



First Peoples, Living Waters How Treaties Address Indigenous Water Rights

My name is Dr. Erin O'Donnell. I am a Senior Lecturer and ARC Research Fellow at the Melbourne Law School. I've been working in water since 2003. So I've worked in the private sector as a consultant, I've worked for government in producing water policy, and now I'm a research academic.

So for me and my research, what connects me to the Australia Centre is through the Australian Centre's values and their commitment to exposing the contemporary, as well as the historic impacts of colonisation.

And so the Australian Centre is a place to do the kind of research that acknowledges that, that amplifies that message, and that makes people aware of all of the different ways that colonising and coloniality have become embedded and invisibilised within Australian culture.

I think there's a number of things that drive me to do this work. Firstly, water justice, and really water injustice, is a massive issue. So we know that traditional owners in the Murray-Darling Basin, for instance, own less than 0.2% of all of the water entitlements. That doesn't even stack up on population parity grounds.

So in the Australian context, that means challenging the assumption of aqua nullius. This is a term that was really coined by Virginia Marshall, a Wiradjuri Nyemba academic at the Australian National University. And it's a way of translating the terra nullius assumption that all of Australia belongs to no one when the British invaded, specifically into the water space, and we see aqua nullius is given form and effect in settler state water laws today.

So the exclusion, the dispossession of water from Indigenous peoples in Australia is a massive and contemporary issue, and it's getting worse.

I'm a fellow of the Australian Centre and I found out about the seed funding through a direct email from the Australian Centre, and it was a really exciting opportunity for me. So the Australian Centre seed funding was used to support a team of four, and this was me, it was two Indigenous co-researchers, so Melissa Kennedy, who has a part-time role at the University of Melbourne. She's also the CEO and founder of Tati Tati Kaiejin, which is a traditional owner-led, not-for-profit organization. She's also a part-time Aboriginal water officer for Tati Tati people as well. The other Aboriginal water officer that we have in the team is Nicky Hudson. She is the Aboriginal Water Officer for Gunditj Mirring Traditional Owner Corporation, and she's a Gunditjmarra woman. Nicky has been instrumental in the return of water to Gunditjmarra people. The fourth member of our team is Dr. Sangeetha Chandrashekeran. She's at University of Melbourne as well. She has an ARC-funded project through the Life Course Centre and she's been working with Melissa on the idea of wellbeing and how cultural flows, and cultural water, and the return of water to Aboriginal people can influence wellbeing.

So the four of us were funded by the Australia Centre's seed funding, but we are also part of a much bigger research team that this seed funding has been used to support.

So in July 2023, we went to visit the USA. We spent about eight days in Arizona meeting with tribes, talking about water and water justice. So we were introduced to the Colorado River at



sunrise. It was a really powerful experience to go and meet people on their country and have conversations about water justice that cross oceans.

And one of the really exciting things that the Australian Centre seed funding made possible was not just for Mel and Nicky to come, but also for two men from their Traditional Owner organisation. But what this meant was that Indigenous people were able to go and form those relationships and learn those stories and those insights for themselves. And that's been the best outcome. It enabled us to build on those relationships. And as seed funding, it was completely okay to say these relationships are, in fact, being built.

So we actually have this incredible three-way conversation across three settler colonial states with Indigenous peoples traveling to other parts of the world to build those relationships directly.

The first step was the visit to Arizona in July. That laid the foundation for a lot of really great relationships of trust and accountability. We are now following that up with a visit from tribes and Wanganui Iwi to Australia in November.

So this kind of ongoing dialogue between people about the power of sharing stories relating to water, the realisation that you're not alone, that the experience of being an Indigenous person trying to push against the settler state being made to feel like you just don't fit in this system that seems to work perfectly well for everybody else, apparently. That's constantly the message from the settler state to Indigenous people.

So water justice is a major driver for me, but it also comes down to the invisibility of aqua nullius. So every single statute in Australia, every single water law statute has a line in it that sets aside water and the power to control water for the crown. So part of the joy and the strength of this project has been connecting people and enabling them to realize that they're not alone in feeling this disconnect with the settler state system.