



Sustainable
Communities
and Waste

National Environmental Science Program

Understanding, identifying & resisting aqua nullius.

Milestone report IP1.02.02 Water sensitive
and liveable communities: **Indigenous only
aqua nullius workshops 2023**

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1.0 Project Overview

This report represents Milestone 6, and is an output, of IP1.02.02, Water sensitive and liveable communities, in the National Environmental Science Program's (NESP) Sustainable Communities and Waste (SCaW) Hub. It provides an account of the Indigenous-only aqua nullius workshops run through research stream two, the Indigenous-led water program.

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The objectives of these workshops were to provide First Nations water practitioners a detailed conceptual and operational understanding of aqua nullius and the opportunity to contrast this with Indigenous water science and governance, allowing Indigenous water practitioners to effectively challenge aqua nullius. The outcomes at a high level have been the create a cohort of Indigenous practitioners able to articulate, identify and resist the impact of aqua nullius on their work, while enhancing their capacity to share this knowledge within their communities.

The primary audience for this report is SCaW Hub and NESP colleagues. It will also be provided to all workshop participants and the Victorian Aboriginal Water Office.

WHAT IS AQUANULIUS

Aqua nullius describes

“governments’ lack of inclusion of Indigenous water rights and interests resembles Australia’s western framing of Indigenous land rights—shaped by the doctrine of terra nullius—and reconstructs Indigenous water rights as aqua nullius or ‘water belonging to no one’.”¹ (Marshall 2016:9).

Aqua nullius not only makes Indigenous sovereignty over the waters of ngurambang (country) invisible, it obscures the depth and sophisticated expertise of First Nations water science, management and governance. These and other practices were critical to pre-invasion custodianship of country and cultural expressions.

ACKNOWLEDGEMENT OF FUNDING

This project is supported with funding from the Australian Government under the National Environmental Science Program.

¹ Marshall, V. (2016) deconstructing aqua nullius: reclaiming aboriginal water rights and communal identity in Australia *Indigenous Law Bulletin* 8(26) 9-14

2.0 BACKGROUND

Over three workshops, this transdisciplinary activity equipped Indigenous water practitioners with an understanding of aqua nullius operation in modern Australia's water scape, and how it may be resisted with First Nations water science and governance practices.

Aqua nullius describes

“governments’ lack of inclusion of Indigenous water rights and interests resembles Australia’s western framing of Indigenous land rights—shaped by the doctrine of terra nullius—and reconstructs Indigenous water rights as aqua nullius or ‘water belonging to no one’.”² (Marshall 2016:9).

Aqua nullius not only makes Indigenous sovereignty over the waters of ngurambang (country) invisible, it obscures the depth and sophisticated expertise of First Nations water science, management and governance. These and other practices were critical to pre-invasion custodianship of country and cultural expressions.

The imposition of English water science and governance remains critical to the colonization project, while fundamentally altering the waterscape and leading to declining water conditions generally, and impoverished stream conditions in urban and agricultural sites specifically. While many of the imposed scientific and governance practices are codified through policies and legislation, others are obscured in the aqua nullius doctrine. The hidden nature of these colonial water practices represents another hurdle to Indigenous participation in contemporary water science and governance, particularly the application of Indigenous water science and governance practices.

These workshops provided First Nations water practitioners a detailed conceptual and operational understanding of aqua nullius and the opportunity to contrast it with Indigenous water science and governance. The workshops enabled participants to identify tactics and strategies to more effectively challenge aqua nullius. That is, this work contributes towards (re)establishing the Indigenous water science and governance practices critical to pre-invasion environmental custodianship and cultural expressions.

2.1 CURRENT POLICY CONTEXT

There is increasing interest from settler-state institutions in Indigenous sciences and governance practices, in a range of areas, as solutions to the range of environmental problems the same system created are sought. Water is not shielded from this shift in the settler-state gaze, for example the Commonwealth's promise to provide \$40 million for First Nations groups to purchase water in the Murray-Darling Basin, their establishment of the Committee on Aboriginal and Torres Strait Islander Water Interests (CAWI) and a First Nations Water unit in the Department of Climate Change, Energy, the Environment and Water.

Despite this shift in gaze, the potential for selective use of Indigenous knowledges and practices concurrent with the on-going dismissal of Indigenous water rights is

² Marshall, V. (2016) deconstructing aqua nullius: reclaiming aboriginal water rights and communal identity in Australia *Indigenous Law Bulletin* 8(26) 9-14

high. Such a situation could be regarded as a new wave of aqua nullius washing over Indigenous water rights. Indigenous actors need to be prepared to prevent this situation arising, to avoid the exploitation of First Nations expertise. Such thinking may have contributed to the Victorian Aboriginal Water Office support for the travel and accommodation of participants from Victoria.

3.0 APPROACH

These workshops addressed the knowledge base of Aboriginal actors in the Murray-Darling Basin (MDB), regarding aqua nullius' role on the water science, management policy and governance spheres, while building their skills to resist it.

The primary approach to developing and delivering these workshops was the deliberate use of Indigenous ways of being and teaching, with yindyamarra³ the leading principle. This approach directly influenced every aspect of workshop planning and delivery, including methods used, materials chosen and scheduling decisions.

A list of the materials used to develop workshop content and provided to participants is provided at 8.0 Workshop Resources. The reappearance of some material across the weeks speaks to their use in multiple workshops, while offering participants greater opportunity to read them.

This section outlines the key elements involved in running the workshops.

3.1 workshop programming

Three one and a half days connected workshops were developed, each with a specific theme, and held on the country of three different First Nations. As indicated in the workshop program provided at appendix 8.1, each workshop follows the same format. This approach allowed a mix of activities to happen within a predictable structure, keeping participants engaged and alert, while catering for different learning styles.

Each workshop was held on a different First Nations country, and was opened by a welcome to country or acknowledgment of country and closed with a walking on country session. This was an important element of the programming, to ensure we demonstrated yindyamarra to the country where we were working and staying, and its traditional custodians.

3.2 Workshop Methods

The following indicates the range of methods employed during the workshop, and reflects Indigenous pedagogical practices.

3.2.1 yarning

Allocated sessions for yarning generally followed the presentation and allowed participants to consider the material from the readings and presentations in a more general way. These sessions helped the facilitator identify questions for the deeper discussions of the group work.

³ Harriden, k. (2023) Working with Indigenous science(s) frameworks and methods: Challenging the ontological hegemony of 'western' science and the axiological biases of its practitioners *Methodological Innovations* <https://doi.org/10.1177/2059799123117939>

3.2.2 walking country

The country talks sessions, with a local traditional custodian, were designed to give participants a greater sense of the water country we were visitors to. Particular attention was paid to evidence of aqua nullius in the waterscapes. Walking country also provided a respectful goodbye to country.

3.2.3 group work

Group work provided opportunities for the participants to develop their relationships, while developing their aqua nullius expertise. Relationality is central to Indigenous ways of being and doing.

3.2.4 multiple modes of information delivery

Most of the modes of delivery sat within Indigenous-based pedagogies such as 8ways, for example, the group work, use of videos and sand talk, and the country talks. Even the more conventional presentations were full of images and the readings mostly published in mainstream media outlets.

3.2.5 Indigenous presenters and materials

To support sovereign learning, all presenters were Indigenous and all primary materials were authored/co-authored by Indigenous people.

3.2.6 mob schedule

Rather than rigidly sticking to the ‘published’ schedule, there was a high degree of fluidity. If an unscheduled yarn started that was clearly benefiting most participants, it was left to run its course. If the participants were clearly engaged in a group activity at ‘finish’ time, we continued until the group was done.

This approach ensured the workshops were tailored to the group’s needs.

3.3 Homework

Participants were given a practical activity to undertake between workshops. For example, from the first workshop (understanding aqua nullius) the participants had to explain aqua nullius to at least one relevant person in their organization or community. Offering this type of out-of-session activities allowed participants to create meaningful opportunities to develop tangible links between what they learn ‘in school’ and how to use it in ‘the real world’.

3.4 Communication

3.4.1 Before the workshops

Expression of Interest

Participants self-identified by responding to a call for expressions of interest (Eoi) (Appendix 8.2). The form could be completed by filling it in personally, over the phone or providing a video response. Most people chose to fill the form themselves, or completing their expression of interest over the phone. No video responses were provided.

With the workshops designed for Indigenous people working in water in the MDB, the call for expressions of interest was circulated through a number of informal networks and a mailout through the Murray Lower Darling Rivers Indigenous Network.

Consent Forms

Each participant attending was asked to complete a consent form (Appendix 8.3).

3.4.2 During the workshops

An email providing the reading material and program was sent to all participant's before each workshop.

An email with a workshop summary and any materials requested by the group was sent to all participants at the end of each workshop.

3.4.3 After the workshops

Following the workshops, I have remained in contact with the group, sharing various opportunities and information.

4.0 PARTICIPANTS

Ten people had an EoI accepted. Approximately half as many again enquiries were made. The need to attend each workshop was the primary hurdle to submitting an EoI.

Participants were from the ACT, NSW and Victoria, and all had a connection to the Murray-Darling Basin (MDB). Only one participant worked for a settler-state agency, with the majority working for an Aboriginal organization. Most participants held an Aboriginal Water Officer or similar role, although there was a range of experience in the role held among this cohort.

There was gender parity on the participant list as well as during the vast majority of the sessions. Illness and changed work commitments meant attendance varied from four to seven attendees across the workshop series.

5.0 OUTPUTS

The only public output from the Indigenous only aqua nullius workshop series is this report.

Two other outputs, an aqua nullius 'undictionary' and 'resistance toolkit', were produced by and for the workshop participants to be used according to their needs and preferences. These Indigenous only resources were created from the knowledge developed and experiences shared during all three workshops. As such, they represent Indigenous sovereignty in action, as both documents were created through cultural appropriate knowledge sharing practices.

These materials contribute to the structural empowerment of groups, such as Aboriginal water officers, Indigenous organizations staff and Indigenous water knowledge holders, to participate in decisions that impact on their rights of self-determination and on exercising their custodianship of Country.

5.1 UNDICTIONARY

The second workshop culminated in the drafting of an 'undictionary' of language obscuring aqua nullius. Participants listed words and phrases they often heard, particularly from settler-state authorities, that sent different messages to those of the words used.

Examples of undictionary entries include:

- ◆ “work in progress” translates to: more work and less progress for Indigenous peoples to exercise their water rights; it means always going back to the table, with nothing going forward
 - ◆ “capacity building” translates to: a deficit discourse resulting in Indigenous people being expected to learn the skills/knowledges the settler-state wants to us to know, but does not support Indigenous peoples learning all the settler-state skills/knowledge we want to know.
- The wielding of this term hides the failure of non-Indigenous peoples to recognize their own need for ‘capacity building’ in terms of Indigenous water rights and knowledge.

5.2 AQUA NULLIUS RESISTANCE ‘TOOLKIT’

To support Indigenous people, particularly Aboriginal Water Officers, in resisting aqua nullius, a collection of tips and tricks was identified as a priority by workshop participants.

During the third workshop, a toolkit of resistance tips and tricks was developed. This represents Indigenous peoples capacity to identify and produce the knowledge and skills they need.

The toolkit offers tactics that cross scales and areas of influence, from recognizing the inseparability of land and water to using the relevant language word for ‘water’ in all water related documents.

6.0 FUTURE DIRECTIONS

A national gathering is planned for January 2024. Its theme will be aqua nullius, with content guided to some extent by this workshop series and a similar series being run for non-Indigenous people in October/November, 2023 (funded by Monash University). While, still in planning stages, it is anticipated to be three days long and not a standard conference format.

If the NESP bid is successful, the 2024 workshop series will focus on topics that participants in this workshop series have identified, including Murray-Darling Basin Authority operations, cultural water and the water allocation/entitlements system. Due to the nature of the material, they will be offered as standalone workshops.

Another round of mob only aqua nullius workshop series will likely be run in 2025, and another national gathering.

At this stage there is optimism that a 2-year cycle of mob-focussed training could be delivered, with aqua nullius being the foundation series on which the other training builds. It is also anticipated that the national gathering will form every second year.

7.0 WORKSHOP RESOURCES

Provided here is the list of key resources participants were asked to read between workshops. The list includes a mix of academic articles and book chapters, short oped pieces, and government and Indigenous organization’s policy documents. The list and materials listed were provided to the participants in hardcopy and electronic formats.

Other materials were referred to during the workshops, including State legislations and numerous books. These materials while relevant to the topic were not resources underpinning workshop content and are not listed here.

workshop 1

Harriden, K., O'Bryan, K. & Williams, B. (2022) Water justice: 'Aqua nullius' threatens the water security of all Australians (2022) *Lens* <https://lens.monash.edu/@politics-society/2022/09/26/1385078/water-justice-aqua-nullius-threatens-the-water-security-of-all-australians>

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Marshall, V. (2017) Chapter 3 'Aboriginal property and western values – concepts of ownership' (esp pg 40-50) *Overturning Aqua nullius: securing Aboriginal Water Rights* Aboriginal Studies Press:Canberra, Australia

Extra reading

Marshall, V. (2016) deconstructing aqua nullius: reclaiming aboriginal water rights and communal identity in Australia *Indigenous Law Bulletin* 8(26) 9-14

Water Act 2007 (Commonwealth)

<https://www.legislation.gov.au/Details/C2021C00539>

workshop 2

harriden, k. (2021) Resisting aqua nullius: Indigenous river management in contemporary Australia *Global Water Forum* <https://globalwaterforum.org/2021/04/14/resisting-aqua-nullius-indigenous-river-management-in-contemporary-australia/> 14 April, 2021

Kennedy, B., Kennedy, M. & Chandrashekeran, S. (2022) Terra nullius has been overturned. Now we must reverse aqua nullius and return water rights to Traditional Owners *The Conversation* <https://theconversation.com/terra-nullius-has-been-overturned-now-we-must-reverse-aqua-nullius-and-return-water-rights-to-first-nations-people-180037> 30 March, 2022

Extra reading

Marshall, V. (2016) deconstructing aqua nullius: reclaiming aboriginal water rights and communal identity in Australia *Indigenous Law Bulletin* 8(26) 9-14

Water is Life – Part A

<https://www.water.vic.gov.au/aboriginal-values/the-aboriginal-water-program>

workshop 3

harriden, k. (2021) Resisting aqua nullius: Indigenous river management in contemporary Australia *Global Water Forum* <https://globalwaterforum.org/2021/04/14/resisting-aqua-nullius-indigenous-river-management-in-contemporary-australia/> 14 April, 2021

Kennedy, B., Kennedy, M. & Chandrashekeran, S. (2022) Terra nullius has been overturned. Now we must reverse aqua nullius and return water rights to Traditional Owners *The Conversation* <https://theconversation.com/terra-nullius-has-been-overturned-now-we-must-reverse-aqua-nullius-and-return-water-rights-to-first-nations-people-180037>

[overturned-now-we-must-reverse-aqua-nullius-and-return-water-rights-to-first-nations-people-180037](#) 30 March, 2022

Marshall, V. (2017) Recommendations in Part C: A paradigm shift for Aboriginal water rights, in *Overturing Aqua nullius: securing Aboriginal Water Rights* Aboriginal Studies Press:Canberra, Australia

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extra reading

Echuca Declaration Murray Lower Darling Rivers Indigenous Nations 2010 MLDRIN
<https://mldrin.org.au/wp-content/uploads/2018/07/Echuca-Declaration-Final-PDF.pdf>

8.0 Appendices

8.1 Workshop schedule

This schedule was provided to participants at the first workshop. Some changes in programming, in response to participant's interests and needs are not represented.

THEMES, DATES & LOCATIONS

workshop

1. understanding aqua nullius
2. identifying aqua nullius
3. resisting aqua nullius

date

19/20 June, 2023
24/25 July, 2023
7/8 August, 2023

location

Canberra, ACT
Mildura, Vic
Dubbo, NSW

WORKSHOP SCHEDULE

workshop 1 Canberra	day 1 19 June, 2023	day 2 20, June 2023
understanding aqua nullius	9.45am Register	
	10am Welcome to Country Ngunawal country elder Wally Bell	9.30am brainstorming Preparing to share with mob
	yarning circle – intro's - led by Wally Bell	11am morning tea
	11am morning tea	11.20am Country talks Ngunawal country custodian Bradley Bell
	11.20am Understanding aqua nullius Virginia Marshall	1.30pm lunch – Country talks site/on campus
	12.35pm lunch on campus	2.15pm wrap up
	1.30pm yarning sharing understanding aqua nullius	3.30pm close
	2.45pm afternoon tea	
	3pm focus ?'s deeper discussion	
	4.15pm wrap up	

workshop 2 Mildura	day 1 24 July, 2023	day 2 25 July, 2023
identifying aqua nullius	9.45am Register	
	10am Welcome to Country Latje Latje Elder Brendan Kennedy	9.30am brainstorming aqua nullius translated into 'plain english'
	yarning circle – catching up Brendan Kennedy	11am morning tea
	11am morning tea	11.20am Country talks Brendan Kennedy
	11.20am Identifying aqua nullius presentation kate harriiden	1.30pm lunch – Country talks site
	12.30 pm lunch	2.15pm wrap up
	1.30pm yarning – identifying AN in laws and policies	3.30pm close
	2.45pm afternoon tea	
	3pm focus ?'s deeper discussion	
	4.15pm wrap up	

workshop 3 Dubbo	day 1 7 Aug, 2023	day 2, 8 Aug, 2023
resisting aqua nullius	9.45am Register	
	10am Acknowledgement of Country kate harriiden	9.30am brainstorming resistance tips and tricks
	yarning circle – catching up	11am morning tea
	11am morning tea	11.20am Country talks wiradyuri garden
	11.20am Resisting aqua nullius presentation + Q&A 15 mins Brendan Kennedy	1.30pm lunch – Country talks site
	12.30 pm lunch	2.15pm close
	1.30pm yarning resistance in action	
	2.45pm afternoon tea	
	3pm focus ?'s deeper discussion	
	4.15pm wrap up	

8.2 Expression of Interest form

Expression of Interest: Understanding, Identifying and Resisting aqua nullius

Aqua nullius, or ‘water belonging to no one’, is the unofficial water policy in colonized Australia that has fractured and obscured Indigenous water science and governance practices. Aqua nullius not only makes Indigenous sovereignty over the waters of ngurambang (country) invisible, it obscures the depth and sophistication of First Nations water expertise.

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Aqua nullius describes

“governments’ lack of inclusion of Indigenous water rights and interests resembles Australia’s western framing of Indigenous land rights—shaped by the doctrine of terra nullius—and reconstructs Indigenous water rights as aqua nullius or ‘water belonging to no one’.” (Marshall 2016:9).

Over three mob-only workshops, the aim is to equip Indigenous water practitioners in the Murray-Darling Basin with an understanding of aqua nullius operation in modern Australia’s water scape, how to identify it and how we can resist it with First Nations water science and governance practices.

There is no need to already know about aqua nullius to participate in the workshops. However, you must be able to attend all three sessions and do a little bit of ‘homework’ before each workshop. The requirement to attend all workshops is because

- i) each session builds on the previous one, and to
- ii) strengthen relationships to support more open, powerful conversations and boldness in the brainstorming sessions.

As the number of participants is limited to approximately 12 people, please complete this expression of interest to help us craft a suitable participant group.

These workshops are free to attend and are catered. We are hoping to provide some financial support to those unable to get support from their organizations or the group they are representing. There is not enough funding to offer full financial support to any participant.

Workshop participants and results will help set the agenda for a national gathering on aqua nullius in Canberra during October 2023. We hope that those who attend the workshops will be able to attend the gathering, but it is not compulsory or a pre-requisite for workshop participation. A key priority of the national gathering is to create the conditions for an Indigenous-led coalition of allies to review, and conduct, the work required to transform the architecture of the Australian water sector, including legislation and institutions, to allow the (re)building of First Nations water science and governance.

Please return your expression of interest to kate by Friday May 26, 2023 to k.harriden@monash.edu

You can fill the form out or provide answers in a video.

If you have any questions or would like help with this form, please contact Kate or Michelle (michelle.graymore@monash.edu).

expression of interest: aqua nullius workshops 2023

name: _____

mob: _____

Country where you live: _____

phone: _____

email: _____

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Are you available on the following days: June 19 & 20 Canberra Y/N

July 24 & 25 Mildura Y/N

Aug 7 & 8 Dalby Y/N

Are you familiar with aqua nullius? Y/N

if yes, how familiar with the concept are you? Circle the relevant response.

A a little bit – have heard the term before

B kinda – understand the term and can recognize aqua nullius in some
settler-state institutions policies and actions

C pretty well – already actively working to resist aqua nullius on our
country

Why are you interested in these workshops?

Will you be attending as an organizational representative Y/N

if yes, what organization _____

if no, are you representing any group? _____

How will you share what you learn with your mob or organization?

If attending, will you require any financial support? Y/N

if yes, what support will you need: transport ☐
accommodation ☐

8.3 Consent Form



Consent Form

Workshop series: **Understanding, identifying and resisting aqua nullius**
Workshop lead: kate harriden

I have been given information about this workshop series and provided the opportunity to ask questions about the series and my participation.

I have been advised of the potential of risks and burdens associated with these workshops, specifically:

- possible discomfort or distress talking about the history of colonization and water.

I have been told I will be supported by the workshop lead, and there will be opportunities for debriefing during and after workshops to discuss any feelings of discomfort.

I understand that my participation in this workshop series is voluntary, I am free to refuse to participate and I am free to withdraw at any time.

I am aware that no video or voice recordings will be made and that any notes taken by the workshop lead will be used for reporting back or crafting future research collaborations.

Should any potential future collaboration proceed on the basis of the written notes, I understand that the workshop lead must ask for consent before incorporating any contributions at the workshops series identifiable as or attributable to me.

If I have any enquiries about the research, I can contact kate harriden by phone (0474 434 099) or email (k.harriden@monash.edu).

If I have any concerns or complaints regarding the way the workshops are conducted, I am aware that I can contact Monash University's Office of Research Ethics & Integrity, Room 116, Administration Building B (3D)
26 Sports Walk, Clayton Campus
Clayton, VIC 3800
E: managerresearchethics@monash.edu.

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Name (please print)

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