



Water quality information sheet 39 January 2017

Aboriginal customary activities in public drinking water source areas in the South West Native Title Settlement Area

“On 6 June 2016 the Noongar people were formally recognised as the traditional owners of the land in the South West Settlement Area by the WA Parliament in the Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act 2016.”

As a component of the South West Native Title Settlement, amended water by-laws now enable Noongar people to undertake some types of land-based activities for Aboriginal customary purposes¹ in public drinking water source areas (PDWSAs) in the South West Native Title Settlement Area (the settlement area). The Department of Water has also investigated and removed impediments that may have affected the practice of Aboriginal customary activities within numerous other PDWSAs that fall within the settlement area.

What is the South West Native Title Settlement?

The South West Native Title Settlement (settlement) is the most comprehensive native title agreement proposed in Australian history, comprising the full and final resolution of all native title claims in the South West of Western Australia, in exchange for a package of benefits (www.dpc.wa.gov.au). The settlement, in the form of six Indigenous Land Use Agreements (ILUAs), was negotiated between the state government and the South West Aboriginal Land and Sea Council on behalf of six Noongar ILUA groups:

1. Yued (Jurien, Moora, Lancelin, Gingin)
2. Gnaala Karla Booja (Mandurah, Bunbury, Donnybrook)

¹ The term 'Aboriginal customary purpose' is defined in the by-law amendments to mean:

- a) preparing or consuming food customarily eaten by Aboriginal persons; or
- b) preparing or using medicine customarily used by Aboriginal persons; or
- c) engaging in artistic, ceremonial or other cultural activities customarily engaged in by Aboriginal persons; or
- d) engaging in activities incidental to a purpose stated in paragraph (a), (b) or (c).

'Aboriginal customary purpose' is also recognised in the *Conservation and Land Management Act 1984* and *Wildlife Conservation Act 1950*.

3. South West Boojarah # 2 (Busselton, Dunsborough, Margaret River, Pemberton, Nannup)
4. Wagyl Kaip & Southern Noongar (Katanning, Gnowangerup, Albany)
5. Ballardong People (York, Northam, Hyden, Kondinin)
6. Whadjuk People (Perth metropolitan area).

Together, the ILUAs cover the entire settlement area (see Figure 1). Once the ILUAs are conclusively registered on the Register of Indigenous Land Use Agreements, native title will be resolved in the settlement area.



Figure 1 South West Native Title Settlement Area

What by-laws were amended?

As part of the settlement, the Department of Water amended two sets of by-laws to enable Noongar people to undertake some types of land-based activities for Aboriginal customary purposes¹. The amendments to the Metropolitan Water Supply, Sewerage and Drainage By-laws 1981 and the Country Areas Water Supply By-laws 1957 came into effect on 8 June 2016.

Why were the by-laws amended?

Access to bushland and water source areas on Noongar land is of fundamental importance to Noongar people because of their spiritual relationship to the land and the desire to carry out traditional practices and pass on knowledge to future generations. The issue of lawful access to certain land was a key factor in obtaining support in the Noongar community for the settlement.

Before the amendments, many land-based, Aboriginal customary activities were already allowed. However, some by-laws needed to be changed to enable Noongar people to undertake the activities that were agreed to by the state government through the settlement's ILUAs. In addition to these amendments the Department of Water has also worked to abolish or resolve source protection by-laws from relevant PDWSAs within the South West Native Title Settlement Area.

The Government of Western Australia must satisfy four conditions before the commencement of the settlement. The amendment of the by-laws is one of the significant conditions now successfully satisfied by the Department of Water (www.dpc.wa.gov.au).

Where do the by-law amendments apply?

The by-law amendments apply to PDWSAs within the settlement area, extending from near Leeman on the west coast, approximately east to a point north of Moora and then south-easterly to a point just east of Hopetoun on the south coast (see Figure 1).

What can Noongar people do in PDWSAs in the settlement area?

The amendments enable:

- Noongar people to access registered Aboriginal sites (under the *Aboriginal Heritage Act 1972*) within reservoir protection zones² on Crown land for Aboriginal customary purposes¹.
- The Minister for Water, after consultation with the respective Noongar ILUA groups, to designate camping sites for Noongar people on Crown land outside reservoir protection² and wellhead protection zones. The Minister for Water will require written permission from the Minister for Environment before

² A buffer measured from the high water mark of a drinking water reservoir, inclusive of the reservoir (usually 2 km). This is referred to as a prohibited zone under the Metropolitan Water Supply, Sewerage, and Drainage Act By-laws 1981.

designating a camping site on land administered under the *Conservation and Land Management Act 1984*.

- Noongar people to light fires for Aboriginal customary purposes¹ on a registered Aboriginal site in a reservoir protection zone, and in a surface water³ PDWSA in the outer catchment, subject to restrictions under the *Bush Fires Act 1954*.
- Noongar people to gather invertebrates, eggs and flora for Aboriginal customary purposes¹ at registered Aboriginal sites on Crown land within reservoir protection zones²; and on Crown land outside reservoir protection zones².

Water-based activities, including water-based customary activities such as fishing and marroning, are not supported in PDWSAs. If people come into direct contact with water that is used for drinking water supply, there is a risk of pathogen contamination, which could be detrimental to the health of those consuming the water. To protect public health, the restrictions on water-based activities are the same for all PDWSAs in WA.

How will the amended by-laws be implemented?

The Department of Water will administer the by-law changes in collaboration with the Water Corporation, which undertakes community consultation, catchment surveillance and by-law enforcement under delegated authority from the Department of Water.

Once the settlement commences, six Noongar Regional Corporations will be established to represent the six Noongar ILUA groups, together with one supporting Central Services Corporation. The Department of Water will liaise with the corporations, at agreed intervals to advise on by-laws implementation, and the Water Corporation will work closely with Regional Corporations at a local level.

How have we increased the land and water available for Aboriginal customary purposes?

The ILUAs commit the Department of Water to investigate the abolition or removal of source protection by-laws from five PDWSAs. Department of Water investigations included stakeholder consultation and led to the abolition of the Deep River and Scotsdale Brook water reserves, and the removal of by-laws from the Warren River and Kent River water reserves because they are no longer required for drinking water supplies (Figure 2). This means that restrictions on Aboriginal customary purposes¹ in those four areas are now removed. No changes were made to the Donnelly River Water Reserve because it is still required for future drinking water supply.

The Department of Water has also made changes to nine other PDWSAs, greatly increasing the land and water available for Aboriginal customary purposes¹, and

³The existing by-laws on fire management do not restrict fire lighting in a groundwater PDWSA. The *Bush Fires Act 1954* also applies in these areas.

removed any relevant restrictions (Figure 2). The Mullalyup Water Reserve and the Padbury Reservoir Catchment Area will also be investigated to see if these can be abolished. This will make 15 PDWSAs altogether that have been abolished or had restrictions removed.

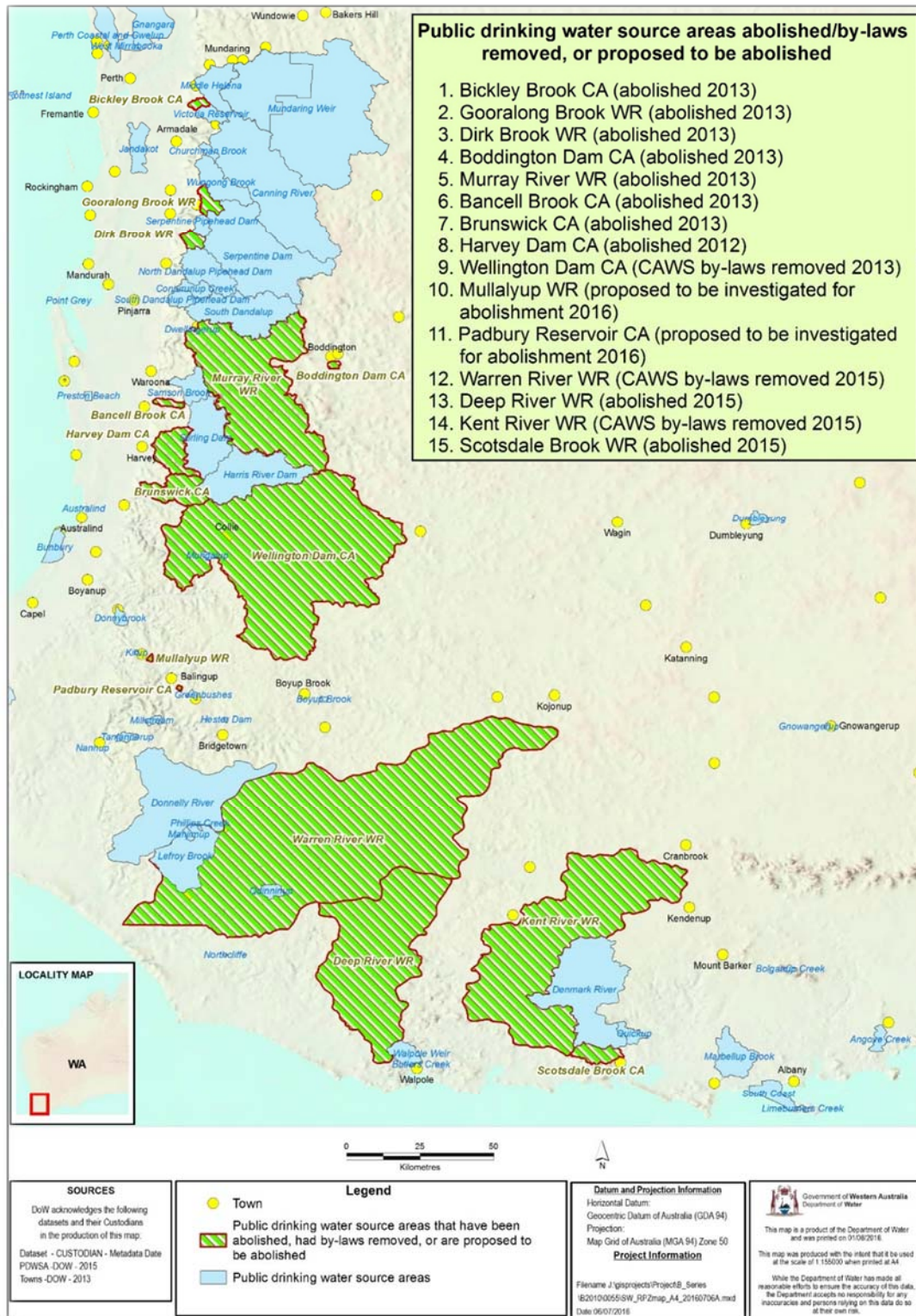


Figure 2 Public drinking water source areas that have been abolished, had their by-laws removed, or will be investigated for abolition

Need more information?

For more information about the Settlement, ILUAs and *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act 2016*, visit www.dpc.wa.gov.au.

Copies of the amended by-laws, which include maps of where they apply, are available from www.slp.wa.gov.au.

Guidelines on Aboriginal customary purposes on land and water managed by the Department of Parks and Wildlife were prepared in 2014. They also provide advice on most land-based Aboriginal customary purposes undertaken on Crown land in a PDWSA, visit www.dpaw.wa.gov.au.

For information about the Settlement visit the Department of the Premier and Cabinet website at www.dpc.wa.gov.au. See also the South West Aboriginal Land and Sea Council, the native title representative body of the Noongar people, at www.noongar.org.au.

For information about how the Department of Water manages WA's drinking water sources, visit www.water.wa.gov.au.

To find out why pathogens from body-contact with water are the biggest public health risk in drinking water sources, please read our brochure *Risks from pathogenic micro-organisms in public drinking water source areas*, available www.water.wa.gov.au.

References

Department of the Premier and Cabinet 2015, *The South West Native Title Settlement Fact Sheets: An Agreement reached between the Noongar People and the WA Government*, Department of the Premier and Cabinet, Perth, Western Australia, available www.dpc.wa.gov.au.

Legislation

Aboriginal Heritage Act 1972

Bush Fires Act 1954

Conservation and Land Management Act 1984

Country Areas Water Supply By-laws 1957

Metropolitan Water Supply, Sewerage and Drainage By-laws 1981

Native Title Act 1993 (Cwlth)

Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act 2016

Wildlife Conservation Act 1950

Please visit the State Law Publisher's website at www.slp.wa.gov.au.