Community of Kununurra, some fifty different government departments and agencies, as well as non-government groups, associations and individuals representing various interests, are listed as having been contacted throughout the process of preparing the plan. It should be noted that among this multitude of entities only two individuals representing Aboriginal interests were listed, one from the Northern Land Council (NLC) and one from the KLC. Of these two groups the KLC is a Representative Body for the East Kimberley whilst the NLC's interests lie within the Northern Territory.

The interest groups referred to above may be divided into two general groups: those with statutory powers within the state of Western Australia and groups whose roles are confined to an advisory or lobbying capacity.

As noted, in 1994, the W.A. Government began investigating the possible development and extension of ORIA Stage 1 for broad scale agriculture to include additional irrigation areas along the Lower Ord (west bank of the Ord, Ivanhoe, Mantinea flats and Carlton Plain) as well as on the Weaber, Keep and Knox Plains, extending into the Northern Territory. These separate areas are collectively named Ord Stage 2. Further development of the Ord valley was certainly a major priority for community leaders in Kununurra who succeeded in convincing the State Government of the merits of such a development.

In the same year, the Council of Australian Governments (COAG) agreed on a framework for water resource policy reform as part of a restructuring of water management throughout Australia. This agreement required each state jurisdiction to develop a clear policy for ensuring that the water needs of the environment, as well as water for all other uses, were included in water allocation decisions.

In 1995, after the signing of a Memorandum of Understanding (MOU) between the W.A. and N.T. Governments over the proposed development of Ord Stage 2, the W.A. Government commissioned various studies to examine the feasibility of the proposed

scheme. The driving forces behind the proposal were Wesfarmers, the Water Corporation, the Department of Agriculture and the Department of Resources Development (DRD). Continuation of the W.A. Government's "development" ethic, already referred to, was obviously still a major factor of change in the lower Ord valley. This was noted in the advice given to the W.A. Minister for the Environment in December 1999 by the EPA:

The expansion of the [ORIA 1] is based on the original plans for the provision of water for irrigation from the Ord Dam. This perspective of the initiative taken in the 1960s and 70s, continues to prevail today. However, much has changed from those times and these changes need to be recognised when decisions are being made today (op. cit.).

At this stage of development Aboriginal interests in the proposal were simply not acknowledged. As noted, this became one of the factors culminating in the lodging of MG#1 in 1994 and MG#2 in 1996.⁵

A broad range of rights and interests were claimed by the TOs including the rights and interests of possession, occupation, use and enjoyment of the land and waters and the right to make decisions about matters concerning their land (see Barber & Palmer 1996: 2). Hearings were conducted within the area of the claims in 1996, with significant evidence being taken at sites in and around the Ord River valley. Despite these legal processes there appears to have been little immediate positive impact on Aboriginal involvement in the management of water in the Ord River valley.

⁵ The First Respondents for Ben Ward & Ors (Miriwung & Gajerrong No. 1) were listed as the: State of Western Australia, Aboriginal Affairs Planning Authority, Aboriginal Lands Trust, Agriculture Protection Board, Commissioner of Main Roads, Department of Conservation and Land Management, Minister of Aboriginal Affairs, Minister for Fisheries, Minister for Lands, Minister for Mines, Minister for Primary Industry, Minister for Resources Development, Minister for Transport, Minister for Water Resources, Minister for Works, Ministry of Justice, National Parks and Nature Conservation Authority, State Energy Commission of Western Australia, State Planning Commission, Water Authority of Western Australia, Western Australian Museum, Western Australian Wildlife Authority. Other respondents included a wide range of groups with interests in the Ord basin including agribusiness, tourism, mining, sporting clubs as well as local government bodies.

4.4 The Post-Claim Involvement of Aboriginal People in Management of the Ord River Basin

The state government agencies' concerns at the time seemed to focus on environmental and conservation issues rather than on Aboriginal heritage issues, native title claims and the role of Aboriginal people in developments associated with the Ord River and land they had claimed. In this context it should be noted that in 1990 three sites in the Ord valley were listed under the Ramsar Convention for the conservation of wetland habitats of international importance. These sites included Lakes Kununurra and Argyle and the lower Ord, which comprises the Ord River Nature Reserve, the Parry Lagoons Nature Reserve, a proposed National Park and a proposed Marine Park (see Map 1). Australia's obligations under this treaty were delegated to the states and, in W.A., CALM was the agency responsible for the conservation of these wetlands.

In 1997, Wetlands International-Oceania were contracted to CALM with funding from the National Wetlands Program of Environment Australia (Biodiversity Group) to prepare a report and management plan for Ramsar sites in the Kimberley. Not surprisingly this report drew attention to the significance of Aboriginal cultural values and the existence of native title claims in the area. Even though Lee J's judgment had yet to be handed down the report noted that a number of agreements had been negotiated by a working party, including representatives of native title claimants, the State Government and the Shire. The report considered that:

...despite conflicting interests related to the area under claim, properly structured consultation and negotiation processes can yield positive results (1997:27; 48; 71).

A recommendation of this report was that the Regional Manager of CALM establish a consultative committee with the Kununurra office of the WRC to discuss Ramsar issues related to the management of Lake Argyle (p34) and Lake Kununurra (p57).

Recommendations 8 and 18 suggested that the consultative committee should give recognition to the special interests of Aboriginal people. Recommendations 9, 19 and 29 suggested that the Regional Manager of CALM note the special interests that Aboriginal

people have in Lakes Argyle, Kununurra and the Ord River floodplain respectively and seek to ensure that these interests were included in any future discussions about their management. In addition, each of these recommendations suggested that the Regional Manager of CALM seek to ensure that full recognition be given to native title proceedings in any decisions relating to these Ramsar-listed sites.

In 1998, a management report for the lower Ord Ramsar site was drafted by CALM for approval by the National Parks and Nature Conservation Authority (NPNC). This report was largely based on the Wetlands International Report discussed briefly in the previous paragraph. Lack of resources has meant that, while the draft has been approved for discussion, no final plan has yet been produced. No draft management reports have yet been undertaken for Lakes Kununurra and Argyle.

This management plan for the lower Ord Ramsar site drafted by CALM included in its management goals a heading 'Aboriginal Culture', which stated an intent to:

[f]ormalise cooperative management of land, waters and cultural resources with Aboriginal Traditional Owners (1998:4).

Its objectives included provision for the primary mechanism of management to be conducted cooperatively by CALM and the TOs through the establishment of a management council. In addition, further objectives included providing TOs with the opportunity to maintain their cultural links with the site in keeping with conservation and other objectives, as well as ensuring that all areas of spiritual significance to Aboriginal people are respected in keeping with the wishes of the TOs.

The draft management report also mentioned having engaged a consultant to identify Aboriginal people who have affiliations with, or an interest in, the lower Ord Ramsar site. The consultant's report recommended, among other things, the development of a strategy to realise effective input from members of the Aboriginal community to contribute to the development of the future plan and gain their ongoing support. However, direct consultation with Aboriginal people was extremely limited and no site visits were made.

It seems that no further contact has been made with Aboriginal people in the process of producing a final development plan.

In a section on 'Aboriginal Living Areas' (*op. cit.*: 50), the report noted an objective of ensuring that areas designated for occupation by Aboriginal people within the site would not detract from the environmental and cultural values of the site. It went on to note a long drawn-out case (over a decade) of an Aboriginal person who while attempting to gain such an area, was at the time of writing applying for a living lease. One of the report's recommendations regarding Aboriginal living areas within the site was to institute an assessment process whereby the applicant be required to address and resolve all issues of concern. This would appear to place an undue bureaucratic burden on applicants and increase the levels of frustration even more than they currently are.

The CALM draft management report noted that the entire site was subject to native title claims which were still ongoing at the time the report was drafted and thus no specific recommendations were made with respect to native title and rights of traditional usage. Nevertheless, an objective of ensuring that the outcomes of the native title claim process were effectively applied to the site was included.

At the same time as conservation and environmental issues were becoming more significant in the Ord valley and Aboriginal heritage issues and native title claims were 'on the table', the state government in 1997 began calling for expressions of interest in Ord Stage 2 from the private sector. In 1998, a consortium consisting of the Wesfarmers Sugar Co Ltd., Marubeni Corporation and the Water Corporation of W.A. were given an exclusive mandate to investigate the feasibility of growing sugar cane in the Ord Stage 2 area.

In 1998, a Kununurra-based community group called Care of the Ord Valley Environment (COVE) was formed. Its concerns included such issues as the environmental problems generated by Ord Stage 1 such as increased salinity, higher ground water levels, downstream pollution caused by herbicides and pesticides as well as

a fish kill on the Ord River. This group and others involved in different environmental conservation groups stressed the need to solve problems associated with Ord Stage 1 before more areas were brought under irrigation. Members of COVE also wanted to find out exactly what Ord Stage 2 involved.

In the same year that CALM produced its draft management report for the lower Ord and the feasibility of Ord Stage 2 was proceeding and the COVE group was formed, Lee J ruled in favour of MG#1, the first successful mainland native title claim. At this time, particular interest groups and individuals began to play an even more active part in articulating their concerns over water use in the Ord Valley and Aboriginal concerns over heritage issues and native title could no longer be ignored.

In 1999 the quarantining of a large area of country because of the existence of noogoora burr (a weed), along the Ord River from Button's Crossing to Parry Lagoons via Parry Creek Road, was lifted in response to lobbying by recreational fishers and tourism operators. It is interesting to note that Aboriginal people had been voicing their concerns about lack of access to this area ever since it had been quarantined, but their concerns were never heeded. Other interest groups succeeded where they had failed.

Also in 1999, the Kununurra-Wyndham Area Development Strategy (KWADS), which had been established in 1997, released its draft strategy for public comment. This was an initiative of the W.A. Ministry for Planning and also involved the KDC, the SWEK and the N.T. Department of Lands, Planning and Environment. The main objective of KWADS was to identify planning issues and set broad regional economic, social and environmental objectives for the area. Both the WRC and Aboriginal interests were represented on the Steering Committee.

COVE disbanded in 1999 and a number of its members joined the Ord Land & Water (OLW) community group which had begun community consultations in 1997. This group of local people was initially concerned to address the problem of rising

groundwater in the irrigation area. Natural Heritage Trust (NHT) funding was received by OLW through a project submitted by the W.A. Department of Agriculture.

There are four focus groups making up OLW. Broadly speaking, these represent:

1. the land (farmers, irrigators, pastoralists)
2. the river (recreational fishers, tour operators)
3. conservationists (concerns re: flora, fauna, fire, weeds and national parks)
4. the town (concerns re: land use planning, waste water, rubbish and drainage)

The OLW group started work on a management plan and the scope of the project broadened from a single focus on rising groundwater to include a range of other issues. The community consultation process undertaken in the preparation of the management plan apparently entailed significant community commitment and resulted in the publication of the *Ord Land and Water Management Plan 2000*.

Funding from the NHT is continuing and from February 2002 is being used by OLW to employ a coordinator. As noted, the focus of OLW is primarily on the irrigation/ farming area and parts of the Ord River. Its approach is to use community aspirations, as expressed through the planning process, to drive land and water management issues to meet goals expressed in the management plan.

OLW currently places considerable emphasis on irrigation management practice, which gives it a fairly clear sphere of interest and responsibility, allowing it to maintain strong support from most local agencies because it is essentially working towards common goals. It may develop a broader focus as it continues its existence because the group appears to include consideration of the wider Ord catchment area in terms of looking for opportunities to encourage an integrated approach to addressing issues of water quality in the Ord River. It is however, primarily focused on implementing strategies in the core irrigation/ farming area.

Although there were some efforts early on to include Aboriginal people in this planning process, these efforts were not effective or successful. As previously noted, two individuals representing Aboriginal interests are listed as having been contacted during the community consultation process, one from the Northern Land Council (NLC) and one from the KLC, but at present OLW has no direct Aboriginal representation.

In the same year, the WRC released its Draft Interim Water Allocation Plan for the Ord River. It should be noted that among other interested parties, the Miriung and Gajerrong people (at that time represented by the ALS, the KLC and the NLC) forwarded a submission on the draft plan. At the end of the same year, the EPA gave its advice on the plan to the Minister for the Environment. In addition to criticisms of the basis for calculating environmental water provisions, the EPA made three particular points regarding Aboriginal/ heritage matters in an appendix summarising issues raised in submissions. It stated that the WRC plan should:

1. acknowledge and address Aboriginal issues, and include a clear and transparent strategy for consultation with the Aboriginal communities upon which the Plan may impact. ... [A]lso provide a framework to ensure inclusion of the Ord River's role in the lives and cosmology of the Aboriginal people in the allocation process.

2. develop a Cultural Heritage Management Plan for the Ord River.

3. account for and incorporate Native Title determinations, claims, rights and interests.

In another appendix in the same document, the WRC responded to points raised in submissions, including those relating to both Aboriginal/ heritage issues as well as native title issues. The WRC indicated that it had commenced planning for a detailed Aboriginal social and cultural values study of the Ord River to be included in the Final Water Allocation Plan in 2006. It also had a commitment to considering Aboriginal cultural and heritage values in determining the flow and water level regimes to be maintained along the Ord River. The WRC considered that a Cultural Heritage Management Plan had merit, but was beyond the scope of the water allocation plan. The WRC suggested that this could emerge from the OLW planning process, the Shire's land

management responsibilities and the WRC's own work in establishing environmental water provisions for the Lower Ord as part of the development of the Final Water Allocation Plan.

The WRC acknowledged that it had not taken account of native title claims, rights or interests in its Draft Interim Allocation Plan for the Ord River. The Commission stated that it would be notifying native title holders and claimants before any further licenses were granted and providing them with an opportunity to comment. If any rights or interests in water were affected by the granting of new licenses, native title holders would be entitled to compensation from the State. The WRC gave an undertaking that it would make appropriate amendments to its final plan when the degree to which native title rights and interests would be affected by the granting of licenses was eventually clarified by the Courts. It also gave an undertaking to ascertain whether any compensation for impairment would be payable at the same time.

In 2000, the WRC endorsed its Environmental Water Provisions Policy for W.A.. This policy resulted in part from the COAG Framework Agreement on Water Resources Policy Reform (1994 and subsequent agreements) mentioned earlier, as well as the National Principles for the Provision of Water for Ecosystems (1996) and other national policies and strategies. Although the WRC was well advanced in promoting the importance of environmental provisions particularly for groundwater in W.A., this policy has had a major effect on the planning of water allocation in the state by documenting the principles and processes to be followed in making environmental provisions where none had previously existed.

In January 2000, Wesfarmers Sugar Co Ltd/ Marubeni Corporation/ Water Corporation released the Environmental Review and Management Programme (ERMP) & Draft Environmental Impact Statement (EIS) for the proposed development of the ORIA Stage 2. In this document it is stated that consultation with Miriuwung and Gajerrong people about the proposed development of Ord Stage 2 began in 1995 and continued more extensively after 1998 when Wesfarmers Sugar Co Ltd/ Marubeni Corporation/ Water

Corporation acquired the exclusive mandate to investigate the feasibility of the project. The consortium recognised that the project area fell within land that is under native title claims by the Miriuwung and Gajerrong people and that issues of changes in land use and compatibility with traditional uses would need to be negotiated with TOs. The consortium made a commitment to address Aboriginal social impact issues through an Aboriginal Socio-Economic Impact Assessment (ASEIA), though this was not undertaken. In addition, the consortium proposed that an Environmental Management Entity (EME), owned by the industry participants, be established with responsibility for overseeing operational aspects of ongoing environmental issues.

Early in 2000, another Ord River-related group was formed in Kununurra with the intention of drawing together various agencies to coordinate local level management decisions for the Ord valley. The Ord River Waterway Management Group (ORWMG) is an advisory forum consisting of state government agency representatives and some other parties. It is an agency partnership intended to facilitate a more coordinated approach to waterway management issues than previously existed. In meetings, individual agencies may take the initiative on matters of particular relevance to their core business, but the purpose of the ORWMG is to achieve shared outcomes regarding management objectives rather than to benefit particular individual agencies/ parties. This approach has helped to address both uncoordinated decision-making as well as to put issues on the agenda which were not necessarily the central business of any particular agency and on which no leadership was being taken. The group endeavoured to build a stronger understanding and to resolve differences between agencies with key responsibilities for water management in the Ord Valley i.e. WRC, WC and SWEK. Other agencies have joined ORWMG and have also focused on common resolution of issues of mutual concern. ORWMG now also includes the Department of Indigenous Affairs (DIA), CALM, DOLA and the KLC, all of whose participation may vary depending on issues.

The impetus for the development of the ORWMG came from the WRC wishing to liaise more closely with other agencies with common or similar concerns. The WRC continues

to facilitate the forum. The main commitment of this group is to be effective in providing an integrated approach to waterway management in the area. In the past, there has been limited collaboration by government agencies relating to land and water planning management. A focus of this group is putting forward initiatives and specific implementation strategies. Another objective of the ORWMG is building a collaborative resource management framework with OLW which has representation on ORWMG. By the middle of 2001, Aboriginal people had been represented in this group by the KLC. The need for Aboriginal heritage clearance in future waterways management planning has recently been formally recognised by the group. As a member of the ORWMG, the WRC has also been working with Mirima Dawang Woorlab-gerring, Language and Culture Centre (MDWG) in Kununurra to develop a map which includes Miriwoong names for places of interest on the Ord River. This is being done as an initial means of involving Aboriginal people in the waterways management process. The WRC in Kununurra is seeking ways of increasing Aboriginal input into the future management of the Lower Ord and building trust with the local Aboriginal community, although the precise nature of this ongoing involvement has not yet been worked out.

The ORWMG arose in part due to management needs identified in both the KWADS draft strategy and the OLW draft Management Plan as well as pressure from the Shire to resolve outstanding management issues. The WRC were keen to initiate the group in order to build the agency partnerships that would be required in the future for integrated Natural Resource Management (NRM). It was (and is) seen as an agency partnership to parallel the community partnership of OLW while both groups develop a more holistic NRM plan.

KWADS released its final report in December 2000 and among its range of planning recommendations, it recognised the significance of such issues as Aboriginal culture, heritage and values, native title claims as well as the importance of conserving natural ecosystems. The Strategy specifically recommended that research:

... be carried out to determine the most appropriate extent and method

of identification, management and future use of the Ord River water bodies and environs (2000: ix).

The Lower Ord Community Advisory Committee was a group which focused on recreational use in the lower Ord River. This committee was facilitated by the Shire but is no longer active.

The Lily Creek Management Plan is an initiative of the Shire, the KDC and others to identify future development of the area of interest. Issues of concern to this group relate to water and land management controls. Recommendations from the group have been included in Town Planning Schemes.

In May 2001 the EPA released the second part of its report and recommendations for ORIA Stage 2 relating to management issues. It noted, as one of a number of issues arising from the proposal, the potential for loss of sites of Aboriginal heritage or cultural value. It indicated that Wesfarmers Sugar Co Ltd/ Marubeni Corporation/ Water Corporation needed to address factors of Aboriginal heritage and culture through undertaking ethnographic and archaeological surveys as well as studies of Aboriginal values and use of the land. It noted that it had been constrained in its assessment of Aboriginal heritage and culture by the limited available information on Aboriginal values. As noted above the ASEIA, which the consortium made a commitment to undertake, was not completed.

In addition, the EPA recommended changes to the proposed structure of the EME. It also noted that the co-proponents were committed to develop and implement a Cultural Heritage Management Plan (CHMP) to the satisfaction of the Miriung and Gajerrong people. The EPA also noted:

... that the KLC/ NLC consider that the management of cultural heritage should be the sole responsibility of Miriung and Gajerrong people in accordance with traditional laws, and with the assistance of their representative agencies (2001:31).

On the 11th of December 2001 Andrew Hopkins of Wesfarmers formally announced that the proposed ORIA Stage 2 project would not go ahead. He indicated that primary amongst the factors on which the decision was based, was the fluctuation of the sugar price and the continued volatility of the market. He noted that adequacy of irrigation water supply had also become a concern. Mr Hopkins also went on to indicate that uncertainty about access to land within the project area because of native title claims factored in the decision. He noted:

Access to the land required for the project, some of which is subject to claims under the Native Title Act and land rights legislation in the Northern Territory, has not been resolved. From the outset, Wesfarmers and Marubeni made it clear we wanted to reach a negotiated agreement with the claimants, rather than take legal action, and we have been in discussions with them and their representatives since 1998.

While we have not been party to the proceedings, a complicating factor in working towards an agreement has been the lengthy litigation process in regard to the Miriuwung Gajerrong native title claim, which has now been through two Federal Court hearings and is currently before the High Court for determination (press release 12th December 2001).⁶

4.5 Summary

The current management of the Ord River is divided among a plethora of State Government agencies. In regard to some management issues the agencies have sought opinions from a range of interests, one of which is the TOs of the area. A number of committees have been established which discuss issues relevant to the management of the Ord. The interests of the TOs are represented by the relevant Representative Bodies. Not all of the committees meet regularly and their deliberations and views are not binding on the various agencies. In this respect there is, to date, little meaningful involvement of Aboriginal people in the management of the Ord River or an accommodation of their rights and interests in any substantive fashion.

⁶ The implications of native title for existing and future water use in W.A. are analysed by D'souza (2002) in reference to relevant state and federal legislation.

5.0 Conclusions

There is presently no overall management of the study area. Existing management is fragmented along function divisions which exist between departments and there appears to be no overall coordination of the bodies. In addition, management decisions and timeframes appear to be tailored to the internal administrative and funding arrangements of the agencies.

Within this overall context the WRC as one amongst a number of agencies with responsibilities in the lower Ord is limited in its ability to respond to Aboriginal concerns by its statutory obligations. Other agencies are similarly restricted. The nature of planning within the WRC (and possibly other agencies) is also limited as it tends to be specific to a particular development and current only for short periods (1-3 years). Information received by the TOs and their day-to-day contact with agencies reflects this situation.

Most of these authorities, agencies and groups have cultural difficulties establishing communication or dialogue with Aboriginal people, either directly or through their representative bodies. Mistrust and misunderstanding are still rife between Aboriginal and non-Aboriginal people at the local level in the Ord valley. Two different cultural worlds co-exist, but rarely meet. Aboriginal people are often unaware or uninformed of developments or initiatives which various developers, authorities, agencies and groups are proposing or undertaking. Where direct, informal consultation between an agency and Aboriginal people has recently begun to take place, for example through the ORWMG, this is more through serendipitous proactive social contacts than through any formal mechanism.

In contrast to the segmented interests and role of non-Aboriginal agencies and organisations, the interests of the TOs lie across the functional divisions of all departments and are long term (extending from the present to the distant future). The differing positions of the state government agencies and that of TOs raise a number of

management issues. From the perspective of the TOs, to manage their interests they must negotiate with a disparate number of organisations with differing functions, aims and agendas.

The relationships between TOs and agencies are therefore fragmented and *ad. hoc.* In general terms these current arrangements do not enable the TOs to manage their overall interests in a coordinated and considered way with their future interests in mind.

Outside of litigation the TOs have virtually no formal avenue by which their interests and views can be accommodated in the ongoing day-to-day management of the Ord River valley.

To comprehensively address Aboriginal rights and interests in the study area, even within the existing parameter of agencies, would require Aboriginal representation within the decision making structures of the agencies and the coordinated involvement of all other state agencies with interests in the Ord River. A structured relationship of this kind would provide opportunity for the fostering of cooperative and productive relationships between the TOs and individual agencies such as the WRC.

The WRC's brief to the consultants indicates that as an organisation, they wish to have an understanding and to take regard of the cultural values of the TOs when creating the Final Water Allocation Plan for the Ord River and Wetlands in 2006. These aims were expressed in the consultant's brief.

The literature review was limited to available work which directly addressed issues relating to Aboriginal cultural values in relation to water in the Kimberley. Broader documentation which can be broadly characterized as describing Aboriginal involvement in water management and planning within the Ord River basin was also reviewed in subsequent sections of the report.

5.1 Addressing the Brief

Objectives (1 & 2) in the consultant brief required the consultants to:

- 1. develop protocols for the provision of information by Traditional Owners;*
- 2. develop measures to protect the intellectual property rights of informants and the cultural sensitivities of the information itself.*

Whilst objective 11 required the consultants to:

- 11. make recommendations regarding the minimisation or avoidance of negative impacts (or the enhancement of positive impacts) on water-dependent values of Traditional Owners in the study area.*

Objectives 1 & 2 encompass rights and interests claimed by the TOs over all three of the Miriung Gajerrong claims, including the areas of MG #1 & #2 claims which coincide with the study area.⁷ The comprehensive nature of these are described above. Objective 11 is dealt with in the Recommendations made below.

A fundamental component of the TOs' system of rights and interests is the control by TOs of their own cultural heritage. In this context, and as noted above, it is appropriate that the TOs, in consultation with their advisors, respond on a case-by-case basis to the WRC (and other bodies) when considering their approach to issues which may lead to the exposure of cultural material in a public context.

In any event, it is unlikely that the WRC will in any circumstance be required to deal with sensitive cultural information, beyond that which is provided by the TOs with the context of the eventual use of the material in mind.

⁷ The native title rights and interests described in the Miriung and Gajerrong 1 case and catalogued in Lee's judgment include the right of the native title holders to:

...maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the "determination area" (Ben Ward & Ors, Tuesday, 24th November 1998: 11).

Objectives 4-10 were explored and completed in Sections 3 & 4 of this report.⁸

In this report riparian areas, adjacent land and specific water features have been discussed in general terms. Specific locations have not been named or focused on in accordance with the wishes of the TOs. This is consistent with accepted Heritage protection measures and procedures utilized by the claimants in relation to areas of heritage and cultural significance within their area of interest and the study area.

The economic and cultural values ascribed by the TOs to the geographic and environmental features of the valley, including the Ord Valley itself, are comprehensive and encompass the entirety of the study area.. For this reason, cultural interests have been described in this report in reference to the general system of the TOs' native title. This approach reflects more accurately the nature of Aboriginal rights and interests in the study area and the TOs' cultural responsibilities. As such it points toward a management process through which the interests of the TOs and the WRC can be accommodated.

It is likely that the TOs will wish to protect certain areas and interests in the face of a specific development. As indicated above, given the broad cultural interests of the TOs, this cannot be achieved by a simple process of cataloguing points on the landscape, or 'sacred sites', or without TOs having access to comprehensive details of the proposed development.

5.2 Recommendations

It is therefore recommended that, within and consistent with its statutory obligations, the WRC:

⁸ 4. describe an Aboriginal derived framework for understanding water as a cultural and natural resource; 5. identify and document environmental features and ecological processes dependent on surface water regarded as of cultural, social and economic significance to Traditional Owners in the study region; 6. identify and map riparian areas and adjacent land integral to the identified water features; 7. describe the cultural, social and economic context and significance of different water sources and the inter-relationship between these (justify why not done); 8. assess and evaluate the cultural significance of any ecological features.

(1) establish a Heritage agreement with the Traditional Owners for clearance procedures. These procedures would establish suitable protocols for the protection of areas of cultural significance and intellectual property as well as continued access by the TOs.

Such a process would assist the WRC to take account of Aboriginal cultural rights and interests. Communication between the WRC and TOs would, in turn, allow for the consideration of development plans in a manner which would enable all Aboriginal cultural rights and interests to be taken into account.

Consistent with current practice in the region it would be expected that such an agreement would envisage that clearances be conducted via Work Programme Clearance (WPC) surveys conducted by independent researchers within the parameters of the *Aboriginal Heritage Act 1972 (W.A)*. The researchers would document whether or not any part of the development may impact on areas of heritage value. In surveys of this kind, consistent with the traditional responsibilities of the TOs, they are not required to divulge sensitive cultural information. The results of the research would then be conveyed to the WRC.

A Heritage agreement would assist the TOs in the process of making considered decisions and judgments concerning their own rights in water and ‘water dependent values’.

To account for the broader interests of the TOs and in order to communicate more effectively with Aboriginal people, communities and organisations, it is further recommended that the WRC:

(2) with the assistance of the Mirima Dawang Woorlab-gerring, Language and Culture Centre in Kununurra support the establishment of an Aboriginal Native Title Reference Group of TOs which can consider relevant issues such as a heritage agreement, water quality, access and commercial and recreational use. This Reference Group would be provided with technical and administrative support and advice by the WRC.

(3) establish committees within the WRC which would include at least 2 TOs from the Aboriginal Native Title Reference Group. These committees would consider and make decisions on matters of common interest to the WRC, TOs, and other stakeholders. These matters would include those noted in (2) above:

(a) water quality.

(b) protection of the integrity of water bodies.

(c) access to water (consistent with the WRC's role on the land).

(d) commercial and recreational use i.e. regulation of its use by other stakeholders.

(4) require all employees of the WRC working in the region to attend cross cultural awareness induction/ training courses. This could involve the Mirima Dawang Woorlab-gerring, Language and Culture Centre in Kununurra and the ATSIC Regional Office.

In order to ensure meaningful participation of Aboriginal interests in decision making relating to the water and management in the study area it is recommended that:

(5) the WRC use its best endeavors to institute a process whereby the constitutions of all existing agencies and committees be reviewed and amended to ensure a coordinated and consistent approach to the management of Aboriginal related water values.

Following on from this it is further recommended that the WRC:

(6) coordinate and liaise with other agencies with the view of forming an all-of-government approach to issues within the Ord.

The aim of such an approach would be to create a body/ committee which would oversee the activities of the state government in the region. Alternatively, the role of ORWMG be broadened to act as a coordinating umbrella group with a clearly defined role and responsibilities to those statutory bodies and organisations it coordinates.

(7) It is also recommended that TOs would be represented on this body

5.3 Additional Comments

The literature and recent history indicates that there has been a gradual trend by agencies to have a greater regard for Aboriginal cultural interests within the study area. Private sector organisations have taken this further and have negotiated, or are negotiating agreements, with the Traditional Owners.⁹

Adoption of an all-of-government approach would better position both state government agencies and TOs to manage their separate and common interests. Should the rights claimed in MG#1 be granted, the early implementation of such an approach would benefit both the TOs and WRC.

In the context of ongoing native title litigation recognition of the rights and interests of the TOs in their land, which includes the study area, would be fundamental to the operations of all agencies with interests in the area. It is foreseeable, in these circumstances, that TOs would desire some role in the day-to-day activities of the agencies.

The *Native Title Act 1993* provides for title to be held by a Prescribed Body Corporate (PBC). A fundamental organising principle of such a body would be that decisions about native title rights and interests would be made by the TOs themselves. The functions of such a body would, to a degree, depend on the specific rights and interests granted or those negotiated with government and non-government organisations.

There are a number of views about the possible role of such a body. Various models have been proposed which vary between a minimalist model - which would be analogous to that of land trusts established under the auspices of the *Land Rights Act (NT) 1976* - and a more complex model which proposes that PBCs would take on many of the current roles of Land Councils and other Representative Bodies. In either model the TOs would

⁹ The Traditional Owners negotiated agreements with Normandy Poseidon Bow River Diamond Mine, the Ord Hydro Consortium and are about to commence negotiations with Argyle Diamond Mine.

take a primary role in matters of cultural management, including that of cultural information and the protection of sites, as well as having a role in the management of other resources on the land.

The recommendation contained in (2) above suggests establishing an Aboriginal Native Title Reference Group to work on WRC related matters. Such a group could provide valuable experience to TOs regarding the work and business of the WRC and in a sense could act as a precursor to the TOs subsequent involvement via a PBC.

In any event, if a positive determination were made the TOs would become part of management of the Ord at the highest level. It is foreseeable that in the advent of such a determination there would need to be negotiations between the Government and the TOs as to how the determination area should be managed.

This consideration of the traditional rights and interests of the TOs of the area is particularly important when considering their input into management of issues within the Ord River area and wetlands and in particular the Final Water Allocation Plan.

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7.0 Appendix 1: Summary of Chronology of post contact impact and developments in the Ord River Area

1890s Establishment of pastoral stations in the North East Kimberley region.

1959/1960 Commencement of building works for the Diversion Dam and the town of Kununurra.

1963 Diversion Dam completed. Creation of Lake Kununurra.

1963 - 1966 Irrigation infrastructure for Ord River Irrigation Area (ORIA) Stage 1 constructed and township of Kununurra established.

1972 Top Dam/Ord River Dam construction completed. Formation of Lake Argyle.

1990 Kimberley Ramsar sites listed as wetlands of international importance, including Lower Ord Wetlands, Lake Kununurra and Lake Argyle.

1994 COAG Agreement re National Policy on Environmental River Flows.

1994 W.A. Government begins investigating development and extension of ORIA Stage 1 to include new areas collectively named Ord Stage 2.

1995 MOU between Premier of W.A. and Chief Minister of NT re Ord Stage 2.

1995-6 W.A. Government commissioned various studies related to Ord Stage 2
Environment Australia gives money to Wetlands International for a report "Management Planning for Ramsar sites in the Kimberley Region of W.A.".

National Principles for the Provision of Water for Ecosystems.

1996 Ord Hydro establishes HEP station at Top Dam.

1997 W.A. Government calls for expressions of interest in Ord (ORIA) Stage 2 from private sector.

1998 Wesfarmers Sugar Co Ltd/Marubeni Corporation/Water Corporation given exclusive mandate to investigate feasibility of Ord (ORIA) Stage 2 for growing sugar cane.

1998 Care of Ord Valley Environment (COVE) community group formed.

1998 CALM produces Lower Ord Ramsar Site Draft Management Report.

1998 (Nov.) Justice Lee grants Native Title Rights to the Miriuwung Gajerrong people over claimed area.

1999 (May) WRC Draft Interim Water Allocation Plan, Ord River, Western Australia.

1999 COVE disbanded and re-formed as Ord Land & Water (OLW) community group.

1999 (Dec.) EPA advice to Minister re: WRC Draft Interim Allocation Plan, Ord River, Western Australia.

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2000 (Oct.) WRC Draft Background to developing a Revised Interim Allocation Strategy - Ord River, Western Australia.

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2001 (Jan.) Announcement of extensions to Ord River floodplain Ramsar site.

2001 Ord River Waterways Management Group (ORWMG) formed. Community-based with agency and organisational representation.

2001 (May) Commencement of WRC Study of Aboriginal Values of Ord River & Wetlands.

2001 (May) EPA Report & Recommendations re ORIA Stage 2 (M2 Supply Channel), Kununurra. Part 2 – Management.

8.0 Appendix 2: Extracts from Mary Durack's (1986) 'Lament for a Drowned Country'.

... I sit along river coming down from my born country.
That heart place! I got to talk to that water.
I got to tell that fish: 'You go back - go back now -
Talk strong my country. You tell him that spirit can't leave 'em.
You tell him - Wait! Hang on! *This not the finish!*
Bilbilji, grassshopper fella on top that mountain -
You tell him: Don't go away. You tell him my old man
still got him that corroboree... He keep that corroboree - can't lose 'm'.
Moolarli...- strong fellow that one for making country.
All that good spring water for wallaby, cattle, everything -
Moolarli make'm. You know that old station waterhole?
In-bulling-burly we call'm. Whiteman call'm *Argyle*.
... - you know *Moolarli* got that spear - that lightning?
Well, he pick'm up and he chuck'm - cracking like thunder
And that range behind billabong come tumble down, make way for gorge
For river and he talk: 'Come on you fish, turtle, everysing,
You can go now, you free...
you can swim away now down to salt water coast country'.
Then he talk along salt water crocodile: 'You can come up now,
Camp on river, sleep in that shade place along paperbark'.
My people reckon we can't play around with country.
Only spirit can make him. That dangerous business.

Well, whiteman got different way from blackfella. He reckon:
'No, we don't want spirit. We got *ingineer*. Clever fella properly.
We got plenty man, tomahawk, truck, tractor, dynamite.
... We seen that big smoke come up. Everysing -
ground, tree, rock, shake like the finish coming.
Bird sing out... Cattle, horse, kangaroo,
fright - ... nobody can't stop 'em.
... when 'im settle down - no more mountain that side -
no more goanna dreaming place. All that finish'.
... [*Moolarli*] don't want to drown my country.
Before when I catch a fish, I cook 'em straight away,
... Only now, today, when I take away hook I don't hurt 'im.
He go 'flap-flap' in my hand and I talk this way:

'You go back up there, that old station...
You tell him, my country - me - ...
she can't forget 'im, my country she all day heart-crying'.

... one day [old spirit fellows] going to wake up again

... that lightning ... straight through
that wall, that top-dam place ... like dynamite.
All that flood water go jump through Kangaroo Pocket,
Down that dingo dreaming place...
Push down that water-trap, that bridge close up Bandicoot,
Ivanhoe crossing, *Djigamurri*, *Bullgoomurri*, that Carlton country –
Swoosh down, lose'm in that big salt water.
And that finish all that ingineer business.
...tell that fish:

'You bring this message my country, down there underneath.
You tell him *hold on!* Some day that dream coming true –
Then he can stretch out and dry himself, my country.
... Bye'n'bye the grass come back again, tree, spinifex,
all them lizard and snake and wallaby, bandicoot, porcupine,
flying fox – all that good bush tucker – eversing come back.
And bird too – big mob brolga...
And Jabiroo, emu, cockatoo... I got [my born country] here –
Inside my heart, can't lose'm...

9.0 Appendix 3: Some Miriwung words and terms related to water

Bandanyirring - dry season
Baragbarag - diver bird/little pied cormorant
Barandag gugalin - wet wind
Barruburrum - water dreaming place
Belengbeg - wash away
Cununurra - black clay soil found on valley floors
Dalungdalung - white-faced heron
Djadang - heavy rain
Djadjan - catfish
Djalarang - white crane/egret
Djaliwung - barramundi
Djathang - rain (coming straight down)
Djibid - light rain
Djibidjibidbe - rain a little bit
Djibiling - type of duck or goose
Djiliming – little green rock melon which used to brought down by river floods
Djimirring - mullet
Djugulu/Djugurru- fresh water garfish. long tom
Gananurang - big river (also Kununurra)
Gundaring/Gundarim - fish
Kalang/Galung - water, big rain storm
Kalawarrbanda - billabong (with lilies)
Kalawurrung - lily
Karrwarriny - brim
Larrkkarria - mist (cold)
Malawon - leaf of tree used to stun/poison fish in still water
Manbang -eel
Mitjad - round, hairy yam which has to be placed in running water to get rid of the hot, burning (chili-like) sensation
Ngalpatgang - soak
Nganalam - white cockatoo which is found in trees beside water
Njirrirrg - rain a lot
Nungba - mangrove, mud
Nyinggiyin /Yiiwin - wet season
Palgarang (Gajerrong) - eel
Palibung - billabong/ swamp (away from main waterway with no lilies)
Thalawung - yam (potato)
Timalum - tree with white trunk which grows beside rivers and creeks
Tjel - bubbling-up spring
Walanggunang - swordfish
Warrang - edible nut of pandanus
Winbang - pandanus (indicates fresh water)

Wuthungikilitjing - little creek